

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 14/RP/2019 in**

**Petition No. 318/MP/2018 alongwith I.A. No.80/IA/2019**

**Coram:**

**Shri P. K. Pujari, Chairperson  
Dr. M. K. Iyer, Member**

**Date of Order: 12.12.2019**

**In the matter of**

Petition under Section 94 of the Electricity Act, 2003 read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, Read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of order dated 9.4.2019 in Petition No.318/MP/2018.

**And in the matter of**

The Central Transmission Utility,  
(Power Grid Corporation of India Limited),  
B-9, Qutub Industrial Area,  
Katwaria Sarai, New Delhi-110016.

**..... Review Petitioner**

**Vs**

SEI Sunshine Power Private Limited,  
10<sup>th</sup> Floor, Menon Eternity,  
Old No.110, New No. 165,  
St. Mary's Road, Alwarpet,  
Chennai-600018 (Tamil Nadu).

**..... Respondent**

**For Review Petitioner** : Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Jyoti Prasad, PGCIL  
Shri K.K Jain, PGCIL

**For Respondent** : Shri Hemant Singh, Advocate, SEI Sunshine Power (P) Ltd.  
Shri Lakshyajit Singh, Advocate, SEI Sunshine Power (P) Ltd.



## **ORDER**

The Central Transmission Utility (CTU) has filed the instant Review Petition seeking review of order dated 9.4.2019 in Petition No.318/MP/2018, filed by the Respondent, SEI Sunshine Power Private Limited (hereinafter referred to as "SSPPL"). The Commission in order dated 9.4.2019 held that the decision of the CTU to operationalize the LTA without commissioning the entire transmission system is not as per the Long Term Access Agreement (LTAA) dated 26.8.2016 entered into between the CTU and SSPPL. Accordingly, the Commission held that there is no requirement for the SSPPL to open a Letter of Credit (LC) towards payment security mechanism till the commissioning of its generating station(s) and consequently set aside the notice dated 3.10.2018 issued by the CTU to the SSPPL for termination of its Transmission Service Agreement (TSA) for not opening the LC. The CTU has also filed Interlocutory Application, i.e. I.A. No.80/IA/2019 seeking condonation of the delay in filing the instant Review Petition.

### **Background**

2. SSPPL alongwith five other SPVs is setting up solar based generating station at Shivpuri, Madhya Pradesh with an installed capacity of 30 MW each, totalling to 180 MW. SSPPL, acting as a lead generator, entered into Power Purchase Agreements (PPAs) on 15.7.2015 with Tata Power Delhi Distribution Ltd. (TPDDL) for sale of total quantum of 180 MW. SSPPL applied for grant of LTA on 28.7.2015 to supply 180 MW to TPDDL. SSPPL's application for grant of LTA was discussed in the 23rd Meeting of the Western Region constituents held on 1.6.2016 and in the 9<sup>th</sup> Meeting of the Northern Region constituents held on 30.5.2016 regarding the connectivity/long-term access. Pursuant to the said meetings, the CTU granted LTA



to SSPPL vide letter dated 29.7.2016 and as per the said letter, LTA was to be operationalised from 30.9.2016 or from the date of availability of the specified transmission system which is later. SSPPL and the CTU also executed Long Term Access Agreement (LTAA) on 26.8.2016. The CTU informed SSPPL on 28.3.2018 that Jabalpur-Orai-Aligarh 765 kV corridor was charged and likely to achieve COD on 31.3.2018 and the LTA of 180 MW granted to SSPPL will be operationalised w.e.f. 1.4.2018 on the margin available. CTU on 29.3.2018 directed SSPPL to furnish LC for ₹7.75 cr. towards payment security mechanism. In response, SSPPL requested CTU to operationalize the LTA only on completion of the transmission system specified in the LTA granted to it. SSPPL also replied that it is exempted from payment of transmission charges and losses being a solar power project and there is no requirement for opening any LC towards payment security mechanism. Later, CTU issued Termination Notice, of the TSA, on 3.10.2018 for not opening the LC.

3. SSPPL filed Petition No.318/MP/2018 for (a) quashing the termination notice issued by CTU, (b) to hold that the LTA granted to SSPPL can be operationalised in accordance with the provisions of LTAA, TSA and the 2010 Sharing Regulations, and (c) to hold that SSPPL is not liable to pay any transmission charges and losses in terms of Regulation 7(1)(y) of the 2010 Sharing Regulations.

4. The Commission disposed of Petition No. 318/MP/2018 vide order dated 9.4.2019 wherein it was held (a) the CTUs decision to operationalize the LTA without the commissioning of the entire transmission system is not as per the LTA agreement dated 26.8.2016 and the second proviso to clause (5) of Regulation 8 of the 2010 Sharing Regulations is not applicable to SSPPL and therefore the CTUs letter dated 28.3.2018 operationalizing the LTA granted to SSPPL is not in order, (b) as the LTA



operationalised was not as contemplated in the LTA grant letter dated 29.7.2016, the CTUs letter dated 29.3.2019 asking SSPPL to open LC towards payment security mechanism was set aside, (c) SSPPL is not obliged to open LC and therefore TSA Termination Notice dated 3.10.2018 was also set aside.

5. Aggrieved with the above said findings of the Commission in order dated 9.4.2019, CTU has filed the instant Review Petition. The CTU has submitted that the following findings of the Commission in order dated 9.4.2019 are apparent errors and has sought rectification of them.

a) LTA was granted to SSPPL on a transmission system which was not developed for SSPPL and SSPPL was accommodated on the transmission capacity relinquished by other LTA grantees.

b) Regulation 8(5) of 2010 Sharing Regulations is not applicable to SSPPL.

c) The operationalisation of the LTA granted to SSPPL can take place only when the last element in the identified transmission system as recorded in the LTA grant is put into commercial operation.

d) The 5<sup>th</sup> Amendment to the 2010 Sharing Regulations extends the earlier dispensation of exemption of payment of transmission charges by solar power generators and it operates retrospectively.

### **Submission of the CTU**

6. The CTU has made the following submissions in support of the Review Petition.

a. SSPPL's application for grant of LTA was discussed in the 23<sup>rd</sup> Meeting dated 1.6.2016 of the Western Region constituents regarding connectivity/long-term access and in the 9<sup>th</sup> Meeting dated 30.5.2016 of the Northern Region constituents regarding connectivity/long-term access and the LTA to the



Respondent was agreed to be granted accordingly. The following were discussed and agreed in the said meetings.

i) Three inter-regional links namely, Champa-Kurukshetra Phase-I, Champa-Kurukshetra Phase-II and Jabalpur-Orai 765 kV D/C line are implemented, on which LTAs had been granted for transfer of power from various generating stations to different regions.

ii) Some of the LTA grantees sought relinquishment of the LTA granted for various reasons.

iii) The Commission observed that pending decision on the various issues involved, the relinquished quantum could be utilized for grant of LTA to other eligible applicants.

iv) Accordingly, 1884 MW out of the relinquished transmission capacity was reallocated to nine generators, which included SSPPL.

v) The said LTA grant was to be subject to implementation of Jabalpur-Orai 765 kV corridor under implementation as “Inter-Regional System Strengthening Scheme in WR and NR Part-B” and Chama-Kurukshetra HVDC Phase-II under implementation as “Transmission System Strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh”.

b) As per the discussions in the above said meetings, many of the LTA grantees of the two out of the three inter-regional links, that were initially planned for power transfer from various generating stations, have relinquished their respective LTAs. Two out of the three inter-regional links were still required to be implemented for accommodating the LTAs to be granted to 9 generators as specifically recorded in the Minutes of the aforesaid Meetings.



As such, it cannot be said that the transmission system envisaged for the LTAs granted to 9 generators was not implemented/developed for them and that the capacity had been created only on account of relinquishment of earlier LTAs.

c) CTU vide letter dated 29.7.2016 intimated that LTA for 180 MW was granted to SSPPL which was to be effective from 30.9.2016 or from availability of the specified transmission system, whichever was later.

d) All the applications for grant of LTA received in a month are bunched together for their processing. The transmission system planning and ISTS augmentation is undertaken so as to develop an efficient, coordinated and economical system of ISTS lines as mandated under Section 38(2) of the Electricity Act, 2003. Transmission augmentation scheme(s) are evolved taking into account all the LTA applications received over a period of six months and the Regulations do not envisage transmission system planning for a single LTA applicant. The LTAs granted are considered to evolve transmission system scheme(s) and the LTA Agreements entered also record the scheme(s) and the elements required for enabling operationalization of the LTAs. This recording in the LTA intimation or the LTA Agreements does not mean that for each LTA grantee, each of the elements upto the last one are necessarily to be commissioned before their respective LTAs can be operationalized. The transmission capacity is progressively commissioned and added to the ISTS under the transmission system scheme identified for a given number of generators. Based on this and subject to the scheduled Commercial Operation Date (COD) of the generators, LTAs to the extent of



the transmission capacity already added to the ISTS are operationalized so that neither the commissioned transmission elements remain unutilized nor the generation capacity gets stranded. This methodology of LTA grant and operationalization is adopted uniformly for all LTA grants and having the statutory/regulatory prescription, is well known to all LTA applicants.

e) As per the second proviso of Regulation 8(5) of the 2010 Sharing Regulations, if some of the transmission lines or elements were declared commercial then the generator shall pay transmission charges for LTA operationalized corresponding to the transmission system commissioned. Thus, the said proviso provides for operationalization of LTA corresponding to the transmission system commissioned provided the scheduled COD of the LTA grantee/generator has been reached.

f) The Commission has examined the operation and application of Regulation 8(5) of the 2010 Sharing Regulations in various orders like order dated 28.9.2016 in Petition No.30/MP/2014, 5.11.2018 in Petition No.12/SM/2017 and 8.3.2018 in Petition No.229/RC/2015.

g) The Commission in various cases has asked the CTU to give effect to the second proviso of Regulations 8(5) of the 2010 Sharing Regulations by operationalising part or full LTA granted when some of the elements of an identified transmission system are commissioned and asked the LTA customers to open the LCs for ensuring payment of transmission charges.

h) The Commission mistook that the transmission system as envisaged in the LTA Agreement was not developed and that the capacity was created due to



relinquishment of other LTA customers. It is an inadvertent oversight as the CTU had placed on record the Minutes of Meetings dated 1.6.2016 (of the Western Region constituents) and 30.5.2016 (of the Northern Region constituents) wherein the transmission system for grant of LTA to the SSPPL (and other LTA applicants) was discussed. It could be seen from the Minutes that two inter-regional links were initially planned for power transfer from various generating stations. Many of those generators have relinquished their respective LTA and the inter-regional links were to be implemented for power transfer from the nine generating stations for whom LTA for 1884 MW was being granted. Though the transmission capacity was created on account of relinquishment by earlier LTA grantees, the inter-regional links were still required to be implemented for accommodating the LTA to be granted to these 9 generators. Further, it was stated in the reply to the main petition that the relinquishment by various other LTA customers had occurred prior to grant of LTA to SSPPL and was thus immaterial to the grant of LTA to SSPPL.

i) Though the aforesaid submission was recorded in the order dated 9.4.2019, it was construed by the Commission that the LTA grant to SSPPL to be with an existing system or with a system not developed for SSPPL but accommodated on transmission capacity relinquished by some other LTA grantees. It appears that the aspect of relinquished corridors was inter-mixed with the option given by the CTU for some generators, including SSPPL to operationalize their LTA with the available capacity of 559 MW after surrender of LTA by other LTA customers, which was different from the LTA relinquishments prior to the LTA granted to SSPPL. Consequently, an error





apparent crept into the findings of the Commission which led to the consequential erroneous finding that since the LTA grant was with relinquished capacities, the provisions of Regulation 8(5) of the Sharing Regulations were not applicable and as such, SSPPL's LTA could not be operationalized upon completion of part transmission system. The Commission further erroneously concluded that if some of the LTA holders had relinquished their LTA capacity in the given corridor, then the Review Petitioner should have taken steps to revise the requirement of transmission system in the LTA Agreement. The SSPPL's LTA continued at all times with the transmission system intimated under the LTA grant and recorded in the LTA Agreement and no revision in the same was required to be carried out.

j) The finding that SSPPL was required to develop its project with the understanding that its LTA was to be operationalized after commissioning of the entire system as agreed under the LTA Agreement and that the CTU could not operationalize the LTA without the completion of the entire transmission system as per the LTA Agreement is another error. The system augmentation schemes were evolved as part of transmission planning for enabling power flow under LTA by bunching together applications received over six months. When the LTA was granted, the transmission system identified was reflected in the LTA grants against each of these applications. It does not mean that for each LTA grantee, each of the transmission elements upto the last one are necessarily to be commissioned before their respective LTAs could be operationalized.



k) The provisions of Regulation 8(5) of the 2010 Sharing Regulations were erroneously by-passed to unsettle the entire process of LTA grant in ISTS not just for SSPPL but for all future LTA applicants whose LTAs were now to be operationalized only when the last element of the identified transmission system was commissioned. The result of this direction would be that huge transmission capacities in augmented/strengthened transmission system would remain unutilized till the entire system was developed and commissioned, which is contrary to the intent of the regulations.

l) Applying the 5<sup>th</sup> Amendment to the 2010 Sharing Regulations retrospectively is another error in the order dated 9.4.2019. The 5th Amendment to the 2010 Sharing Regulations had come into force after the contractual arrangement between SSPPL and the CTU. The settled law is that subordinate legislation could not be given retrospective effect unless specifically authorized under the parent statute. Keeping in line with this settled law, the Commission had also held in its order dated 13.3.2018 in Petition No.130/MP/2017 that the Regulations notified by it could operate only prospectively. However, this settled legal position escaped the attention of the Commission leading to the wrong finding that the 5<sup>th</sup> Amendment was applicable to SSPPL and accordingly SSPPL was exempted from paying transmission charges.

m) Owing to the aforesaid errors in order dated 9.4.2019, SSPPL has been wrongly absolved by the Commission from its liability to pay the transmission charges billed on it as per the 2010 Sharing Regulations and also from opening the mandatory LC. As such, said errors are liable to be rectified by the Commission by exercising the powers vested in it under its review jurisdiction.



7. The CTU has made the following prayers:

“(a) admit the present Review Petition and review and modify the Order dated 9.4.2019 to the extent sought in the above Petition;

(b) Pass such further and other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.”

**I.A. No. 80/IA/2019 filed by CTU**

8. During the hearing on 16.9.2019, the counsel for SSPPL opposed the admissibility of the Review Petition as it was filed after 20 days of the prescribed limit of 45 days and there was no application for condonation of delay in filing the Review Petition. The Commission directed the CTU to file an application for condoning the delay in filing the Review Petition. Accordingly, I.A. No.80/IA/2019 has been filed by CTU for condonation of the delay in filing the instant Review Petition. CTU has submitted the instant Review Petition was filed on 24.5.2019, i.e., within the prescribed time limit of 45 days for filing a Review Petition. CUT has submitted that the Review Petition was filed with the cause title "Powergrid Corporation of India Ltd. vs. SEI Sunshine Power Pvt. Ltd." against the order dated 9.4.2019 in Petition No.318/MP/2018 titled "SEI Sunshine Power Pvt. Ltd. vs. Powergrid Corporation of India Ltd." seeking exemption from payment of fees as provided in Regulation 6(3) of the Central Electricity Regulatory Commission (Payment of Fees) (First Amendment) Regulations, 2017. Upon filing of the said Review Petition, the Registry of the Commission intimated the CTU, the requirement of filing the Petition in the name of "Central Transmission Utility" as against "Powergrid Corporation of India Ltd." to claim exemption from payment of Court Fee and therefore referred the said Review Petition back. Thereafter, the counsel for the CTU informed the CTU about the said requirement and sought instructions for the same. Accordingly, the Review Petition



was re-filed on 14.6.2019 with the cause title "Central Transmission Utility vs. SEI Sunshine Power Pvt. Ltd." Thus, there has been no delay in filing of the instant Review Petition and it has been filed within the specified time. We have considered the submissions of the parties on the issue of delay in filing the instant Review Petition. It is observed that the CTU has filed the Review Petition within the time limit of 45 days. However, there were certain deficiencies in filing the Review Petition therefore, the Registry of the Commission directed the CTU to remove the deficiency. The CTU removed the deficiency and refiled the Review Petition on 14.6.2019 which was 20 days beyond the prescribed time limit of 45 days. Since CTU filed the Review Petition in time and 20 days extra was taken to remove the deficiency as pointed out by the Registry, the delay of 20 days in filing the Review Petition is condoned.

9. The matter was heard on 16.9.2019 and 6.11.2019 and order on admissibility was reserved.

10. After having heard the parties and perused the documents on record, we proceed to examine the admissibility of the review petition.

**Analysis and decision:**

11. We have heard and considered the submissions of learned counsel for the CTU and SSPPL. CTU has mainly sought review of the order dated 9.4.2019 on four grounds as stated in para 5 above.

12. In the first ground, the CTU has contended that the Commission in its findings in order dated 9.4.2019 has recorded that the LTA of SSPPL was operationalized on the transmission system which was not developed for SSPPL but on transmission capacity relinquished by other LTA grantees. In the third ground, the CTU has



contended that the Commission has taken a view that operationalization of LTA granted to SSPPL could take place only when the last element in the identified transmission system for SSPPL in the LTA was put into commercial operation. CTU has submitted that these findings are wrong and therefore, the order suffers from error apparent on the face of record.

13. SSPPL's submissions that SSPPL planned the implementation of the projects keeping in mind the development of the transmission system specified in the LTA and the transmission system specified in the LTA was required to operationalize the LTA were considered in para 2(c) of the order dated 9.4.2019, which is as follows.

"c) Pursuant to the grant of LTA, the Petitioner and PGCIL also executed Long Term Access Agreement (LTAA) and Transmission Service Agreement dated 26.8.2016. Accordingly, the Petitioner planned the implementation of the projects keeping in mind the development of the specified Transmission System, which was specifically detailed by PGCIL in the LTA intimation letter dated 29.7.2016....."

14. The submissions made by the CTU in its reply were recorded in para 4 (a) of the order dated 9.4.2019 as follows.

"The Petitioner's letter for the grant of LTA was discussed in the 23<sup>rd</sup> Meeting dated 1.6.2016 of the Western Region constituents regarding connectivity/long-term access and in the 9<sup>th</sup> Meeting dated 30.5.2016 of the Northern Region constituents regarding connectivity/long-term access. The consideration of the Petitioner's application as also of many other generators was in the backdrop of relinquishment of a large LTA capacity in WR-NR corridor (of 1980 MW) by many LTA customers. This relinquished quantum could be utilized for grant of LTA to other eligible LTA customers with the commissioning of Jabalpur PS-Orai 765 kV corridor under implementation as "Inter-Regional System Strengthening Scheme in WR and NR Part-B" and Champa-Kurukshetra HVDC Phase II under implementation as "Transmission System Strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh". The LTA to the Petitioner was agreed to be granted accordingly."

15. The submissions made by SSPPL in its rejoinder were recorded by the Commission in para 5(a) and (b) order dated 9.4.2019 as follows.

"(a) The 23<sup>rd</sup> meeting of WR constituents for connectivity and LTA application held on 1.6.2016 itself records that the LTA shall be granted subject to the commissioning of Jabalpur- Orai 765 kV corridor and Champa - Kurukshetra HVDC Phase- II. However, Champa- Kurukshetra Phase II is still under construction and therefore



PGCIL cannot seek operationalisation of LTA, at this stage. Further, as per the minutes of meeting of 4.11.2016 held by PGCIL for operationalisation of LTA, the concurrence of LTA customer is a condition precedent for the early operationalisation of LTA. The Petitioner never opted for the early operationalisation of LTA and therefore PGCIL cannot unilaterally pre-pone the operationalisation of LTA.

(b) In the 21<sup>st</sup> JCC meeting for generation projects in WR, conducted by PGCIL, on 28.9.2018, it was specifically recorded that the upgradation of 800kV, 3000MW HVDC bipole between Champa Pooling station - Kurukshetra (NR) to 6000 MW, which is part of the "identified" transmission system mentioned in the LTA intimation letter of the Petitioner, will only get commissioned in June, 2019. PGCIL has been frequently changing the date of LTA operationalisation, which subjected the Petitioner to unnecessary hardship and therefore, the Petitioner has been restrained from implementing its Project. The operationalisation of LTA by the PGCIL has no legal sanctity as the said LTA can be operationalised after commissioning of "identified transmission system of PGCIL in accordance with the terms of intimation letter and LTAA executed between the Petitioner and PGCIL."

16. The Commission's gave its finding on the above said two issues considering the submissions of the parties which is as follows.

"13. We have considered the submissions of the parties. The entire issue revolves around the LTA Intimation Letter dated 29.7.2016 and the right of PGCIL to operationalisation of LTA before the completion of transmission system as specified in the LTA intimation letter. The respondent, PGCIL was required to complete the following transmission system:

"Inter-regional system strengthening scheme in WR and NR (Part-B)

- Jabalpur PS - Oral 765 kV D/C line
- Orai - Aligarh 765 kV D/C line
- Orai-Orai 400 kV D/C (Quad) line
- LILO of one ckt of Satna - Gwalior 765 kV 2xS/C line at Orai
- LILO of Agra - Meerut 765 kV S/C at Aligarh
- LILO of Kanpur - Jhatikara 765 kV S/C at Aligarh

Transmission system strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh

- Up-gradation of +800 kV, 3000 MW HVDC bipole between Champa PS - Kurukshetra (NR) to 6000 MW
- Kurukshetra (NR) - Jind 400 kV D/c (Quad)"

It is observed that PGCIL granted LTA on 29.7.2016. The Annexure-I of the LTA agreement envisaged the requirement of aforementioned transmission system for the evacuation of power from the Petitioner's generating station and the date of operationalisation of LTA was fixed "as 30.9.2016 or availability of transmission system, whichever is later".

14. It is observed that the entire transmission system as envisaged in LTAA has not been commissioned as yet....."



17. The Commission has recorded the findings based on the pleadings of the parties and there is no error apparent on the face of record. CTU is seeking to re-agitate the matter by advancing fresh arguments which cannot be entertained in review.

18. In the second ground, the CTU has contended that even though the Commission has reconsidered the submission of the CTU with regard the provisions regarding operationalization of LTA on the commissioning of the part capacity, namely second proviso to Regulation 8(5) of the 2010 Sharing Regulations and para 129 of the order dated 16.2.2015 in Petition No. 92/MP/2004, the Commission has held that these provisions are not applicable for the case of SSPPL. SSPPL has submitted that the above contention of CTU have been clearly rejected by the Commission in para 19 and 20 of the order dated 19.4.2019. According to SSPPL, CTU is seeking to re-agitate the matter on merit which is not permissible in review.

19. The Commission having considered the submissions of the CTU and SSPPL gave its finding in para 19 and 20 of the order dated 19.4.2019 as under.

“19..... It is observed that the PGCIL and the petitioner have not revised the requirement of transmission system after execution of LTA agreement dated 26.8.2016. If the some of the LTA holders had relinquished their LTA capacity in the given corridor, PGCIL should have taken steps to revise the requirement of the transmission system in LTA agreement. The petitioner is required to develop its project with the understanding that its LTA will be operationalized after commissioning of the entire transmission system as it was agreed under concluded contract. In the above situation, we do not find it appropriate to alter the rights of the petitioner and obligations of the Respondent under the concluded contract (LTAA). Therefore, we hold that as per the LTA agreement dated 26.8.2016, the date of operationalisation of LTA was “as 30.9.2016 or availability of transmission system, whichever is later” and in absence of any facts to the contrary this position continues.

20. In the light of the above discussion, we are of the view that the decision of the PGCIL to operationalise the LTA without commissioning the entire transmission system is not as per the LTA agreement dated 26.8.2016. Further, PGCIL's decision to invoke the second proviso to clause (5) of Regulation 8 of the Sharing Regulation is not applicable in the present case. Therefore, letter dated 28.3.2018 issued by PGCIL



to the Petitioner declaring operationalization of the LTA is not in order”

20. In the light of the clear finding on merit in para 19 and 20 of the impugned order, we do not find any error on the findings of the Commission.

21. In the fourth ground, the CTU has contended that the Commission’s finding with regard to retrospective application of the 5<sup>th</sup> amendment to the 2010 Sharing Regulations in case of SSPPL is an apparent error. The submissions made by the CTU on the applicability of the 5<sup>th</sup> amendment were recorded in para 4(d) of the impugned order as follows.

“(d) The regulatory regime applicable at the time of grant of LTA to the Petitioner and the entering into of the LTA Agreement was that if solar-based generation projects were commissioned during the period 1.7.2014 to 30.6.2017, no transmission charges for use of inter-State transmission system were payable by them. The LTA Agreement also accordingly proceeded based on the scheduled commissioning date of 30.9.2016 and not on the availability of identified transmission system which could be later than 30.9.2016 or even 30.6.2017 (the cut-off date for claiming exemption). The Fifth Amendment to the Sharing Regulations came into force after the contractual arrangement between the Petitioner and the Respondent and therefore is not applicable in the present case.”

22. The Commission has reconsidered its findings in the above submissions of CTU in para 24 to 26 of the order dated 4.9.2019 as under.

“24. We have considered the submissions of the parties. Regulation 7 (1) (u) of the Sharing Regulations reads as under :

“No transmission charges for the use of ISTS network shall be charged to solar based generation. This shall be applicable for the useful life of the projects commissioned in next three years.

Provided that the above provision shall also be applicable for the useful life of the projects commissioned during the period 1.7.2014 to 30.6.2017.”

Regulation 7(1)(u) of the Sharing Regulations exempted the Solar Power Developer (SPD) from the payment of any transmission charges for the useful life of the projects commissioned during the period 1.7.2014 to 30.6.2017. The exemption is applicable only when the power is evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station.

25. Further, by way of the Fifth Amendment dated 14.12.2017 to the Sharing Regulation, a new sub clause (y) was added to Regulation 7(1) of the Principal Regulations as under:





“(y) No transmission charges and losses for the use of ISTS network shall be payable for the capacity of the generation projects based on solar resources for a period of 25 years from the date of commercial operation of the such generation projects if they fulfill the following conditions:

- (i) Such generation capacity has been awarded through competitive bidding; and
- (ii) Such generation capacity has been declared under commercial operation between 1.7.2017 and 31.12.2019; and
- (iii) Power Purchase Agreement(s) have been executed for sale of power from such generation capacity to the Distribution Companies for compliance of their renewable purchase obligation.”

26. Subsequent to 5<sup>th</sup> amendment to the Sharing Regulations, the exemption from the payment of transmission charges for solar generation projects commissioning between 1.7.2017 to 31.12.2019 was provided (extending it from erstwhile date of 30.6.2017). We are not inclined to accept the contention of PGCIL that Regulation 7 (1) (y) of the Sharing Regulation is not applicable upon the Petitioner. The effective date of Regulation 7 (1) (y) is 1.7.2017. Further, the Fifth Amendment nowhere prohibits the under construction generating stations from the exemption provided therein. Therefore, the exemption which was available till 30.6.2017 under Regulation 7(1)(u) has been further extended to 31.12.2019 by way of Fifth Amendment to the Sharing Regulation. The Fifth Amendment is equally applicable upon the Petitioner also and therefore, we are not inclined to accept the contention of PGCIL that the Fifth Amendment to the Sharing Regulation is not applicable in the instant case.”

23. It is clear from the above that the Commission has already given a clear finding in order dated 4.9.2014 that 5<sup>th</sup> amendment to the Sharing Regulations is applicable in the case of SSPPL. The CTU is trying to re-agitate the matter on merits at the stage of review which is not permissible. Further, on the basis of the findings in order dated 4.9.2014, the Commission held that SSPPL is not obliged to open the LC towards payment security as SSPPL is exempted from payment of transmission charges and losses and set aside the TSA Termination Notice dated 3.10.2018 issued by the CTU to SSPPL. The Commission also gave reasons for doing so and we are of the view that there is no error in order dated 4.9.2019.

24. For the reasons stated above, we do not find any merit in the submissions of the CTU and accordingly, the instant Review Petition is dismissed at the stage of admission.



25. The Review Petition No. 14/RP/2019 in Petition No. 318/MP/2018 and I.A. No. 80/IA/2019 are disposed of.

Sd/-  
**(Dr. M.K. Iyer)**  
**Member**

Sd/-  
**(P. K. Pujari)**  
**Chairperson**

