

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 195/MP/2019
along with I.A. No. 65/IA/2019 and 88/IA/2019**

Coram:

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

Date of Order: 5.2.2020

In the matter of

Petition under Section 79 read with Regulations 20 and 21 of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010, read with Regulation 33A and 33B 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 and Regulations 111 and 112 of the CERC (Conduct of Business) Regulations, 1999 invoking the jurisdiction of this Hon'ble Commission for resolving discrepancies arising on account of conflict between the SCOD under the PPA and date of operationalization of Connectivity and LTA.

And

In the matter of

Vivid Solaire Energy Private Limited
(100% subsidiary of Betam Wind Energy Private Limited)
Office No. 203, Magarpatta City,
Pentagon tower-3, 2nd Floor,
Pune, Maharashtra-411028

..... PETITIONER

Vs

1. Powergrid Corporation of India Limited
Central Transmission Utility
Saudamini, Plot No. 2,
Sector 29, Gurgaon – 122 001

2. Solar Energy Corporation of India Limited
Through its Managing Director
1st Floor, A-Wing
D-3, District Centre
Saket, New Delhi - 110 017

..... RESPONDENTS



The following parties were present:

For Petitioner : Shri Sitesh Mukherjee, Advocate, Vivid Solaire
Shri Aryaman Saxsena, Advocate, Vivid Solaire
Shri Karan Arora, Advocate, Vivid Solaire

For Respondents : Ms. Suparna Srivastava, Advocate, PGCIL
Shri Siddharth Sharma, PGCIL
Shri Swapnil Verma, PGCIL
Shri Ranjeet Rajput, PGCIL
Dr. V. N. Paranjape, PGCIL
Ms. Jyoti Prasad, PGCIL
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI

ORDER

The Petitioner i.e. Vivid Solar Energy Private Limited (VSEPL) is a 100% owned subsidiary of Betam Wind Energy Private Limited (hereinafter referred as 'BWEPL') which has been selected as the successful bidder against the Request for Selection issued by Respondent No. 2, i.e. Solar Energy Corporation of India (hereinafter to be referred as 'SECI'). The Petitioner is a renewable energy generating company undertaking implementation and operation of two wind power plants of 50.2 MW and 200 MW capacities awarded by SECI, which are located in Tirunelveli and Tuticorin districts in the State of Tamil Nadu. The Petitioner has made the following prayers:

- a) *Admit the instant Petition and list the same on an urgent basis; and*
- b) *Exercise the Power to Relax under Regulations 33A and 33B of the Connectivity Regulations and Regulations 20 and 21 of the Sharing Regulations, and realign the date of operationalization of Connectivity and LTA in two phases with the respective scheduled dates of commissioning of the Project under the PPA I and PPA II, in the terms set out in the instant petition.*

2. The Petitioner has also filed IA. No.65/2019 and 88/2019. The Petitioner has made the following prayers in I.A No. 65/2019 :



- a) *Admit the instant Application and list the same for urgent hearing;*
- b) *Pass appropriate directions to the CTU to not operationalise the Long Term Open Access ("LTA") from 31.07.2019 during the pendency of the accompanying Petition; and*
- c) *In the alternative and without prejudice, direct CTU not take any coercive actions during the pendency of the present Petition, including, but not limited to, levying any charges on account of operationalization of LTA, encashment of the Applicant's Bank Guarantee, and/ or any other financial or regulatory coercive action.*

3. The Petitioner has made following prayers in I.A. No. 88/2019

- a) *Allow the Applicant to evacuate or supply power to the purchasing utility from its Tranche III Project of 50.2 MW from the date of its commissioning;*
- b) *Direct the CTU to allow such evacuation or supply of power without opening the Letter of Credit ("LC") commensurate with the said quantum of 50.2 MW of LTA capacity; and*
- c) *Direct the CTU to not take any coercive actions, including, but not limited to, the termination of the TSA, until the pendency of the captioned Petition.*

Submission of the Petitioner

4. The Petitioner has submitted as under:

- (a) SECI had issued two Request for Selection ("RfS") documents dated 30.11.2017 ("Tranche-III Project") and 05.02.2018 ("Tranche-IV Project"), inviting bids for setting up 2,000 MW of ISTS-connected Wind Power Projects in India on Build Own Operate ("BOO") basis. As per Clause 3.17 of the RfS document for Tranche-III wind generation project, the timeline provided for commissioning of the proposed wind power project was 18 months from the 'date of issue of LOI', whereas, the RfS document for Tranche-IV wind generation project provides a timeline of 18 months from the 'effective date of PPA' for achieving the COD of the tranche-IV generation project. Further, both RfS documents specified that each selected Wind Power Project Developer shall be responsible for seeking Connectivity and Long term Access (LTA) from the CTU in line with the regulations notified by this Commission.



(b) The Petitioner participated in both the bids to construct and commission two wind based power generating stations of 50.20 MW under Tranche-III Project and 200 MW under Tranche-IV Project respectively, located in Tirunelveli and Tuticorin districts in the State of Tamil Nadu.

(c) SECI, vide LOA dated 23.2.2018, informed the Petitioner that the Petitioner had been selected as a successful bidder for implementing 50.20 MW of wind power project at Tirunelveli and Tuticorin districts in Tamil Nadu. Clause 1.11 of the LOA dated 23.2.2018 categorically states that the date of commissioning of the full capacity of the Project shall be within 18 months from the "Effective date of PPA".

(d) Simultaneously, SECI vide RfS document dated 5.2.2018 published another notification of bid submission for Tranche-IV-2000MW ISTS-connected Wind Power Project to be established by Wind Power Developer with a commissioning timeline of 18 months from the effective date of PPA mentioned under clause 3.17 (B). SECI, vide LOA dated 1.6.2018, informed the Petitioner that their proposal for setting up of 200 MW of wind power plant under Tranche-IV of the 2000 MW ISTS-connected wind power projects, has been accepted and as per the RfS document the timeline for commissioning of the wind power project shall be 18 months from the effective date of PPA.

(e) The scheme, as per the RfS as well as the LOA, envisaged that the commissioning timeline of the two Projects were contingent upon execution of the PPA and not earlier than 18 months from its (PPA) effective date.

(f) Subsequently, the Petitioner applied for Stage-I Connectivity for 250.2 MW and Stage-II Connectivity with two separate applications for 50.2 MW and 200 MW respectively vide its Application for Connectivity dated 12.6.2018, from its generation switchyard to the nearest ISTS pooling station. At the time of making the application to CTU, the Petitioner raised its concern over delay in execution of PPAs with SECI and its consequential impact in determination of SCOD of the wind power project. Further, the Petitioner also stated that if the



Connectivity is granted prior to the SCOD, the same would be infructuous, as Petitioner cannot commence supply under the PPA prior to the SCOD.

(g) Owing to the shorter gestation period in implementing renewable generation projects and availability constraints of the required transmission corridor for connectivity and open access, the Petitioner approached the CTU upon receiving the LOAs from SECI. While applying for Stage-I and Stage-II Connectivity to the CTU, the Petitioner sought connectivity after 18 months from the date of issue of first LOA dated 23.2.2018 by SECI. However, the actual scheduled date of commissioning of the Project was contingent upon the effective date to be determined under the power purchase agreement, which had not been signed until then.

(h) Subsequently, on 13.7.2018, the Petitioner signed a Power Purchase Agreement (“PPA-I”) with SECI for the first 50.2 MW awarded vide LOA dated 23.2.2018. Pertinently, In terms of the PPA-I, the schedule commissioning date of the Tranche-III Project of 50.20 MW was 18 months from the effective date of the PPA. Further, in terms of Clause 2.1 of the PPA-I, the effective date is 24.5.2018. Therefore, the Schedule Commissioning Date (“SCOD”) for Tranche-III Project under the PPA-I has been defined to be 24.11.2019 under Clause 1.1. In terms of the RfS, the PPA was required to be signed within 3 months from the date of the receipt of the LOA. However, the PPA was signed after a delay of two months, which was not within the control of the Petitioner.

(i) Meanwhile, on 13.7.2018, the Petitioner also received communication from the CTU granting Stage-II from the proposed Project for 50.2 MW and 200 MW respectively with effect from 31.7.2019. Whereas, Subsequently, on 25.7.2018, the Petitioner applied for Long Term Access for 25 years, through one common application, for the entire quantum of 250.20 MW to be operationalized w.e.f. 31.7.2019.

(j) The Petitioner applied for one common LTA of 250.2 MW, upon the advice of the CTU whereupon the CTU vide letter dated 24.8.2018, granted LTA for the entire quantum of 250.20 MW on the existing transmission systems



operational from 31.7.2019. Meanwhile, the Petitioner also signed the Transmission Agreement for Connectivity dated 7.8.2018.

(k) Further, on 04.09.2018, SECI and the Petitioner entered into another PPA for sale of 200 MW of power from the Tranche-IV Project ("PPA-II"). In terms of Article 2.1 of the PPA-II, the effective date of the PPA is 30.08.2018. Accordingly, the scheduled date of commissioning is 29.2.2020.

(l) The Petitioner signed the Long Term Access Agreement dated 20.9.2018 with the CTU for the entire quantum of 250.2 MW. Subsequently, the Petitioner received a communication dated 18.06.2019 from the CTU intimating that the LTA for 250.20 MW is to be operationalized from 31.7.2019. Further, in this letter the CTU asked the Petitioner to submit certain documents towards fulfilment of the provisions for waiver of transmission charges for the use of ISTS network.

(m) Thereafter, the Petitioner wrote a letter to CTU stating that the dates of operationalization of LTA is not aligned with the SCOD of the wind power project under the PPA and requested CTU to align the same. However, the Petitioner did not receive any communication from CTU. However, in another communication dated 11.7.2019 from CTU, BWEPL was asked to open a Letter of Credit in favour of PGCIL towards payment security mechanism for Rs. 1445.66 Lakhs.

(n) The LOA and the PPA entered into between the Petitioner and SECI envisages consistent scheme that the commissioning of supply from the Project shall be scheduled in 18 months from the effective date of the PPA. There was a lapse of considerable time between the issuance of LOA and the consequent execution of the PPA. At the time when the Petitioner had filed its applications for connectivity, the Petitioner could not provide an accurate date as the PPAs were not executed. The Petitioner made its applications in a timely manner so as to ensure that there is no delay on its part in obtaining connectivity and LTA, as was its obligation under the bidding documents, LOA, PPA-I and PPA-II.



(o) The Petitioner had segregated the connectivity requirements for 50.2 MW and 200 MW for Tranche-III Project and Tranche-IV Project. It had also made two separate applications (of 50.2 MW and 200 MW, respectively) seeking Stage-II connectivity as provided under clause 9.2 of the Detailed procedure for grant of Connectivity of Projects based on Renewable Sources to Inter-State Transmission System notified on 15.5.2018 (hereinafter referred to as the RE Detailed Procedure). The Petitioner submitted two separate Bank Guarantees of ₹5 Crore each, along with the applications. Further, it was, in fact, the CTU who went ahead and conflated these two distinct capacities as one project, which is evidenced by the Stage-II Connectivity intimations wherein they refer to a quantum of 250.2 MW. Further, during the discussions with the CTU, it was suggested that since the power evacuation from the wind farm would eventually be required for the entire quantum of 250.2 MW, the Petitioner should be allotted one bay (which would allow them to evacuate a capacity of around 300 MW) instead of evacuating the quantum of 50.2 MW and 200 MW separately through two different bays. Therefore, the Petitioner submitted a single LTA application for 250.2 MW.

(p) Under the terms of the Connectivity Agreement, Petitioner is required to build, own, operate and maintain the identified dedicated transmission system in accordance with Para 5.3 of the RE Detailed Procedure. Further, as per Clause 1(f) of the Connectivity Agreement, Petitioner is required to commission its dedicated transmission line, identified under the Connectivity Agreement, in 24 months. Therefore, the date of operationalization of Connectivity under the terms of the Agreement cannot be prior to the SCOD of the dedicated transmission line, as in the instant case.

(q) The timeline of 24 months is prescribed in accordance with Para 11.2 of the RE Detailed Procedure. Hence, the Petitioner is well within its rights to utilize full time-period of 24 months for commissioning its dedicated transmission system, and in case the connectivity is granted prior to the expiry of 24 months, such connectivity cannot be operationalized. The period of 24 months expires on 6.8.2020, in the instant case. Therefore, there is need to



realign the date of operationalization of Connectivity with the timeline of commissioning of Dedicated Transmission line provided under the same Connectivity Agreement.

(r) Regulation 8(6) 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 (hereinafter referred to as the 2009 Connectivity Regulations) stipulates that mere grant of connectivity does not entitle an applicant to interchange of any power over ISTS, unless a separate LTA/ MTOA is obtained. This regulation apart from stipulating the necessity of open access (LTA or MTOA or STOA), also implies that connectivity is a pre-condition for grant of any open access instrument and their operationalization shall be contingent upon the status of connectivity as well.

(s) Therefore, from a combined reading of Clause 1.0(f) and paragraph 11.2 of the RE Detailed Procedure and the Regulation 8(6) of the 2009 Connectivity Regulations, the following can be concluded:

- a. Connectivity is necessary pre-condition for operationalization of LTA.
- b. Connectivity through construction of dedicated transmission line can be achieved within a period of 24 months from the date of communication of bays at the substation where ISTS connectivity is granted without attracting any payment liability or encashment of Connectivity BG.

(t) As such, in terms of the Connectivity intimation of CTU dated 13.7.2018, which is also the date of communication of bays allocation at ISTS Tuticorin-II GIS substation, the time period available with the Petitioner for commissioning of its dedicated transmission line under the agreement is till 12.7.2020 and commissioning of the Dedicated Line is a necessary pre-requisite for the operationalization of the LTA. In other words, until the said Dedicated Line is commissioned, the LTA cannot be operationalized as this line is the only means for evacuation of power from the Project.



(u) The CTU has granted connectivity and date of operationalization of LTA from 31.7.2019 without taking into account the necessary time of 24 months which is available to the Petitioner to construct the Dedicated Line.

(v) Furthermore, due to multiplicity of applications, delay in signing of PPA and change in SCOD as mentioned under RfP document and LOI documents, it has so happened that the LTA operationalization date, i.e. 31.7.2019, is prior to the date when the Petitioner is liable or required to commission its Project under the PPA-I and the PPA-II. It cannot be the intent of the regulatory framework to operationalize the LTA when the project is not even required to be commissioned.

(w) The draft format of applications for seeking connectivity under the RE Detailed Procedure categorically requires an Applicant to provide the Scheduled date of Commissioning of the Project. The sole purpose of this information is to estimate when the said Applicant would require connectivity and LTA for evacuation of power. Such information is meant to avoid the exact situation that has arisen in the instant case due to delay in signing of the PPA and the Applicant, i.e. the Petitioner, had no clear visibility about the accurate Scheduled date of Commissioning of the Project.

(x) The Petitioner is executing the implementation of the Project to the best of its ability and its circumstances. Due to several change in law and force majeure situations arising during the implementation phase, which were beyond the control of the Petitioner, the Petitioner could not achieve financial closure, within the prescribed timeline. These change in law and force majeure events were also communicated to SECI for seeking extension in deadlines for financial closure of the Project, which was extended by SECI vide its letter dated 24.5.2019.

(y) Despite the hardships faced by the Petitioner, its generation projects and dedicated transmission line are in advanced stages of implementation and is expected to commission on SCOD. There is no delay in the project implementation despite several regulatory delays and change in law conditions



faced by Petitioner during the course of implementation. Therefore, the instant petition is only for genuine reasons which are not related to any activities pertaining to delay during the commissioning period. Rather the Petitioner is approaching the Commission for removal of the contractual irregularity in accordance with the regulatory mechanism notified under the above cited regulations.

Submission of the Petitioner in IA No. 65/2019

5. The Petitioner in its I.A has reiterated the submission made in the Petition. It has mainly submitted that at the time of making the application to CTU, the Petitioner raised its concern over delay in execution of PPAs with SECI and its consequential impact in determination of Schedule Commercial Operation Date (“SCOD”) of the wind power project. Further, the Petitioner also stated that if the Connectivity is granted prior to the SCOD, the same would be infructuous, as Petitioner cannot commence supply under the PPA prior to the SCOD.

6. During the hearing held on 25.7.2019, the Petitioner submitted that the present Petition has been filed for invoking the jurisdiction of the Commission for resolving discrepancies arising on account of conflict between the SCOD under the PPA and date of operationalisation of Connectivity and LTA granted by Respondent No.1, PGCIL to the Petitioner. Petitioner also submitted that the Petitioner has filed I.A No. 65/2019 for seeking interim direction to PGCIL to not operationalize the long term access from 31.7.2019 during the pendency of the present Petition.

Submission by the PGCIL, Respondent No.1 vide affidavit dated 20.8.2019

7. PGCIL, the Respondent No. 1, has vide affidavit dated 20.8.2019, submitted its reply to the Petition and has mainly submitted as under:



(a) The contentions and prayers of the Petitioner may be categorized into following major issues:-

- i. Alignment of start date of Connectivity/ LTA as per the scheduled commissioning date under respective PPAs
- ii. Intimation/revision in start date of Connectivity based on the maximum permissible limit of 24 months from the date of bay-allocation instead of the date sought in the application.
- iii. Conflation of Petitioner's independent Stage-II Connectivity Applications by PGCIL.
- iv. Delay in execution of PPAs
- v. Contractual Irregularities leading to imposition of penal liability to pay transmission charges

i. Re: Alignment of start date of Connectivity/ LTA as per the scheduled commissioning date under respective PPAs

(b) The Petitioner had submitted Stage-I Connectivity application for 250.20 MW (through a single application), Stage-II Connectivity for the same quantum of 250.2 MW (through two distinct applications of 50.2 MW and 200 MW) and LTA for the same quantum (also through a single application). [Connectivity applications dated 12.06.2018 & LTA application dated 25.07.2018]. In all the cases, the Petitioner had maintained the start date of Stage-I Connectivity, Stage-II Connectivity & LTA as "31.07.2019". It is also an undisputed fact that the Petitioner had submitted the LTA application after signing of PPA, and that it was very well aware of the effective date as per PPA (24.11.2019), as it had sought the LTA start date as 31.07.2019.

(c) The Petitioner signed Transmission Agreement dated 7.8.2018 and LTA Agreement dated 20.9.2018 wherein the stipulated start date of "31.07.2019" was again endorsed. Any Applicant for Connectivity/ LTA is required to make an Application in accordance with Regulation 8 ("Grant of Connectivity") or Regulation 12 ("Application for long-term access") of the 2009 Connectivity Regulations. These Regulations provide that the Applicant shall provide in the application such details as may be laid down in the RE Detailed Procedure.



(d) As per Para 6.1 of the RE Detailed Procedure, it is mentioned that “Applications for grant of Connectivity to ISTS shall be made online as per the application form [FORMAT-RCON-I] available at <https://openaccess.powergrid.in>”. Para 9.1 of the RE Detailed Procedure provides likewise for Stage-II Connectivity [FORMAT-RCON-II]. The procedure for making an application for LTA [FORMAT-LTA-2] is provided in Para 23 of the Detailed Procedure dated 31.12.2009 notified under the 2009 Connectivity Regulations. The respective formats clearly provide for the start date to be stipulated in the application by the Applicant:

Sl. No.	Application for	Format	Para No. in Standard Application Format
1.	Stage-I Connectivity	FORMAT-RCON-I	5b – Date from which connectivity is required
2.	Stage-II Connectivity	FORMAT-RCON-II	7– Date from which Stage-II Connectivity is required
3.	LTA	FORMAT-LTA-2	5b – Date from which LTA required

(e) The applications are then processed through a consultative procedure in which the Applicant and the respective Regional Constituents are involved. The Applications are then granted by way of formal intimations which clearly provide for the respective start dates as sought by the applicant and as discussed and agreed in the consultative process. The start date of both Connectivity as well as LTA is determined first and foremost as per the start date sought in the respective applications. It is only when Connectivity or LTA is being granted with system augmentation that the start date is dependent on the commissioning of the identified transmission elements required for Connectivity/ LTA so sought. In such cases, Connectivity/ LTA is granted with ‘availability of the required transmission elements/ system or the start date, whichever is later’. In the present case, LTA has been granted to the Petitioner without any system augmentation. It follows as a corollary that the start dates of Petitioner’s Connectivity/ LTA is only as requested by it in its respective applications.

(f) The start date of Connectivity does not entail any commercial obligations on the connectivity grantee (the Petitioner in the present case) *per*



se. However, an LTA grantee is liable to pay applicable transmission charges as per the provisions of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as the 2010 Sharing Regulations) from the start date or date of effectiveness of LTA. These charges are applicable in terms of the Regulations framed by the Commission and are not a matter of discretion for either the Applicant or the CTU.

(g) The Petitioner has submitted that it was obligated to apply for Connectivity and LTA in terms of the SECI RfS documents. The Petitioner has also submitted that as per the LoA, it is permitted to commission the generation project within 18 months from the 'effective date of PPA'. In the present case, as submitted above, these dates are 24.11.2019 and 29.02.2020 respectively for 50.2 MW and 200 MW of Petitioner's generation project. On this basis, the Petitioner has sought to contend that the LTA application no. 1200001535 dated 25.07.2019 itself had been made as a matter of compulsion and the 'start date' formally sought in the above LTA application ought to be disregarded in terms of the commissioning schedule under the respective PPAs executed by the Petitioner with Respondent No. 2, SECI.

(h) Even before applying for LTA vide application dated 25.07.2018, the Petitioner has signed PPA-I for quantum of 50.2 MW with the scheduled date of commercial operation (SCOD) as 24.11.2019. Despite the SCOD under PPA-I being 24.11.2019, the Petitioner made the LTA application dated 25.07.2018 seeking the start date of LTA operationalization from 31.07.2019. The grant of LTA and the consequent liability for payment of applicable transmission charges is governed by the provisions of the 2009 Connectivity Regulations and the 2010 Sharing Regulations. As such, the 'commercial operation date' or 'effective date' as provided in the Petitioner's PPAs with SECI do not govern the liability towards payment of transmission charges. This is more particularly so in the present case where the Petitioner had applied for LTA of 250.2 MW on 'target-region' basis with 100 MW in Northern Region (NR) and 150.2 MW in Eastern Region (ER) with start date of 31.07.2019.



(i) Further, in terms of Third Proviso to Regulation 12(1) of the 2009 Connectivity Regulations; the relevance of PPA is limited to firming up the drawal or injection point (as the case may be) and is not at all determinative of the start date or date of effectiveness of LTA, which is solely determined as per the applicable CERC Regulations and LTA application, LTA grant and LTA agreement. With regard to the Petitioner's submissions regarding being obligated to apply for LTA in terms of RfS, it is submitted that the obligation is towards applying for LTA and did not in particular specify any date from which LTA was to be applied, not in the least "31.07.2019". The Petitioner was at liberty to suitably apply for LTA in terms of its consequent contractual/ bidding obligations. Nevertheless, the liability to bear applicable transmission charges is independent of all such obligations. The Petitioner was also at liberty to make separate LTA applications with different quantum and start dates. However, the Petitioner ought not to be permitted to cast aside the obligations that it has manifestly sought and agreed to in the LTA application, grant and agreement.

ii. Intimation/revision in start date of Connectivity based on the maximum permissible limit of 24 months from the date of bay-allocation instead of the date sought in the application.

(j) Para 11.2 of the RE Detailed Procedure is negatively worded, which prescribes delay in implementation of dedicated transmission line (and the consequent idling of national infrastructure) and not an enabling provision. However, the Petitioner has sought to interpret the above provision to be entitling a Stage-II Connectivity grantee to all sorts of immunity against any regulatory actions or commercial liabilities till the exhaustion of the permissible time limit of 24 months from the date of intimation of bay allocation at ISTS sub-station.

(k) The legislative intent behind the incorporation of Para 11.2 was never to provide a maximum permissible timeline till which the regulatory and commercial liabilities of the Stage-II Connectivity grantee may not ensue. In fact, the liability of the Stage-II Connectivity grantee to meet the scheduled date of operationalization of LTA, (as sought under LTA Application and agreed to under LTA intimation and LTA Agreement), is independent of its obligation



under Para 11.2 of RE Detailed Procedure, the default of which entails its own independent consequences.

(l) It is wrong to suggest on the part of the Petitioner that the LTA cannot be operationalized till the commissioning of dedicated transmission line. The liability to bear transmission charges is commercial in nature governed by the signed LTA agreement and is independent of the physical status of connectivity. However, it is true that no scheduling of power can be undertaken through ISTS till the Petitioner is able to complete its dedicated transmission line. However, the same is not the subject matter of the present petition.

iii. Conflation of Petitioner's independent Stage-II Connectivity Applications by PGCIL

(m) The Petitioner had made a Stage-I Connectivity Application vide no. 1200001320 for 250.2 MW dated 12.6.2018 which was reverted on account of discrepancies in the Application. The Petitioner reverted with the corrected Application vide no. 1200001415 dated 31.7.2019 which was also for the same quantum i.e. 250.2 MW. Vide intimation dated 13.7.2018, the Petitioner was granted Stage-I Connectivity for 250.2 MW at primary location of 'Tuticorin-II GIS PS (erstwhile Tirunelveli GIS PS)'.

(n) The Petitioner had simultaneously applied for Stage-II Connectivity for 50.2 MW and 200 MW respectively vide application nos. 1200001418 (originally 1200001332) and 1200001435 (originally 1200001386). In both the applications, the Petitioner had provided details of the Stage-I Connectivity (original) application no. 1200001320, thereby linking both Stage-II Connectivity applications of cumulative 250.2 MW with its single Stage-I Connectivity application of 250.2 MW, which was granted at the Tuticorin-II ISTS sub-station. The matter was discussed in the 24th Meeting of Southern Region constituents regarding Connectivity and LTA Applications wherein the petitioner's representative was also present, and they agreed for the same in the meeting.

(o) CTU did not conflate Petitioner's two Stage-II Connectivity applications; rather they were conflated by the Petitioner itself when it chose to make two



applications for Stage-II Connectivity on the basis of one Stage-I Connectivity application. In terms of the Detailed Procedure, it was neither permissible nor expedient to grant separate Stage-II Connectivity intimations with two different bay allocations at the same location.

(p) The material particulars including the connectivity location and start date sought by the Petitioner in both the Stage-II applications was same. Therefore, even if the two applications were to be granted separately with allocation of two different bays, the Petitioner would still have been liable to pay applicable transmission charges in terms of its LTA grant. One 220 kV bay have minimum capacity of 300 MW, accordingly as per the application of the Petitioner for quantum of 50 MW and 200 MW, there was a requirement of allocation of only one bay. As such, the grant of Petitioner's two Stage-II Connectivity applications with a single bay allocation is not determinative of the transmission charge liability due on the Petitioner.

(q) The second Stage-II Connectivity application (200 MW) submitted by the Petitioner was in the nature of enhancement of Stage-II Connectivity quantum already applied for (50.20 MW). The Petitioner was originally required to submit two different Connectivity bank guarantees (Conn-BGs) of ₹ 5 Crore each as two separate Stage-II Connectivity intimations had been issued each requiring submission of a bank guarantee. However, the matter of applicability of connectivity bank guarantee (Conn-BG) was later deliberated by the PGCIL and under intimation to this Commission. PGCIL issued an advisory in this regard and decided to retain only one Conn-BG of ₹ 5 Crore up to a cumulative Stage-II Connectivity quantum of 300 MW. The PGCIL also duly returned excess Conn-BG that it had received previously and regularized the process as prescribed in the advisory issued on its website. As the Petitioner's cumulative Stage-II Connectivity quantum (250.2 MW) was under 300MW, one of the two Conn-BGs of ₹ 5 Crore submitted by it was duly returned to it.

iv. Re: Delay in execution of PPAs



(r) It is an undisputed fact that SECI vide RfS documents dated 30.11.2017 and 5.2.2018 published notification of bid submission for Tranche-III and Tranche-IV respectively. The Petitioner participated in both the bids and was selected as the successful bidder, consequent to which LOA dated 23.2.2018 and 1.6.2018 respectively were issued by SECI in favour of the Petitioner. As per the LOA issued by SECI in favour of the Petitioner, the PPA was required to be signed within 3 months from the date of receipt of the LOA. The issuance of LOA and the consequent execution of PPA are events which are bilateral in nature involving only the Petitioner and SECI. Accordingly, the obligation of the parties regarding signing of the PPA within 3 months from the issuance of LOA is issue which is exclusively between the parties, and the liability, if any, arising out of such delay in signing of PPA is governed as per LOA issued by SECI in favour of the Petitioner.

(s) The obligation of the Petitioner arising out of the aforesaid LOAs/ PPAs is independent of its obligation to meet the timeline which the Petitioner has sought under the LTA application and LTA Agreement. The consequent liability of the Petitioner arising out of its failure to meet the scheduled date of operationalization of LTA, i.e. 31.7.2019, cannot be discharged on the basis of delay in the signing of PPA which is a bilateral issue involving only the Petitioner and SECI. As the LOA and PPA are bilateral issues, any rights or obligations arising out of these cannot be imposed on the PGCIL, as the PGCIL is not a privy to these agreements.

(t) Thus, the date of operationalization of Connectivity/LTA cannot be realigned with the respective scheduled dates of commissioning of the Project under its PPAs.

v. Re: Contractual Irregularities leading to imposition of penal liability to pay transmission charges

(u) The liability under the LTA grant is a regulatory matter and the LTA agreement is independent of the agreement (PPAs) that the Petitioner has executed with SECI. Further, the PGCIL has not imposed any liability on the



Petitioner which is beyond the provisions of the Regulations, Procedures, Grants and the Agreements duly executed between PGCIL and the Petitioner.

(v) Further, the Petitioner should have known the commercial and regulatory implications of seeking LTA with start date from the stipulated date (i.e. 31.7.2019) at the time of making the application; during consultative process of the application; during issuance of LTA intimation; and during execution of LTA Agreement, as the PPA was signed by the Petitioner before submission of LTA application and that the same was agreed to by the Petitioner in 25th meeting of Southern Region constituents regarding Connectivity and LTA Applications held on 17.08.2018. The legislative and regulatory design of the 2009 Connectivity Regulations and the 2010 Sharing Regulations is such that there various stages through which any regulatory action is undertaken. There are, therefore, several stages at which any anomaly, difficulty or requirement of modifications in what has been sought or is being granted can be addressed. However, in the present case, it is very evident that the Petitioner has chosen to react only when the commercial liability to establish payment security mechanism (Letter of Credit) and payment of transmission charges had become imminent. At various instances since the grant of LTA to the Petitioner, it had been reminded regularly, more particularly in the quarterly Joint Coordination Committee meetings (held on 28.09.2018, 20.12.2018 & 25.03.2019) that transmission charges will be applicable from the date of start of LTA as per the intimation in case of delay in commissioning of generation project from the schedule, i.e. grant date of LTA. However, through the present Petition, the Petitioner is attempting to feign ignorance of its commercial and regulatory liabilities and on that ground alone, seeking to invoke the inherent powers of the Commission, which are not merited by the facts of the case.

(w) The Petitioner vide letter dated 2.7.2019, requested PGCIL to revise the date of operationalization of LTA under the Connectivity and LTA Agreement with the SCODs of the two projects as provided under the PPAs. In the letter, it was stated by the Petitioner that the dates of operationalization of LTA is earlier



than the SCOD of the project and as such under the provisions of the Connectivity Agreement dated 07.08.2018, the petitioner is entitled to a period of 24 months from the date of execution of the Connectivity Agreement to commission the dedicated transmission line.

(x) The PGCIL vide letter dated 11.7.2019 asked the Petitioner to open the letter of credit towards operationalization of LTA of 250.2 MW. The Petitioner filed the instant Petition along with I.A. No. 65 of 2019 before the Commission on 14.07.2019 seeking extension of date for operationalization of the LTA. PGCIL, vide letter dated 18.7.2019, informed the Petitioner that the entire LTA quantum will be made effective from 31.7.2019 in as per terms and conditions of the LTA intimation letter dated 24.8.2018 as well as the LTA agreement in line with the 2009 Connectivity Regulations and that in the extant CERC Regulations/ RE Detailed Procedure there is no provision under which the date of operationalization can be extended. Accordingly, the request for extension of date of operationalization of LTA was not accepted and this was communicated to the Petitioner.

(y) The Petitioner vide letter dated 30.7.2019, i.e. a day before the LTA was scheduled to be operationalized, again requested the PGCIL for alignment of date of operationalization of LTA with the scheduled date of Wind Power Project under the PPA. In the said letter, the Petitioner stated that at the time of filing the application for connectivity, the Petitioner could not have provided accurate dates, due to the PPAs not having been signed. Further the statements made by the petitioner in its earlier letter dated 2.7.2019 were reiterated. The petitioner further requested the PGCIL to undertake appropriate system studies to consider the request of alignment of operationalization dates of connectivity and LTA in accordance with the SCOD of the Wind Power Project under the PPA.

(z) In reply to Petitioner's letter dated 30.7.2019, PGCIL vide letter dated 1.8.2019 informed the Petitioner that the issues raised by the Petitioner vide letter dated 30.7.2019 have already been addressed vide CTU letter dated 18.7.2019. Furthermore, the entire LTA quantum of 250.2 MW has already been



made effective from 31.7.2019 as per terms and conditions of the LTA intimation/ LTA agreement in line with the 2009 Connectivity Regulations.

(aa) Furthermore, CTU vide letter dated 1.8.2019 issued Notice to the Petitioner pertaining to default in opening of Letter of Credit (LC) as per clause 16.2.1 of TSA and Clause 3.6 of Billing, Collection and Disbursement Procedure approved under the 2010 Sharing Regulations. The Commission in its order dated 8.3.2018 in Petition No. 229/RC/2019 has observed that: -

“(c) Opening of the LC is a statutory requirement in terms of Regulation 12(8) of Sharing Regulations, clause 3.6 of the BCD Procedure and Transmission Service Agreement. Failure to open the LCs constitute on event of default by DIC in terms of Article 16.2 of the TSA leading to termination of TSA under Article 16.4 of the TSA.

“(d)(ii) If the generator does not open the LCs, it shall be denied medium term open access and short term open access till the LCs are opened.”

(bb) The petitioner has alleged that PGCIL has conflated the two distinct applications of the petitioner for Stage-II Connectivity as one project. The said allegation is contrary to the actual position, i.e. that the Petitioner was at liberty to apply for two separate LTA applications with different quantum/ start dates, and it was in pursuance of this that the LTA was granted.

Rejoinder filed vide affidavit dated 11.9.2019 to the reply of PGCIL

8. The Petitioner has filed rejoinder vide affidavit dated 11.09.2019 to the reply filed by the Respondent No.1, PGCIL and submitted as under:

A. Whether LTA can be operationalized by CTU prior to the Scheduled Commercial Operation date of Petitioner’s Generating units under the provisions of the PPA or not.

a) CTU has been vested with the responsibility of undertaking transmission of electricity through inter-State transmission system under Section 38(2)(a) of the Electricity Act, 2003 (hereinafter referred to as the “Act”). Such transmission of electricity is not only undertaken under the provisions of the LTA Agreement but is primarily governed under the terms of the PPA. In this regard, the Regulation 15B of the 2009 Connectivity Regulations provides as under:

“15B. Firming up of Drawl or Injection by LTA Customers:



(1)The Long Term Access Customer who has been granted long term access to a target region shall, after entering into power purchase agreement for supply of power to the same target region for a period of not less than one year, notify the Nodal Agency about the power purchase agreement along with copy of PPA for scheduling of power under LTA:

Provided that scheduling of power shall be contingent upon the availability of last mile transmission links in the target region:

Provided further that on receipt of the copy of the PPA, CTU shall advise concerned RLDC for scheduling of power at the earliest, but not later than a period of one month.”

b) Regional Load Despatch Centre (“RLDC”) has the responsibility of optimum scheduling and dispatch of electricity, strictly in accordance with the contracts entered into with the licensee or the generating companies, under Section 28(3)(a) of the Act. Section 28 casts responsibility of optimum scheduling and dispatch in accordance with the contracts between the parties upon RLDC. Such contract cannot be only the open access agreements as the same has to be read in tandem with the power purchase agreements between generators and the procuring consumer/ Discoms.

c) It can be inferred from the combined reading of Regulation 15B of the 2009 Connectivity Regulations and Section 28 of the Act that CTU is obligated to consider the details of the PPAs with respect to date of commencement of supply and the quantum agreed to be supplied under the said PPAs. Any deviation in the grant of LTA or the power purchase agreement would need immediate rectification to enable RLDC to schedule the power, as the two agreements need to be synchronous for RLDC to undertake scheduling and dispatch.

d) Further, as per Regulation 8(5) of the 2010 Sharing Regulations, it is the liability of the generator to pay withdrawal charges corresponding to the LTA granted by CTU, only in case of delay in commissioning of the generating station.

e) As per the provisions of Regulation 8(5) of the 2010 Sharing Regulations, a generator is liable to bear withdrawal charges when a generating



station is delayed from its SCOD. It also prescribes that generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by the CTU becomes effective” implies that CTU has only granted LTA based on the Schedule Commercial Operation Date of the generation units, after considering Schedule Commissioning Date in accordance with the PPA of the applicant.

f) CTU has stated in their reply that the Petitioner has been informed of the liability to bear transmission charges in case they fail to avail LTA in terms of the decision of the Commission in 229/RC/2015. The Order of the Commission in this Petition being relied upon by the CTU was determined on the basis of the provision of Regulation 8(5) of the 2010 Sharing Regulations where the Independent Power Producers, upon commissioning of new transmission elements, identified and implemented by CTU, were commissioned by the licensee after the SCOD of the generators. Further, in the said case, the petitioner also undertook to coordinate and commission the transmission system to match, as far as practicable, with the commissioning schedule of the generators. Therefore, the orders issued by this Commission in 229/RC/2015 cannot be applied in the instant case, as the Petitioner is being levied transmission charges prior to the SCOD of its generating station. Such a levy is clearly contrary to the provisions of the 2010 Sharing Regulations.

B. Whether the Contractual Irregularity Leading to imposition of penal liability to pay transmission charges can be against the Regulations and orders of Ministry of Power

g) The provisions of the LTA agreement which is being relied by CTU to levy transmission charges must be read along with the provisions of the 2010 Sharing Regulations. Since, Regulation 8(5) of the 2010 Sharing Regulations provides for levy of withdrawal charges only in cases of delay on part of generators, no charges can be levied upon the Petitioner before the SCOD of the generating unit of the Petitioner.

h) The instant project is a part of Government of India’s ambitious plan to install 60 GW of wind power generation by the year 2022. The transmission



charges for the instant Wind Power Projects are exempted for a period of 25 years, from the date of Commissioning of its generation projects under the Ministry of Power, Government of India order dated 13.2.2018 “Waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources of energy”. Accordingly, it is only in case of a delay in commissioning of the generation project of the developer, that CTU can levy transmission charges upon a generator under the provisions of the 2010 Sharing Regulations.

i) The existing transmission systems, upon which the LTA has been granted to the Petitioner is being utilized by ISTS customers. The Petitioner is a generating station having lowest generation tariff in the country and saddling it with such Negative Cash flows in the beginning of the project life, especially during the implementation phase could lead to great financial difficulty in completing the project itself. Therefore, it is submitted that the LTA should be realigned for the Petitioner and must be operationalized only from the date of commencement of supply under the PPA.

j) Ministry of Power, the Government of India has issued directions under Section 107 of the Electricity Act, 2003 dated 11.7.2019, wherein the transmission systems implemented by CTU (*‘Green Energy Corridors’*), to evacuate power of the Renewable Generators, are to be considered as “Projects of National Importance”. In accordance with these directions, the Commission must iron out such discrepancies and anomalies arising under the agreement to facilitate development of renewable projects and attain the objective of 175 GW of renewable generation by 2022. Such negative cash flows impact, for renewable generators to bear hefty transmission/ LTA Charges, even prior to its operations will only make the generation projects unviable for the developers.

C. CTU’s notice of ‘Cessation of DIC’ under Article 16.4.1 of the TSA.

k) CTU vide its letter dated 11.9.2019 has issued a notice to the Petitioner of ‘Cessation of DIC’ under Article 16.4.1 for the default of the Petitioner under



Article 16.2.1 of the TSA, due to non-compliance of the Clause 3.6 of the Billing, Collection and Disbursement (BCD) Procedure and defaulting in opening of Letter of Credit.

l) The issue in the instant Petition pertains to the liability of the Petitioner to bear transmission charges for the same period that CTU has given notice to the Petitioner. The operationalization of LTA by the CTU, prior to COD of the Petitioner, is being adjudicated by Commission and the outcome of the instant Petition would have a direct impact on the date on which the said Letter of Credit is required to be opened by the Petitioner under the BCD Procedure.

m) The Petitioner in the instant IA has prayed to Commission to safeguard the Petitioner against actions of CTU leading to termination of the PPA, which is effectively the communication made by CTU vide its letter notice dated 11.09.2019.

Submissions of SECI, Respondent No. 2

9. SECI vide affidavit dated 10.10.2019 has submitted the following:

a) As per Article 2.1.1 of the PPA dated 13.7.2018, the Effective Date mentioned in the PPA is 24.05.2018, which is the Effective Date for all intent and purposes of the PPA. The signing of the PPA was at a later date on account of the time taken by the Petitioner to give the Performance Bank Guarantee as per the terms and conditions of the bidding undertaken by SECI. The Performance Bank Guarantee was initially sent by the Petitioner on 22.03.2018. The Performance Bank Guarantee furnished was defective and was not in accordance with Clause 3.11 of the Request for Selection (RfS) Document dated 12.01.2018.

b) The said Performance Guarantee was, therefore, returned. The revised Performance Guarantee was finally received by SECI on 13.6.2018. The same was considered by the Committee appointed by SECI and thereafter the PPA was signed on 13.7.2018. The Petitioner acknowledging the above aspect of



delay in furnishing the Performance Bank Guarantee had accepted the Effective Date to be 24.5.2018 though the PPA was signed on 13.7.2018.

c) With regard to PPA dated 4.9.2018, the Effective Date was agreed and incorporated as 30.8.2018, wherein the Petitioner accepted the Effective Date 5 days prior to signing the PPA. Delay in signing of the PPA was a ministerial act because of the intervening holidays and the Petitioner signed the documents only on 4.9.2018.

Submission by the Petitioner in I.A No. 88/2019

10. The Petitioner vide affidavit dated 14.10.2019 has filed I.A No. 88/2019 and has additionally submitted the following:

a) The Petitioner's Tranche-III Project is already in advance stages of commissioning and is expected to be commissioned by mid-November 2019. As on the date of filing the instant IA, the Petitioner has completed the following activities:

Project progress summary of 50.2MW Wind Power Project under SECI Tranche-III

Major Milestones	Status as on date
Total No. of WTG Locations (Land Parcels)	26 (Capacity of each WTG is 2MW)
Status of Land Acquisition	Lease/Sale Deed executed for all 26 WTG locations
Status of WTGs works	Civil: 26/26 and Erection: 21/26
Status of Pooling Substation (PSS)	95% completed (230kV & 33kV structure and equipment erection completed, testing & commissioning in progress).
230kV EHV Line from PSS to PGCIL-GIS	All 73 towers erected; 90% stringing work completed; GIS Bay work - installation including pre commissioning as per Connectivity intimation are completed. However, additional shutdown from PGCIL is required to complete the physical interconnection of Bus and Bay no 221 (Orange Sironj bay) with the existing 230KV bus and to perform HV testing.
33kV Line from WTGs to PSS	80% completed

b) In terms of the express provisions of the PPA-I, the Petitioner is entitled to commission its Tranche-III Project on a date earlier than the SCOD. In this regard, the relevant clause of the PPA-I (Article 9.1) has been reproduced below:



*"9.1 The WPD shall be entitled to receive the Tariff of Rs. **2.45/kWh**, fixed for the entire term of this Agreement, with effect from the SCD for the power sold by the Buyer to the Buying Entity for the scheduled energy as reflected in the REA subject to the Article 4.6.3 of this Agreement. In case of early part-commissioning, till the achievement of full commissioning of the Project or SCD, whichever is earlier, subject to the consent for such purchase by the Buying Utility, SECI may purchase the generation @ 75% (seventy-five per cent) of the PPA tariff Subsequent to the full commissioning of the Project or the SCD, whichever is earlier, the tariff for power purchase by SECI shall be Rs. **2.45/kWh**. Any energy produced and flowing into the grid before SCD shall not be at the cost of SECI. SECI may agree to buy such power provided Buying Utility consent to purchase such energy. However, the WPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than SECI (unless refused by SECI)."*

c) In view of Article 9.1 of the PPA-I, the Petitioner is entitled to commission its Tranche-III Project from a date earlier than the SCOD, i.e. 24.11.2019. For the purposes of early commissioning and dispatch of power under the aforesaid Article 9.1 of the PPA, the Petitioner would require to obtain the consent of the procurer. Such consent for early procurement of power shall be granted by SECI/ procurer in terms of the aforementioned Article 9.1 of the PPA-I, after having a certainty of the permission for evacuation of power by CTU. Unless such certainty and clarity is provided by Commission to ensure evacuation of power, the Petitioner cannot proceed to plan early commissioning and accordingly request SECI and procuring Beneficiary to provide their consent of early procurement in terms of the aforesaid provisions of the PPA.

d) During the pendency of the instant Petition before the Commission, PGCIL vide its letter dated 1.8.2019 informed the Petitioner about operationalization of LTA and the Petitioner has failed to open the LC, which is an Event of Default in terms of Clause 16.2 of the Transmission Services Agreement dated 20.09.2018 ("TSA"). The said letter also asked the Petitioner to open the LC within the next 30 days, despite the pendency of the instant dispute with the Commission.

e) Subsequently, PGCIL vide its another letter dated 11.9.2019 informed the Petitioner that since the Petitioner had not opened an LC even after a passage of 30 days since the previous communication dated 01.08.2019, the same constitutes an Event of Default in terms of Article 16.2 and therefore,



PGCIL is now initiating a consultation period of 60 days in terms of Article 16.4 of the TSA.

f) Article 16.4 of the TSA pertains to a situation when there is a continuing Event of Default that may lead to the "cessation of the DIC Status" of the Petitioner. Article 16.4 provides that once a notice under Article 16.4 is issued, it marks the commencement of a 60 day consultation period wherein the parties deliberate upon the possible steps to be taken to cure or mitigate the effects of such Event of Default.

g) The ability and right of the Petitioner to supply power under the PPA may get jeopardised on the sole pretext that the default in opening of the LC is a material breach of the TSA. The opening of LC is neither a requirement under the TSA nor under the LTA Agreement dated 20.9.2018. The liability of opening the LC is being cast upon the Petitioner solely on the basis of the Clause 3.6. of the Billing Collection and Disbursement Procedure ("BCD Procedure"). The provisions of the said BCD Procedure are not applicable upon the Petitioner in terms of the waiver granted from payment of transmission charges from the date of commissioning of its generating stations and commencement of supply.

h) In light of the commissioning of the Tranche-III Project in mid-November, 2019 and commencement of supply of power, the transmission charges shall be duly recovered in terms of the Regulations framed by this Commission. Accordingly, there is no situation where the CTU's recovery of transmission charges on account of the utilization of LTA shall be jeopardised. Therefore, directions need to be issued to the CTU to permit the evacuation of power by utilising the LTA commensurate to the commissioned capacity, without the opening of the LC.

i) In view of the aforementioned communications issued by PGCIL, the Petitioner has serious apprehensions as to whether CTU will allow the Petitioner to utilize the LTA to evacuate the power from its Tranche-III Project and supply the same to its intended beneficiaries from the date when the same is commissioned. If the CTU does not permit such evacuation from the date of



commissioning of the Tranche-III Project, the Petitioner will not be able to exercise its rights to supply the power under the PPA-I and that shall also endanger the commercial viability of the Project.

Additional Submission by the Petitioner

11. The Petitioner vide affidavit dated 7.11.2019 has submitted the following additional information:

a) SECI has signed three Power Sale Agreements (“PSA”) with Bihar, Odisha and Uttar Pradesh Distribution Companies (“Discoms”) who have agreed to purchase the entire quantum of 250.2 MW from the two generating stations of the Petitioner (being Tranche-III and Tranche-IV generation).

b) SECI has executed a Power Sale Agreement (“PSA”) for the both Tranche-III and Tranche-IV generation project of the Petitioner. As such the said PSA have been executed with the following Discoms for the total capacity of 250.2 MW of the generation stations in the given proportions:

Purchasing Entity	Quantum of Power (In MW)	Generation Project
Bihar Power Distribution Company Limited	50.2 MW	Tranche III
GRIDCO Limited	100 MW	Tranche IV
Uttar Pradesh Power Corporation Limited	100 MW	Tranche IV

c) As per the PPA executed by the Petitioner with SECI, the SCOD of its Tranche-III Generation Project is 24.11.2019, whereas, due to the efforts of the Petitioner the Tranche III Project is reaching its commissioning on 20.11.2019, earlier than the SCOD. Therefore, the Petitioner had approached the Commission to give appropriate directions to the CTU to operationalize the LTA.

d) CTU vide its letter dated 18.6.2019 had requested the Petitioner to submit the following documents to avail the benefits of the Government of India guidelines regarding waiver of transmission charges from renewable generating stations. In the said letter, CTU had requested the Petitioner to provide the following documents:

- i. Certificate of date of commissioning of the generation project



- ii. Letter of Award issued by the designated agency that project has been awarded through competitive bidding process in accordance with the guidelines issued by Central Government.
 - iii. Certificate from entities including DISCOMs that the executed PPAs with Solar and Wind power resources are for compliance of their renewable purchase obligations.
- e) The Petitioner is a renewable generator, who is exempted from payment of transmission charges as per the directions of the Government of India. Further, in accordance with the notifications of this Commission, a renewable generator is exempted from payment of transmission charges if they fulfill the following criteria:
- i. Letter of Award issued by the designated agency that project has been awarded through competitive bidding process in accordance with the guidelines issued by Central Government.
 - ii. Certificate from entities including DISCOMs that the executed PPAs with Solar and Wind power resources are for compliance of their renewable purchase obligations.
- f) The Petitioner has complied with all the requirements for availing the said exemption from payment of transmission charges. It is only for the intervening period where the Petitioner could not operationalize the LTA on account of SCOD under the PPA being later than the LTA operationalization date that the liability of payment towards transmission charges (and not PoC Charges) is casted upon the Petitioner.
- g) Under the provisions of the PSA with Bihar Discoms, the Petitioner can commence an early evacuation under the provisions of clause 5.1.4 as given below:
- “5.1.4 As per provisions of the PPA, the WPDs are permitted for full commissioning as well as part commissioning of the Project even prior to the SCD. In cases of early part-commissioning, till the achievement of full commissioning or SCD, whichever is earlier, the Buying Entity shall purchase the generation till SCD, at 75% (seventy-five per cent) of the tariff as mentioned in the Article 5.1.1 plus Trading Margin of Rs 0.07/kWh, (Rupees Seven Paisa per kWh). In case of full commissioning of the Project(s) prior to SCD, Buying Entity shall purchase the power at tariff as per article 5.1.1.”*
- h) The Petitioner does not even require a prior consent of the beneficiary for dispatching its power in cases of early commissioning. Further, all



requirements for availing the waiver on payment of transmission charges are duly complied.

i) From the date of commissioning, the transmission charges shall be recovered from the PoC Pool and not from the Applicant. Accordingly, there is no provision applicable upon the Petitioner that requires it to provide for a payment security mechanism as there is no liability of payment towards transmission charges on the Petitioner. Requirement shown by the CTU for opening of the LC under the BCD Procedure is not applicable upon the Petitioner in terms of the express provisions of the PPA-I.

12. The Petitioner vide affidavit dated 29.11.2019 has submitted the following additional information:

a) The Petitioner was able to achieve the commissioning of its Tranche-III project on its SCOD under the PPA, i.e. on 24.11.2019.

b) Power Sale Agreement for the commissioned 50.2 MW of Tranche-III project was also executed with the beneficiaries and the commissioning certificate along with the NOC from the Bihar Discoms (beneficiary under the PSA executed by Respondent No. 1 for sale of 50.2 MW of power under the Tranche-III project) was submitted to the CTU as required under the provisions of Regulation 7 of the 2010 Sharing Regulations. Thereafter, pursuant to the hearing held on 26.11.2019 and based on the submissions made by the Petitioner, the Commission directed the CTU to operationalize the LTA with immediate effect.

c) As per the provisions of Regulation 8 clause 6 of the Sharing Regulations, 2010, the mechanism for calculating transmission charges at the drawl nodes of the generator, as per the PoC methodology, becomes effective only after the commercial operation of the generator. Prior to such date, the generator is only liable to pay the transmission charges.

d) Further, the direction issued by the Commission in Petition No. 172/TT/2018 also clarifies the above submissions of the Petitioner. In the said



Petition, the Commission while determining the transmission tariff for the assets commissioned by PGCIL, has observed that the Long Term Transmission Customers shall pay the transmission charges from the date of operationalization of their respective LTAs as per the start date of LTA till the commissioning of their respective generation. Thereafter, the asset shall be included in the PoC. The relevant part of the order issued by the Commission in 172/TT/2018 is reproduced below:

“85. Besides the above said 75 MW of LTA granted to Mytrah Energy, it is observed that further LTA was granted to Mytrah Energy, Orange Sironj, GIREL and Betam Wind for 175 MW, 200 MW, 249.9 MW and 250.2 MW respectively. The start dates for these said LTAs are after the date of commercial operation of Asset-IV, i.e. 10.6.2018. Therefore, we are of the view that these LTA grantees shall pay the transmission charges from the date of operationalisation of the respective LTAs as per the start date of LTA till the commissioning of their respective generation. After the commissioning of the generation by these LTA grantees, the transmission charges of the Asset-IV shall be included in the POC computation”

e) From the above order of the Commission and the provisions of the 2010 Sharing Regulations highlighted above, the Petitioner may be required to pay transmission charges for the period commencing from the date of operationalization of the LTA till the commissioning of the generating station (considering that the Commission takes a view that the Petitioner is not entitled for realignment of their LTA).

f) The CTU has computed the LC amount in accordance with the provisions of the Billing Collection and Disbursement procedure (“BCD Procedure”). Under Clause 3.6.3 of the BCD Procedure, it is provided that the Letter of Credit shall be opened for an amount equal to one point zero five (1.05) times of the average of the First Bill amount. The relevant provision of the BCD Procedure is reproduced below:

“3.6 Letter of Credit

3.6.1

3.6.2

3.6.3 The Letter of Credit shall have a term of twelve (12) Months and shall be for an amount equal to one point zero five (1.05) times the average of the First Bill Amount for different months of the Application Period, as computed by the Implementing Agency (IA) for the DIC, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist.



Provided that where such tripartite agreement does not exist, the DIC shall open the Letter of Credit for an amount equal to two point one times (2.10) the average First Bill amount for different months of the Application Period, as computed by the Implementing Agency for that DIC.

Provided that the CTU shall not make any drawl before the 30th day after Due Date.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in this Clause 3.6.3, the concerned DIC shall restore such shortfall within seven (7) days.

Provided the amount of Letter of Credit shall be revised in case of revision of PoC charges by the IA.”

g) Upon the Commissioning of the generating project, the transmission charges would stand waived off for the Petitioner. Accordingly, the CTU will return the LC, upon commissioning of the Tranche-IV generating project, if the same is directed to be opened by the Commission.

h) The computation done by the CTU towards the amount of the LC is based on the PoC charges attributable to the 250.2 MW of LTA. The Petitioner has firstly, commissioned the Tranche-III Generation Project of 50.2 MW and accordingly, no transmission charges are payable by the Petitioner henceforth. Secondly, for the remaining LTA of 200 MW, the amount of the LC should be proportionate to the 1.05 times of the monthly transmission charges corresponding to the 200 MW LTA, if the prayers of the Petitioners are not allowed in the main Petition.

i) Since the maximum default that can be assumed on part of the Petitioner would not be beyond the monthly transmission charges for the assets covered under Petition No. 172/TT/2018, the requirement indicated by the CTU to open the LC corresponding to the monthly average PoC charges is unwarranted and requires a revision.

j) The process of opening of the LC would require some time to arrange the funds for the LC amount. The Commission may direct PGCIL to reissue the letter giving time of 30 business days to the Petitioner to open the LC.



13. With regard to exemption from payment of transmission charges in respect of 200 MW Project, the Commission granted liberty to the Petitioner to file separate Petition.

14. The matter was heard on 26.11.2019 and order was reserved in the Petition.

Analysis and Decisions

15. The Petitioner was selected as successful bidder to set up 50.20 MW and 200 MW Wind Power Project in pursuance of the competitive bidding process conducted by the Solar Energy Corporation of India Limited (SECI) under Tranche-III and Tranche-IV respectively. Accordingly, the Petitioner was issued the Letters of Awards (LoAs) on 23.2.2018 and 1.6.2018 respectively. LoAs envisaged commissioning of the Projects within 18 months from the 'Effective date of PPA'. On the basis of LoAs issued by SECI, the Petitioner made applications to PGCIL for grant of Connectivity and Long-term Access (LTA). LTA was by PGCIL with effect from 31.7.2019. In terms of the PPAs entered into with SECI, the SCoD in respect of 50.2 MW and 200 MW Projects are 24.11.2019 and 29.2.2020 respectively. Stating that the date of operationalization (31.07.2019) of the LTA is earlier than the SCoD of the Projects, the Petitioner has sought relaxation under provisions of 2009 Connectivity Regulations and the 2010 Sharing Regulations with a request to realign the date of operationalization of Connectivity and LTA with the respective SCoD of the 50.2 MW and 200 MW Project.

16. PGCIL asked the Petitioner to open Letter of Credit (LC) in terms of provisions of Billing, Collection and Disbursement (BCD) Procedure and when the Petitioner did



not do so, PGCIL issued Notice for Cessation of DIC as per Clause 3.6 of the BCD Procedure.

17. The Petitioner has submitted that PGCIL has calculated the amount of LC based on PoC charges, whereas the LC amount has to be calculated on the basis of transmission charges in terms of Regulation 8(6) of the 2010 Sharing Regulations. The Petitioner has laid reference on Order of the Commission dated 6.8.2019 in Petition No. 172/TT/2018 for calculation of said transmission charges.

18. The Petitioner commissioned Tranche-III 50.2 MW Project on 25.11.2019. It has submitted that in respect of Tranche-IV 200 MW Project, due to certain changes in Tamil Nadu land laws, SECI has extended the SCOD of the Project by six months and accordingly Petitioner has sought liberty to file an additional affidavit to bring on record the Petitioner's plea of Force Majeure which has been granted by us during the course of hearing.

19. PGCIL has submitted that the provisions of the 2009 Connectivity Regulations do not require PGCIL to look into the timeline provided in the Power Purchase Agreements executed by the Generators. It is the Generator, who comes up with the date from which it requires the Connectivity and Long-term Access. Accordingly, it is the responsibility of the generator to synchronize between the time-line between two sets of agreements i.e. PPAs and LTA agreements. It has further submitted that the LTA was granted to the Petitioner after discussion during various Joint Co-ordination Committee Meetings but the Petitioner did not raise the issue of mismatch in the dates of LTA operationalization and schedule date of commissioning of the Project.



20. PGCIL has submitted that there cannot be any realignment of the date of operationalization of connectivity and LTA with the schedule date of commissioning of Project on account default on the part of the Petitioner. It has also submitted that the Petitioner was required to open LC in respect of LTA of 250.20 MW in terms of the provisions of the BCD Procedure and the 2009 Connectivity Regulations. On account of failure in opening of LC by the Petitioner, PGCIL has issued the termination notice.

21. Based on submission of the parties, the chronology of events are summarized below:

Event/ Activity	Tranche - I (50.20 MW)	Tranche – II (200 MW)
LOA Issued	23.2.2018	1.6.2018
PBG forwarded by Petitioner to SECI	22.3.2018	-
Revised PBG forwarded by Petitioner to SECI	13.6.2018	-
Application for Connectivity	12.6.2018	12.6.2018
Connectivity sought w.e.f.	31.7.2019	31.7.2019
PPA signing date	13.7.2018	4.9.2018
PPA Effective Date	24.5.2018 with SCOD as 24.11.2019	30.8.2018 with SCOD as 29.2.2010
LTA Application date	25.7.2018 with start date of LTA as 31.7.2019	
Transmission Agreement for connectivity signed	7.8.2018	
CTU granted LTA w.e.f. 31.7.2019 vide letter dated	24.8.2018	
LTA Agreement signed (250.20 MW)	20.9.2018 with start date of LTA as 31.7.2019	
24th SCM	11.7.2018	
25th SCM	17.8.2018	
24th JCC (Commissioning status: 150 MW & 100.20 MW by 31.7.2019 & 31.8.2019 respectively)	28.9.2018/ 5.11.2018	
25th JCC (Commissioning status: 150 MW & 100.20 MW by 31.7.2019 & 31.8.2019 respectively)	31.1.2019	
26th JCC (Commissioning status: 150 MW & 100.20 MW by 31.7.2019 & 31.8.2019 respectively)	25.3.2019	



Financial closure extended by SECI for 200 MW till final call of the competent authority	24.5.2019	
Request for waiver of Transmission charges and Losses	18.6.2019	
Petitioner's request for matching SCOD and date of LTA operationalization	2.7.2019	
CTU's letter to Petitioner for opening LC of amount Rs. 1445.66 lakhs for 250.20 MW @ POC rates	11.7.2019	
PGCIL's letter to Petitioner for dis-agreeing the revision of date of LTA operationalization	18.7.2019	
Petitioner again requested PGCIL to revise the date of LTA operationalization	30.7.2019	
Notice forwarded to Petitioner by PGCIL for non-opening of LC	1.8.2019	
PGCIL forwarded a letter to Petitioner wherein Notice for Cessation issued.	11.9.2019	
SCOD	24.11.2019	29.2.2020

22. Following issues arise for our consideration:

Issue (a): Whether the prayer of petitioner to realign the date of operationalization of Connectivity and LTA in two phases with the respective scheduled dates of commissioning of the Project under the PPA-I and PPA-II can be acceded to?

Issue (b): What shall be the liability of Petitioner for payment of transmission charges? What is the amount for which LC has to be established?

The above issues have been dealt with in the succeeding paragraphs.

Issue (a): Whether the prayer of petitioner to realign the date of operationalization of Connectivity and LTA in two phases with the respective scheduled dates of commissioning of the Project under the PPA-I and PPA-II can be acceded to?

23. Petitioner has placed its reliance on Paragraph 11.2 of the RE Detailed Procedure where for a dedicated transmission line, the timeline of 24 months is prescribed. It has submitted that the Petitioner is well within its rights to utilize full time-period of 24 months for commissioning its dedicated transmission system, and in case the connectivity is granted prior to the expiry of 24 months, such connectivity cannot be operationalized. Commissioning of the Dedicated Line is a necessary pre-



requisite for the operationalization of the LTA and, therefore, in terms of the Connectivity intimation of CTU dated 13.07.2018, the time period available with the Petitioner for commissioning of its dedicated transmission line under the agreement is till 12.07.2020.

24. The Petitioner has also referred to Regulation 15B of the 2009 Connectivity Regulations to argue that dates of PPAs and LTA should be aligned. The Petitioner has further submitted that under Section 28(3)(a) of the Act, Regional Load Despatch Centre ("RLDC") has the responsibility of optimum scheduling and dispatch of electricity, strictly in accordance with the contracts entered into with the licensee or the generating companies. It has submitted that non-alignment of PPAs with operationalization of grant has led to non-optimal scheduling.

25. The PGCIL has submitted that the Petitioner has requested 31.07.2019 as the start date while submitting applications for Stage-I Connectivity, Stage-II Connectivity as well as LTA. The Petitioner signed Transmission Agreement dated 07.08.2018 and LTA Agreement dated 20.09.2018 wherein the stipulated start date of 31.07.2019 was again endorsed. In the present case, LTA has been granted to the Petitioner without any system augmentation and, therefore, the start dates of Petitioner's Connectivity/ LTA is as requested by the Petitioner in its respective applications. PGCIL has submitted that the Petitioner was at liberty to suitably apply for LTA in terms of its consequent contractual/ bidding obligations. The Petitioner was also at liberty to make separate LTA applications with different quantum and start dates. It is the LTA applicant, who comes up with the date from which it requires the Connectivity and Long-term Access. Accordingly, it is the responsibility of the LTA



applicant to synchronize between the two sets of agreements i.e. PPAs and LTA agreements.

26. PGCIL has submitted that in terms of third proviso to Regulation 12(1) of the 2009 Connectivity Regulations, the relevance of PPA is limited to firming up the drawal or injection point (as the case may be) and is not at all determinative of the start date or date of effectiveness of LTA and that LTA is solely determined as per the applicable Regulations of the Commission, LTA application, LTA grant letter and LTA agreement. It has further submitted that it is only when Connectivity or LTA is granted with system augmentation that the start date of Connectivity or LTA is dependent on the commissioning of the identified transmission elements required for Connectivity/ LTA. In such cases, Connectivity/ LTA is granted with 'availability of the requirement transmission elements/ system or the start date, whichever is later'.

27. We have considered the submissions of Petitioner and Respondents. We observe that the Petitioner applied for Stage-II connectivity on 12.6.2018 through two separate applications for 50.2 MW and 200 MW seeking start date of Stage-II Connectivity as 31.7.2019. It applied for LTA for 250.2 MW on 25.7.2018 seeking start date of LTA s 31.7.2019. The Petitioner signed PPA-I (50.20 MW) on 13.7.2018 and PPA-II (200 MW) on 4.9.2018 with SECI wherein the SCOD was mentioned as 24.11.2019 and 29.2.2020 respectively. Petitioner signed LTA Agreement on 20.9.2018 where start date of LTA was maintained as 31.7.2019. We observe that as on 20.9.2018 when Petitioner signed LTA Agreement, it had already entered into both the PPAs and was well aware of SCOD as PPA, still it maintained schedule of 31.7.2019 as start date of LTA. We observe that as per status of Commissioning



provided by Petitioner in various JCC meetings as quoted in chronology of events above, the Petitioner was expected to Commission 150 MW by 31.7.2019.

28. Thus, the Petitioner was fully aware of all the relevant dates and was a party to the grant of LTA. It was the Petitioner at whose behest the date of LTA was decided as 31.07.2019. In our view, the Petitioner cannot now contend that CTU should have matched the dates of SCOD in the PPAs and the operationalization of LTA. It was the responsibility of the Petitioner to assess and inform the correct dates from when it required LTA, specially, when there is no system augmentation involved and LTA is granted on existing system. The Petitioner has itself submitted that there were incentives attached for early commissioning and, therefore, it cannot be ruled out that the Petitioner wanted to commission its project earlier than SCOD and for that purpose, it sought LTA from 31.07.2019. This is also borne out from JCC meetings where the Petitioner had stated that it was expected to Commission 150 MW by 31.7.2019. Therefore, PGCIL cannot be faulted for operationalizing the LTA from the date it was sought by the Petitioner.

29. Petitioner has submitted that as per Paragraph 11.2 of the RE Detailed Procedure, there is a provision to construct dedicated transmission line in 24 months from date of grant Stage-II Connectivity and, therefore, Connectivity/ LTA cannot be operationalized before that period. The relevant extract from the RE Detailed Procedure is as under:

“11.2 The Stage-II Connectivity grantees shall be required to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months from the date of intimation of bay allocation at existing or new/ under-construction ISTS sub-station. If the grantee fails to complete the dedicated transmission line within the stipulated period, the Conn-BG of the grantee shall be encashed and Stage-II connectivity shall be revoked. The payment received in terms of these provisions shall be adjusted in the POC pool.”



We, note that the timeline of 24 months is the upper limit to construct the dedicated line beyond which Bank Guarantee is to be encashed and Stage-II Connectivity shall be revoked. Therefore, the contention of the Petitioner is not correct and in our view, operationalization of LTA is not dependent upon availability of dedicated transmission line.

30. The Petitioner has prayed for shifting of date of operationalization of LTA. However, once LTA is granted from a specific date, CTU reserves the transmission capacity for such Applicant from that date subject to provisions of Regulations. In case there are new applications for the same corridor on which such an Applicant is granted LTA, CTU has to plan new corridor to accommodate request of the new Applicants. Shifting such dates as per PPA dates would put the burden of transmission charges for the period from which capacity was allocated to a certain LTA grantee to other DICs of ISTS. An LTA Applicant has to seek LTA keeping in view the commercial implications of such LTA grant. In the instant case the Petitioner, being fully aware of its SCOD, signed LTA Agreement for a date prior to its SCOD. Therefore, the Petitioner's request for aligning date of start of LTA with SCOD of the project under provisions of "Power to relax" or "Power to remove difficulty" cannot be agreed to. Hence, the prayer of Petitioner is rejected.

Issue (b): What shall be the liability of Petitioner for payment of transmission charges? What is the amount for which LC has to be established?

31. Petitioner has submitted that it is not liable to bear the transmission charges, as the project being commissioned is entitled for waiver of the same upon its commissioning in terms of Order of the Government of India. The Petitioner has



submitted that it has complied with all the requirements for availing the said exemption from payment of transmission charges.

32. Petitioner has submitted that the opening of LC is neither a requirement under the TSA nor under the LTA Agreement dated 20.09.2018. The liability of opening the LC is being cast upon the Petitioner solely on the basis of the Clause 3.6. of the Billing, Collection and Disbursement Procedure ("BCD Procedure"). The provisions of the said BCD Procedure are not applicable upon the Petitioner in terms of the waiver granted from payment of transmission charges from the date of commissioning of its generating stations and commencement of supply.

33. Petitioner has submitted that vide Order dated 6.8.2019 in Petition No. 172/TT/2018, the Commission while determining the transmission tariff for the assets commissioned by PGCIL pertaining to the connectivity and LTA granted to the Petitioner and other similar wind power projects has observed that the Long Term Transmission Customers shall pay the transmission charges from the date of operationalization of their respective LTAs as per the start date of LTA till the commissioning of their respective generation. Thereafter, the asset shall be included in the PoC. The relevant part of the order dated 6.9.2019 issued by the Commission in 172/TT/2018 is reproduced below:

"83. The petitioner has submitted that Asset-III, i.e. the 400 kV D/C Tirunelveli Tuticorin line alongwith bus reactors would help in controlling the voltage at Tirunelveli and Kudankulam areas and the same was discussed and agreed in the 32nd SRPC meetings held on 22.8.2017 and 1.9.2017. The petitioner has submitted that the 400 kV D/C Tirunelveli PS-Tuticorin PS alongwith 2X125 MVAR Bus reactors at Tuticorin is utilized from 10.6.2018. It is observed that the same was discussed and agreed in the special meeting held on 1.9.2017 at SRPC, Bangalore. The relevant extract of the minutes of the meeting is hereunder:-

"VIII. Commissioning of Tirunelveli GIS and Tuticorin–Tirunelveli 2x400 kV D/C lines Sub-Group Deliberation: Powergrid informed that the system would be commissioned with reactors at Tirunelveli GIS. The line length is only 12 kms and



thus reactors would help in controlling the voltage at Tirunelveli and Kudankulam areas. Powergrid informed that the 230 kV bays and 400/230 kV transformers may not be considered. Hence, the commissioning of this line along with 400 kV system of 400/230 kV Tirunelveli GIS with 2x125 MVAR reactors is recommended.”

It is observed that Asset-III achieved its COD on 10.6.2018 and it is utilized for controlling over voltage at Tirunelveli Pooling Station. As the instant asset has achieved its COD and it is being utilized, we are of the view that the said Asset should be included in the PoC computation w.e.f. COD of the asset.

84. Asset-IV, i.e. 2X500 MVA 400/230 kV transformers alongwith associated 220 kV bays and associated new 400/230 kV GIS Pooling station at Tirunelveli was put into commercial operation on 10.6.2018. It was built alongwith Asset-III for evacuation of power from the seven wind generators in the Tirunelveli area of Tamil Nadu. As per the 38th SCM, seven RE generators had applied for connectivity for about 1764 MW in Tirunelveli area of Tamil Nadu. The petitioner started operationalising the LTA after the COD of Asset-IV on 10.6.2018. It is observed that the start date of LTA for Mytrah Energy was February, 2016. However, Mytrah Energy was not ready with generation on the date of commercial operation of Asset-IV, i.e.10.6.2018. Therefore, we are of the view that Mytrah Energy shall bear the transmission charges proportionate to the quantum of LTA granted to it, i.e. 75 MW from 10.6.2018 to the date of commissioning of its generation.

85. Besides the above said 75 MW of LTA granted to Mytrah Energy, it is observed that further LTA was granted to Mytrah Energy, Orange Sironj, GIREL and Betam Wind for 175 MW, 200 MW, 249.9 MW and 250.2 MW respectively. The start dates for these said LTAs are after the date of commercial operation of Asset-IV, i.e. 10.6.2018. Therefore, we are of the view that these LTA grantees shall pay the transmission charges from the date of operationalisation of the respective LTAs as per the start date of LTA till the commissioning of their respective generation. After the commissioning of the generation by these LTA grantees, the transmission charges of the Asset-IV shall be included in the POC computation”

34. Petitioner has submitted that in terms of the above order of the Commission and the provisions of the 2010 Sharing Regulations, the Petitioner may be required to pay transmission charges (if the prayer of the Petitioner for shifting the date of LTA is not agreed to) for the period commencing from the date of operationalization of the LTA till the commissioning of the generating station. The Petitioner has submitted that it has now commissioned the Tranche-III Generation Project of 50.2 MW and accordingly, no transmission charges are payable by the Petitioner after its COD i.e. 24.11.2019. For the remaining LTA of 200 MW, the amount of the LC should be 1.05



times of the monthly transmission charges corresponding to the 200 MW LTA, if the prayers of the Petitioners are not allowed in the main Petition.

35. SECI has submitted that the Petitioner is a renewable generator who is exempted from payment of transmission charges as per Order issued by the Government of India. Further, in accordance with the notifications of this Commission, a renewable generator is exempted from payment of transmission charges if they fulfill the following criteria:

- I. Certificate for date of commissioning of the generating project.
- II. Letter of Award issued by the designated agency that project has been awarded through competitive bidding process in accordance with the guidelines issued by Central Government.
- III. Certificate from entities including DISCOMs that the executed PPAs with Solar and Wind power resources are for compliance of their renewable purchase obligations.

36. We have considered the submission of petitioner and respondents. At Issue No.1, we have already held that CTU has rightly operationalized the LTA of the Petitioner for 250.20 MW w.e.f. 31.7.2019 and, therefore, the Petitioner as per its own submissions, in line with the order dated 6.8.2019 in Petition No. 172/TT/2018 is liable to pay transmission charges from this date till the CoD of the project in terms of the provisions of the 2009 Connectivity Regulations and the 2010 Sharing Regulations.

37. As regards waiver from ISTS transmission charges and losses, Regulation 7(1)(aa) the 2010 Sharing Regulations states as follows:

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

(i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government;



(ii) Such generation capacity has been declared under commercial operation between 13.2.2018 till 31.3.2022;
(iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to all entities including Distribution Companies for compliance of their renewable purchase obligations.”

As per this Regulation, waiver from payment of transmission charges and losses is available for generation based on solar and wind power resources for a period of 25 years from the date of commercial operation and is subject to the three conditions that have to be met to claim such waiver. Thus, there is no provision of exemption from transmission charges and losses for generation based on solar or wind power resources before the date of commercial operation of such generation projects.

38. In the instant case, the Petitioner has submitted that COD for 50.2 MW capacity (Tranche-III Project) has already been declared by the Petitioner in November 2019 while COD for balance capacity of 200 MW is yet to be declared. Therefore, there would be no transmission charges and losses levied on the Petitioner for 50.20 MW if the conditions of Regulation 7(1)(aa) the 2010 Sharing Regulations are satisfied. CTU is directed to verify whether conditions for waiver of ISTS charges as per provisions of Regulation 7(1)(aa) the 2010 Sharing Regulations are met in case of Petitioner. For the capacity which has not been declared under commercial operation (200 MW), the Petitioner shall be liable to pay transmission charges for assets as directed in 172/TT/2018.

39. In view of the above, subject to verification by the CTU, the transmission charges shall be payable by the Petitioner for the following capacity:



(a) For full capacity for which LTA has been granted (250.20 MW) from 31.07.2019 to 23.11.2019 (i.e. one day before the date of declaration of commercial operation of Tranche-III Project of 50.20 MW); and

(b) For 200 MW, from 24.11.2019 (i.e. the date of declaration of commercial operation of Tranche-III Project of 50.20 MW) till the date of commercial operation of Tranche-IV Project of 200 MW or part thereof as the case may be.

40. For the capacity for which transmission charges are payable, the Petitioner shall pay the transmission charges and open Letter of Credit (LC) corresponding to such charges in terms of the BCD Procedure. CTU shall communicate to the Petitioner the quantum of such LC within 15 days of issue of this Order and the Petitioner shall open the LC within 30 days of this Order. At all times, LC for capacity that has not been declared under commercial operation shall be maintained by the Petitioner as per provisions of the BCD Procedure.

41. This order disposes of the Petition No. 195/MP/2019 along with I.A. No. 65/2019 and I.A. No. 88/2019.

Sd/-
(I.S Jha)
Member

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

Sd/-
(P.K.Pujari)
Chairperson

