

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 55/MP/2019

Coram

Shri P. K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Shri I.S. Jha, Member

Date of Order: 30.12.2019

In the matter of:

Petition under Section 79(1)(c) of the Electricity Act, 2003 read with Regulation 27 and 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 for time extension of achieving financial closure as provided under Clause 9.3.2 of the Detailed Procedure issued by the Central Commission for 'Grant of Connectivity to projects based on Renewable sources to the inter-State Transmission System' dated 15.5.2018.

And

In the matter:

Vaayu Renewable Energy (Mevasa) Private Limited
Plot No. 33,
Daman Patiala Road, Bhimpore
Daman- 392610

.....**PETITIONER**

Versus

Power Grid Corporation of India Limited
(Central Transmission Utility)
Saudamini, Plot No-2,
Sector-29, IFFCO Chowk, Gurgaon
Haryana – 122001

.....**RESPONDENT**

Parties Present

Shri M.G. Ramachandran, Sr. Advocate, Vaayu Renewable
Shri Shubham Arya, Advocate, Vaayu Renewable
Ms. Tanya Sareen, Advocate, Vaayu Renewable
Ms. Anushree Bardhan, Advocate Vaayu Renewable
Shri Ashish Srivastav, Vaayu Renewable
Ms. Suparna Srivastav, Advocate, PGCIL
Ms. Sanjana Dua, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Ranjeet Rajput, PGCIL
Shri Swapnil Verma, PGCIL

Order

The Petitioner, Vaayu Renewable Energy (Mevasa) Private Limited (hereinafter to be referred as “Petitioner”) has filed the present Petition for seeking extension of time by 8 months to achieve the financial closure as provided under the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Open Access in Inter State Transmission and related matters) Regulations, 2009 (hereinafter to be referred as Connectivity Regulations) read with Clause 9.3.2 of the Detailed Procedure dated 15.5.2018. The Petitioner has made the following prayers :

- a) Grant to the Petitioner the extension of time by 8 months to achieve the financial closure as provided under the Connectivity Regulations read with the Detailed Procedure and the timeline specified under Clause 9.3.2 of the Detailed Procedure and consequently the extension in achieving timelines as mentioned in Annexure 3 to the Transmission Agreement by 8 months; and
- b) Restrain the Respondent from en-cashing the Bank Guarantee dated 16.8.2018 furnished by the Petitioner till the decision in the present petition.

Submissions of the Petitioner

2. The Petitioner is developing 300 MW Wind Energy Project in Dharampur, Jamnagar, Gujarat with connectivity being at Jam Khambaliya pooling station owned, operated and maintained by Power Grid Corporation of India (hereinafter to be referred as PGCIL). In accordance with the Detailed Procedure for Grant of Connectivity to projects based on Renewable sources to the inter-State transmission system, the Petitioner vide its letter dated 13.6.2018 applied for Stage-I Connectivity and the same was granted by PGCIL on 17.7.2018.

3. The Petitioner vide its letter dated 13.6.2018 applied for the Stage-II Connectivity for its project. In compliance with the conditions specified in the Detailed Procedure, the Petitioner submitted the following documents to the Respondent along with the application for grant of Stage II Connectivity:

- i. Ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II; and
- ii. Release of at least 10% funds towards generation project execution supported by Auditor's certificate regarding release of such fund.

4. PGCIL vide its letter dated 17.7.2018 informed the petitioner the grant of Stage-II connectivity to ISTS as per the Connectivity Regulations, 2009 and Detailed Procedure. Pursuant to the grant of Stage-II Connectivity, the Petitioner and PGCIL executed the Transmission Agreement for Connectivity on 3.8.2018 and the Petitioner also submitted the bank guarantee of ₹ 5 crore.

5. The Petitioner has acquired more than 50% of the land required for construction of the Project. The Project involves establishment and commissioning of 131 Wind Turbines of 2.3 MW Capacity each. As against the 131 Foot Prints (land location), the Petitioner had already received for 70 Foot Prints land allotment Orders from the District Collector, Kutch, Government of Gujarat under the Gujarat Land Policy, 2004 dated 11.6.2004 where under the revenue lands are allotted and the Petitioner had already applied for the allotment of revenue lands for the balance 61 Foot Prints.

6. The Revenue Department, Govt. of Gujarat vide its letter dated 25.7.2018 directed the District Collector, to process application for allotment of revenue lands received from the Project Developers selected for setting up the Wind Farm Projects under the bid process initiated by the Gujarat Urja Vikas Nigam Limited (GUVNL) and to keep all other applications pending till the finalization of the New Land Policy

by the Government of Gujarat.

7. Pursuant to Govt. of Gujarat letter dated 25.7.2018, the Association of Non-Conventional Energy Developers made several representations to Govt. of Gujarat, Ministry of New and Renewable Energy (MNRE) and Solar Energy Corporation of India (SECI) and requested to resolve the issue pertaining to revenue land allotment. Further, MNRE vide its letter dated 7.8.2018 issued advisory to Govt. of Gujarat that Revenue Department may be advised to process all applications relating to land allotment and accord various clearance for RE projects on priority irrespective of bidding agencies. Further, in accordance with the advisory issued by MNRE, the Revenue Department, Govt. of Gujarat vide its letter dated 12.9.2018 directed the District Collect to process the land allocation applications only of those companies who have won bids invited either by GUVNL or Solar Energy Corporation of India or other agencies of the Govt. of India supported by letter of the effect from GEDA and other applications to be kept on hold till the issuance of new policy.

8. Despite the several representations, directions and discussions made by the Petitioner, the Government of Gujarat did not process the Petitioner's applications for the allotment of remaining land under the then prevailing Land Policy for allotment of revenue land.

9. The Government of Gujarat notified New land Policy on 25.1.2019 for procurement of revenue land in the State of Gujarat. Clause 3 (1) of the land Policy provided as under. The restriction imposed by new Land Policy upon allotment of revenue lands for the Wind Farm Projects of a capacity less than 1000 MW and also further not considering the allotment of revenue lands for the projects which has already been granted Stage-II approval and where the revenue lands have been allotted substantially to the extent of more than 50% have resulted in a situation where the Petitioner has been delayed in fulfilling the conditions specified in Stage-II

Grant, namely, achievement of the financial closure. The impact on the Petitioner's project in regard to the achievement of the financial closure has been on account of the supervening reasons and events mentioned herein above and not on account of any delay or default or failure or otherwise any factor attributable to the Petitioner. The Petitioner has in right earnest proceeded to establish the Wind Farm Projects, acquired substantial part of the land i.e. more than 50% of the total land required by Orders of the District Collector for allotment of the revenue lands and furnished the requisite Bank Guarantee to the Respondent.

10. The Petitioner kept waiting for New land Policy for the period between 25.7.2018 to 25.1.2019. Further, the acquisition of land from private parties involve more detailed process of negotiation and finalization and also considerable higher expenditure for setting up the Wind Farm Projects. Further, the Petitioner is in process of pursuing the acquisition of land from private parties in regard to the balance 61 Foot Prints (location) as an alternative to procurement of the revenue lands.

11. The Petitioner kept informed the Respondent about the project status in the Joint Coordination Committee Meetings conducted by CTU and has also been submitting on a regular basis the quarterly reports of the development in the establishment of the Wind Farm Projects to the Respondent.

12. Due to the above mentioned supervening events, the Petitioner is not able to maintain the time frame specified in Clause 9.3.2 of the Detailed Procedure pertaining to the achievement of the financial closure within the period of 9 months from the Grant of Stage-II Connectivity on 17.7.2018

13. As per the connectivity agreement, the Petitioner has to establish the connectivity between the proposed 400/220kV PGCIL Jam Khambaliya PS to 400/33KV PSS of Vaayu Renewable Energy (Mevasa) Private Limited through a

dedicated 400 KV S/c transmission Line (With ampacity equivalent to 1000 MW at nominal voltage) and associated bays at generation switchyard. For this purpose the Petitioner has also incorporated a new SPV for the creation of afore mentioned asset named as Dharampur Power Evacuation Infrastructure Private Limited. The SPV is to build the 400kV S/C dedicated transmission line along with associated bays at Pooling Station. The petitioner is not able to start construction activities as the location of the Jam Khambaliya ISTS Pooling Station and the 400kV Bay number where the dedicated 400 kV transmission line is to be terminated are yet to be confirmed by the Respondent. The timeframe for construction and commissioning of the Jam Khambaliya Pooling Station which is to be set up through the process of Tariff Based Competitive Bidding has also not been declared and the same has also been deliberated during 28th Meeting of Western Region constituents regarding LTA and connectivity dated 19.7.2018.

14. The Petitioner has sought extension of 8 months for fulfilling the conditions mentioned in the Detailed Procedure. Regulation 33 (A) of the Connectivity Regulations empowers the Commission to remove the hardship to an affected party arising out of “change in law” and “force majeure” events and to address the unprecedented and unforeseen impact of the change in Government of Gujarat policy on land acquisition.

15. The Detailed Procedure notified by the Commission is procedural nature and does not prohibit the Commission to exercise powers to extend the time for completion of the conditions such as the financial closure. The Detailed Procedure has been evolved by the Commission for implementation of the Connectivity Regulations. The Commission had decided on the time frame for the purpose of such implementation and has the inherent powers to consider and grant extension of time for fulfilling any condition, if the circumstances of the case so warrants. The

timeline specified under Clause 9.3.2 of the Detailed Procedure can, therefore, be extended by the Commission in the present case where the Petitioner has been affected by the events which were beyond any control of the Petitioner and the Petitioner is not in any manner acted contrary to the Regulations.

16. The Petition was admitted on 4.4.2019 and notice was issued to PGCIL to file its reply. PGCIL has filed its reply vide affidavit dated 2.5.2019

Submissions of PGCIL

17. PGCIL had filed Petition No. 145/MP/2017 seeking regulatory interventions to ensure efficient utilization and for preventing underutilization of bays for connectivity granted to Wind/Solar generation projects. The Commission vide its order dated 29.9.2017 issued detailed direction pertaining to processing of the pending application for connectivity in respect of wind power developers as under :

“99..... The Commission is of the view that merely because a connectivity grantee has not participated in the bid or has not been selected in the bid cannot be held against him. If a wind power generator acquires connectivity and takes no actions towards project development for a long period of time, the connectivity granted cannot be allowed to continue ad infinitum. Therefore, there is a need to assess the progress on the basis of certain objective criteria. CTU is directed to frame objective criteria to be prescribed through amendment to Detailed Procedure after seeking comments from the stakeholders and submit to the Commission within a period of two month from the date of issue of this order.

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115. In order to ensure optimum planning and utilization of transmission system including bays by CTU, the Commission in exercise of its regulatory power under Section 79 (1) (c) of the Act directs the following:

(a)

(c) All applicants who have been granted connectivity shall be allowed physical connection at the sub-station based on their readiness for physical connectivity with the bays.

(d) The stipulation at para (c) based on the readiness for physical connection by the wind power generators/developers will not prejudicially affect the interest of any other wind power generator since, only those generators which have physically commissioned their projects in the area and are accommodated within the capacity of the sub-station shall get physical connectivity. Reserving the bay for a wind power developer/generator which is not ready for commissioning will result in under-utilization of bays which should be avoided at all cost in national interest.

18. In pursuance of aforesaid directions, PGCIL vide its letter dated 31.1.2018 submitted the Draft Detailed Procedure to the Connectivity Regulations, which was approved by the Commission vide its order dated 15.5.2018. The Detailed Procedure was notified by the Commissions to obviate any sub-optimal utilization in future of the connectivity granted to various applicants and to ensure that the renewable projects whose development was delayed over a long period of time, did not continue with the connectivity ‘ad infinitum’. This inter-relation between the granted connectivity and project development was the fundamental premise on which the Detailed Procedure, 2018 with two-stage connectivity was notified.

19. There is no scope for relaxation in project development timelines for reasons within or beyond the control of the generator/developer, until the entire object of optimal utilization of connectivity granted was to stand defeated and there once again could be blocking of available infrastructure in the ISTS sub-station for use by other entity(s). In other words, any relaxation, for any reason whatsoever, in the prescribed timelines with regard to achieving of the required milestones for a granted connectivity was to result in restoring the status quo ante which had existed prior to the passing of detailed directions by this Commission in Petition No.145/MP/2018 and notification of the Detailed Procedure, 2018.

20. The milestones prescribed under the Detailed Procedure is to be achieved by the connectivity grantee in view of the directions of the Commission in order dated 29.9.2017 in Petition No. 145/MP/2017, which do not permit reserving the bay for a wind power developer/generator which is not ready for commission so as to avoid under utilization of bays in national interest.

21. Regulation 33 A of the Connectivity Regulation vests power to the

Commission to relax the provision of Connectivity Regulation. However, the Detailed Procedure, 2018 notified neither contemplates nor permits any relaxation of its provisions in so far as compliance of prescribed timelines qua connectivity grant to renewable projects is concerned. As such, the said power is not available for its invocation or exercise so as to permit a renewable power project developer to retain the connectivity for the period that the project implementation is being delayed for any reason attributable or not attributable to it.

22. The Appellate Tribunal vide its order dated 20.4.2015 in O.P No. 1,2 and 4 of 2013 has categorically held that the provision of power to relax must not be used in a manner that would defeat the intent and purpose of any Regulation. Thus, the power to relax vested in Commission under Regulation 33A is not available for its exercise so as to relieve the renewable power projects from the “rigours” of timeline compliances pertaining to connectivity grant under the Detailed Procedure, 2018.

23. It is a settled position in law that inherent powers are to be exercised by an authority when the matter sought to be taken care of by exercise of inherent power is not covered by any other specific provision and exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature. Thus, in a case like the present one where a specific provision vesting the power to relax in this Commission is available in the Connectivity Regulations, the inherent powers cannot be invoked, particularly in view of the strict and mandatory operation of the provisions of the Detailed Procedure, 2018.

24. The Petitioner vide its letter dated 31.12.2018 informed the Respondent about the change in law by the Government of Gujarat as regards revenue land allotment to developers on wind power projects and that the same was having a severe impact on timely procurement of the land. The Petitioner stated that the uncertainties in land

allotment would adversely affect schedules for financial closure of the projects since land allotment was a pre-condition for financial closure. The Petitioner, vide the above letter however did not put forth any request for extension of time for submission of document required as per Clause 9.3.2 of the Detailed Procedure but instead requested the Respondent to use its good offices to pursue the Ministry of New and Renewable Energy, Ministry of Power and the Government of Gujarat to resolve the revenue land allotment matter, which was neither the concern nor under the purview of the Respondent as per the prevailing Regulations. Further during the 23rd JCC Meeting held on 23.5.2019 it was stated that the Petitioner was required to submit the documents as per Clause 9.3.2 of the Detailed Procedure failing which the Stage-II connectivity shall be revoked.

25. The grant of Stage-II connectivity is a grant based on the stipulated principles of priority and the rights of one party are therefore often 'rivalrous' with those of others. In other words, if the Petitioner is allowed to retain its Stage-II connectivity despite not having complied with the mandatory requirements of the Detailed Procedure, 2018, it may impede or impinge upon the rights of other entities who are ready to fulfill the procedural requirements and claim priority in terms of bay allocation.

26. In view of the strict timelines under Clause 9.3.2 of the Detailed Procedure, 2018 and the settled principles of law, if the power to relax is exercised by the Commission, then it will lead to the same issue of mismatch which existed prior to the framing of the Detailed Procedure, 2018 and was the underlying reason for the framing of the said Detailed Procedure, 2018.

Additional Submission by the Petitioner

27. The Commission vide RoP dated 9.7.2019 directed the Petitioner to file the following information :

- a) Reason, why the Petitioner has not applied for all foot prints of land at the time of allocation of those land which have been allocated to it; and:
- b) Detailed plan for achieving timeline in case its request for grant of time extension is permitted.

28. In response to the query sought by the Commission vide RoP dated 9.7.2019, the Petitioner vide its affidavit dated 25.7.2019 has submitted as under :

a) The Petitioner has been diligent and taking constructive steps for implementation of the project since the grant of Stage II connectivity by PGCIL and for the said purpose, the Petitioner has already acquired more than 50% of the total land required by Orders of the District Collector for allotment of the revenue lands and furnished the requisite BG to PGCIL.

b) The Petitioner has not been able to comply with the conditions prescribed under Clause 9.3.2 of the Detailed Procedure, in regard to the achievement of the financial closure, due to the supervening reasons and events such as change in the policy of land allotment i.e. New Land Policy introduced by Government of Gujarat on 25.01.2019 and not on account of any delay or default or failure or otherwise any factor attributable to the Petitioner. The Petitioner had no other alternative but to explore the acquisition of private lands for the balance 61 Foot Prints (location).

c) Subsequent to the filing of the Petition, the Government of Gujarat, on **8.3.2019**, issued a communication to the District Collectors directing them to allot revenue land only to those applicants who have either won bids invited by GUVNL or SECI or any other agency of the Government of India and those applicants which are Wind Turbine Manufacturers, its subsidiaries and their associate companies to apply for revenue lands.

d) The Petitioner has not been made eligible by the Government of Gujarat for allocation of revenue lands. However, at the time when the Petitioner decided to implement the project, there was not only no such restriction in the allocation of the revenue land and in fact, the revenue land was allocated to the Petitioner to a substantial effect covering about 50% of the land required. The Petitioner legitimately proceeded on the basis while executing agreements with Powergrid and agreeing to the terms and conditions in regard to Stage I and Stage II connectivity including furnishing necessary Connectivity Bank Guarantee.

e) Despite the adverse developments and uncertainty in regard to the revenue land allotment, the Petitioner has taken substantial steps to execute its Wind Power Projects related to connectivity to Jam Khambhaliya Sub-station. The only aspect to be undertaken in regard to the conditions of Stage II connectivity is the financial closure. The financial closure is to be finalised with the banks and financial institutions based on the commissioning date of the wind power projects. The commissioning date of the wind power project will have to be finalized matching the commissioning of the Jam Khambhaliya sub-station of PGCIL and upon confirmation of the exact date of commissioning, the Petitioner can proceed to finalize its funding arrangements with the Banks and Financial Institutions and achieve the financial closure.

Additional Submission by PGCIL

29. The Commission vide RoP dated 9.7.2019 directed PGCIL also to file the following information :

- a) Details of applicants seeking stage-II Connectivity at the same location;
- b) How many such cases are there where Stage-II grantee has not come up with submissions of documents as per clauses 9.3.1 or 9.3.2 of the Detailed Procedure made under Connectivity Regulations within nine months from the date of grant of Stage-II Connectivity.
- c) Submit the view regarding return of bank guarantee if no investment has been made by it after examining the relevant provisions in this regard

30. In response to the query sought by the Commission vide RoP dated 9.7.2019, PGCIL vide its affidavit dated 31.7.2019 has submitted as under :

- a) **Details of applicants seeking stage-II Connectivity at the same location** : At present, there are no pending applications for the grant of Stage-II Connectivity at Jam-Khambaliya (WR) where connectivity to the Petitioner's project has been granted. Therefore, vacation of bays by the Petitioner Stage-II grantee may not immediately result in allocation of the same to the other entity. The vacated bays will be available for allocation the new Stage-II connectivity applicant in the ordinary course. A composite table indicating the

details of grant of Stage- II connectivity to the location of the Petitioner's connectivity is as under :

S.No.	Name of Applicant	Stage-II Conn. Quantum
1.	Vaayu Renewable Energy (Mevasi) Private Limited	300
2.	Airpower Windfarms Pvt. Limited	250
3.	Powenca Limited (Powerica- jam Khambaliya)	50.6
4.	Clean India Power (Jaiselmer) Private Limited	300
	Total	900.6

b) How many such cases are there where Stage-II grantee has not come up with submissions of documents as per clauses 9.3.1 or 9.3.2 of the Detailed Procedure made under Connectivity Regulations within nine months from the date of grant of Stage-II Connectivity: The Petitioner has furnished the detail in this regard. There are total 57 applicants, out of which 2 are Deemed Stage-II grantee, 10 applicants are required to submit documents under clause 9.3.2 and 45 applicants are required to submit documents under clause 9.3.3. None of the 57 applicants have submitted the documents.

c) Submit the view regarding return of bank guarantee if no investment has been made by it after examining the relevant provisions in this regard : The Detailed Procedure dated 15.5.2018 does not specifically provide for any action to be taken regarding Connectivity BG consequent to revocation of Stage-II Connectivity under clause 9.3.3. Further, the provision of BG was inserted to ensure seriousness of applicants. In the event of revocation of Stage-II connectivity under Clause 9.3.3 of the Detailed Procedure, Connectivity BG would also be encashed and the proceeds from the same would be credited in PoC pool in accordance with clause 11.2 of the Detailed Procedure.

Submission during the hearing on 5.9.2019

31. The petitioner has submitted that despite change in Land Policy by Government of Gujarat making the Petitioner ineligible for allocation of revenue land, the Petitioner has taken substantial steps to execute its 300 MW wind projects to be connected at Jam-Khambhaliya sub-station. The only aspect to be undertaken in regard to the conditions of Stage II connectivity is the financial closure. However, to

achieve the financial closure and funding arrangement for the project, the commissioning date of the wind projects will have to be finalized matching with the commissioning of the Jam-Khambhaliya sub-station and therefore, the Petitioner could only achieve the financial closure once the PGCIL firms up the exact date of commissioning of the said sub-station. In response, PGCIL submitted that the construction of the bay reserved for the Petitioner at Jam-Khambhaliya sub-station has been undertaken on Tariff Based Competitive Bidding (TBCB) route and is expected to be completed by March, 2021. Further, PGCIL has been communicating the status of construction to the generators regularly in Joint Co-ordination Committee Meetings. The Detailed Procedure framed under the Connectivity Regulations is to ascertain the readiness of the generators and not of the Respondent. However, if the Commission is of the opinion that there should be corresponding obligation on the Respondent, the Commission may give direction as to the treatment towards milestones provided under the Detailed Procedure for the generators when there is delay on part of the Respondent.

Analysis and Decision

32. After hearing the learned counsel for the Petitioner and the Respondent, the issue which arises for our consideration is whether the Petitioner is entitled for extension of eight months for achieving requirements of Clause 9.3 of Detailed Procedure of Connectivity.

33. The Petitioner has sought extension of 8 months primarily on two grounds :

a) Government of Gujarat vide letter dated 25.7.2018 instructed the District Collector that any application for allotment of revenue lands received from the project developers selected for setting up the Wind Farm Projects under the bid process initiated by the Gujarat Urja Vikas Nigam Limited (GUVNL) may be processed but all other applications are to be kept on hold till the finalization of the New Land Policy by the Government of Gujarat.

b) The Revenue Department, Govt. Gujarat vide its letter dated

12.09.2018 had expressly indicated that only those applicants will be allocated lands who have won their bids invited by GUVNL, SECI and other Agencies of the Government of India supported by a letter of that effect from GEDA. The New Land Policy dated 25.1.2019 issued by the Govt. of Gujarat put a restriction on allotment of revenue lands for the Wind Farm Projects of a capacity less than 1000 MW. The new land policy is applicable only to those person/unit/company who wants to develop a renewable park like Solar park/ Wind Park/Wind- Solar Hybrid Park in the State of Gujarat and such developer must have the experience of generating minimum 250 MW and/or solar renewable power, as a facility or a project developer.

c) The Petitioner is well prepared to start construction activities of 400kV S/C dedicated transmission line along with associated bays at pooling station but not in a position to do so as the location of Jam Khambaliya ISTS Pooling Station and 400kV Bay, where the dedicated transmission line is to be terminated has not been confirmed by CTU. Further, the timeframe for construction and commissioning of the Jam Khambaliya Pooling Station which is to be set up through the process of Tariff Based Competitive Bidding has not been declared.

34. PGCIL has submitted that the progress of entities that had been granted connectivity was monitored regularly in JCC Meetings held on quarterly basis. During 22nd JCC meeting held on 20.12.2018, all the Stage-II grantees under Detailed Procedure, 2018 were reminded of their obligation to submit all documents under clause 9.3.2 of the Detailed Procedure. The grant of Stage-II connectivity is a grant based on the stipulated principles of priority and the rights of one party are therefore, often 'rivalrous' with those of others and therefore if the Petitioner is allowed to retain its Stage-II connectivity despite not having complied with the mandatory requirements of the Detailed Procedure, 2018, it will impede or impinge upon the rights of other entities who are ready to fulfill the procedural requirements and claim priority in terms of bay allocation.

35. PGCIL has further submitted that the Detailed Procedure neither contemplates nor permits any relaxation of its provisions in so far as compliance of

prescribed timelines qua connectivity grant to renewable projects is concerned. As such, the power to relax is not available for invocation or exercise, to permit a renewable power project developer to retain the connectivity for the period the project implementation is being delayed for any reason attributable or not attributable to it. Any relaxation, for any reason whatsoever, in the prescribed timelines with regard to achieving of the required milestones for a granted connectivity would result in restoring the status quo ante which had existed prior to the passing of detailed directions by this Commission in Petition No.145/MP/2018 and notification of the Detailed Procedure, 2018. Further, Appellate Tribunal vide its judgment dated 20.4.2015 in O.P Nos. 1.2 and 4/2013 and IA No 291 and 420/2013 has held that the provision of power to relax must not be used in a manner that would defeat the intent and purpose of any Regulation. The power to relax under Regulation 33A is not available for relieving the renewable power projects from the rigours of timeline compliances pertaining to connectivity grant under the Detailed Procedure, 2018.

36. We have considered the submission of the Petitioner and the Respondent. The Petitioner has sought extension of eight months for achieving financial closure on account of the change in the Govt. of Gujarat Policy on land acquisition. The Petitioner has also raised the concern that in order to achieve the financial closure and funding arrangement for the project, the commissioning date of the wind projects will have to be finalized matching with the commissioning of the Jam-Khambhaliya sub-station and therefore, the Petitioner can achieve the financial closure once the PGCIL firms up the exact date of commissioning of the sub-station.

37. The petitioner's Project involves establishment and commissioning of 131 Wind Turbines of 2.3 MW capacity each. As against 131 foot prints, the Petitioner has already received 70 foot prints land allotment orders from the District Collector, Kutch under the Gujarat Land Policy, 2004 dated 11.6.2004 and the same has been received between the year 2010 to 2014. Further, the Petitioner had applied for

allotment of revenue lands for the balance 61 foot prints and the same has not been allotted.

38. We observe that the the government policies quoted by Petitioner are regarding revenue land. However, the petitioner has the option of acquiring other lands, such as private land.

39. The Petitioner has also contended that the Petitioner is not able to start construction activities as the location and timeframe of the Jam Khambaliya ISTS Pooling Station and the 400kV Bay number where the dedicated 400 kV transmission line is to be terminated have not been confirmed by the respondent.

40. We observe that the Transmission Agreement for Connectivity dated 3.8.2018 executed between the Petitioner and PGCIL provides the date of connectivity granted to the Petitioner as 31.12.2019. As per the Transmission Agreement for Connectivity, the dedicated transmission line including line bays at generating pooling stations is under the scope of the Petitioner and the terminal bays at the ISTS sub-station is under the scope of the Respondent. While granting Stage-II connectivity to the Petitioner, CTU informed the Petitioner the location of ISTS sub-station as Jam Khambaliya PS but bay number at which connectivity was granted, was not confirmed to the Petitioner and it was stated that same would be infomed later.

41. We have also noted that during the hearing on 9.7.2019, the Respondent was asked about the details of applicants seeking stage-II Connectivity at the same location. In response, PGCIL,, vide its affidavit dated 31.7.2019 has submitted that at present, there are no pending applications for the grant of Stage-II Connectivity at Jam-Khambhaliya (WR) where connectivity to the Petitioner's project has been

granted. Therefore, vacation of bays by the Petitioner Stage-II grantee may not immediately result in allocation of the same to the other entity.

42. We observe that petitioner was granted Stage-II Connectivity on 17.7.2018. Hence, as per the detailed procedure, the timeframe to achieve milestones as per Clause 9.3 ends on 16.4.2019. As on 16.4.2019, the substation at which Connectivity was granted i.e Jam-Khambaliya Substation was not awarded for execution and hence its scheduled commissioning date was not available. We also observe that the gestation period of wind project is less than that of transmission system. The completion schedule of Jam-Khambaliya sub-station is March, 2021 as recorded in the Order dated 10.10.2019 in Petition No.197/MP/2019. Keeping in view that the completion schedule of sub-station was not known, we are inclined to consider petitioner's prayer for grant of extension for achieving milestones as per detailed Procedure.

43. The question arises whether in the light of above facts, Power to Relax can be invoked for granting an extension of eight months to the Petitioner to achieve financial closure.

44. Regulation 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 deals with Power to Relax which reads as under :

“33 A. Power to Relax: The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an affected person to remove the hardship arising out of the operation of Regulation, applicable to a class of persons.”

45. The Appellate Tribunal, vide its judgment dated 20.12.2012 in Appeal No. 189 of 2011 has summarized the principle relating to exercise of Power to Relax as under :

“(a) The Regulation gives judicial discretion to the Commissions to relax norms based on the circumstances of the case. Such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation which has to be exercised only in the exceptional case where non-exercise of the discretion would cause hardship and injustice to a party.

(b) If there is a power to relax the regulation, the power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some party and to disfavour some other party.

(c) The party who claims relaxation of the norms shall adduce valid reasons to establish to the State Commission that it is a fit case to exercise its power to relax such Regulation. In the absence of valid reasons, the State Commission cannot relax the norms for mere asking. When the State Commission has given reasoned order as to why the power for relaxation cannot be exercised, the said order cannot be interfered with by the Appellate Forum.”

46. We have observed that the Petitioner is seeking extension of time to achieve milestones as per requirements of Detailed procedure. Keeping in view the difficulty of Petitioner to achieve milestones as per Clause 9.3 of the Detailed Procedure dated 15.5.2018 in the absence of knowledge of termination point of dedicated transmission line and the timeframe of completion of the substation, we exercise our powers to invoke “Power to relax” under Regulation 33 A Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 to relax the provision 9.3 of Detailed Procedure dated 15.5.2018 issued under the said Regulations and grant time of 8 months from date of issue of this order i.e. upto 31.8.2020 to achieve milestones as per Clause 9.3 of Detailed Procedure dated 15.5.2018.

47. CTU is directed to communicate the coordinates of pooling substation to Stage-II Connectivity grantees within a week of finalization of such Coordinates by the Transmission licensee executing the substation. Transmission Licensee shall provide the coordinates to CTU immediately after its finalisation. We observe that there may be cases where SCOD or expected COD of associated substation where

Stage-II Connectivity has been granted is much beyond the date of submission of documents by Stage-II grantee under Clause 9.3 of the Detailed Procedure of Connectivity. Since gestation period of renewable projects is less, a project may declare its COD within 9 months of financial closure. If the substation at which Stage-II Connectivity has been granted is expected to be commissioned beyond 9 months, a project may not be able to achieve the financial closure earlier than 9 months prior to SCOD or expected COD of substation. Hence we direct that for cases where SCOD or expected COD of associated substation where Stage-II Connectivity has been granted is after the date of submission of documents by Stage-II grantee under Clause 9.3 of the Detailed Procedure of Connectivity, CTU shall communicate the timeline for submission of such documents to Stage-II grantee keeping in view timeline of SCOD or expected COD of associated substation where Stage-II Connectivity has been granted.

48. We also note that during the hearing 9.7.2019, the Respondent was asked about details of cases pertaining to Stage-II grantee who has not submitted documents as per clauses 9.3. of the Detailed Procedure to which CTU has replied that there are 57 Stage-II grantees including deemed Stage-II grantees who have not submitted the documents yet. CTU is directed to monitor the timeline of submission of documents by Stage-II grantees in coordination with bidding agency(ies) considering the extended timeline provided by bidding agency, if any.

49. Petition No. 55/MP/2019 is disposed of in terms of the above.

Sd/-
(I. S .Jha)
Member

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

Sd/-
(P. K. Pujari)
Chairperson