

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 48/MP/2019**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Dr. M. K. Iyer, Member**

**Shri I. S. Jha, Member**

**Date of Order: 8<sup>th</sup> January, 2020**

**In the matter of:**

Petition under Regulation 32 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 and Detailed Procedure of the Central Electricity Regulatory Commission, Delhi dated May 15, 2018 for extension of time for filing of documentation under Clause 5.1 and Clause 9.2 of the Detailed Procedure and Deemed Stage II Connectivity accorded by POWERGRID Corporation of India (Ltd.) to Regen Wind Farm (Vagarai) Pvt. Ltd.

**And**

**In the matter of**

ReGen Wind Farm (Vagarai) Pvt. Ltd.  
S-7, Krishna Arcade, II Floor,  
#10 Rajabathar Street, T. Nagar,  
Chennai – 600 017

**.....Petitioner**

**Vs**

Power Grid Corporation of India Limited and Central Transmission Utility  
Saudamini, Plot No.: 2, Sector-29,  
Gurgaon (Haryana.)- 122 001.

**.....Respondent**

**Parties present:**

Shri M.G. Ramachandran, Senior Advocate, RWF(V)PL

Ms. Suparna Srivastava, Advocate, PGCIL

Ms. Jyoti Prasad, PGCIL

Shri Siddharth Sharma, PGCIL

Shri Swapnil Verma, PGCIL

Shri Ranjeet S. Rajput, PGCIL

## **ORDER**

The present Petition has been filed by the Petitioner, ReGen Wind Farm (Vagarai) Pvt. Ltd. under Regulation 32 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 and Detailed Procedure of the Central Electricity Regulatory Commission, Delhi dated May 15, 2018 for extension of time for filing of documentation under Clause 5.1 and Clause 9.2 of the Detailed Procedure and Deemed Stage II Connectivity accorded by POWERGRID Corporation of India (Ltd.) to ReGen Wind Farm (Vagarai) Pvt. Ltd. The Petitioner has made the following prayers:

*(a) Pass an order directing the Respondent to record compliance under Clause 9.2.2(ii) of the Detailed Procedure in light of the investments made by Regen Powertech Private Ltd. and Clause 8A of the Amendment.*

*(b) Alternatively, extend the time to achieve the requisites under Clause 9.2 / 9.3.2 of the Detailed Procedure to the Petitioner until the next SECI / NTPC bids are completed and sufficient time period thereafter for achieving the financial closure in terms of the letter of award under the said bid(s);*

*(c) Pass an order of ad interim directing the Respondent not to take any precipitative actions against regarding the deemed Stage II Connectivity granted to the Petitioner pending disposal of this Petition;*

*(d) Pass such other relief that the Hon'ble Commission may deem fit and appropriate in light of the circumstances and in the interest of justice.*

### **Submission by Petitioner**

2. Petitioner ReGen Wind Farm (Vagarai) Pvt. Ltd is a deemed Stage-II Connectivity grantee under the "Detailed Procedure for Grant of Connectivity to projects based on Renewable Sources to Inter-State Transmission System" (hereinafter, the Detailed Procedure, 2018") and also a Lead Generator in a Consortium with 13 members who are seeking to establish a 600 MW (12 members including Petitioner have the capacity of 48 MW each and 1

member have the capacity of 24 MW) Wind Farm at Pugalur, Tamil Nadu as per Consortium Agreement dated 4.3.2016.

3. An application was made in terms of the then prevailing regulations, namely regulation 2(1)(b)(i)(c) of 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 "Connectivity Regulation").

4. Petitioner remitted payment of INR 6,00,000 (Indian Rupees Six Lakhs only) as Connectivity Application Fee and further amount of INR 8,00,000 (Indian Rupees Eight Lakhs only) towards application fee for Long Term Access ("LTA").

5. CTU vide its communication dated August 16, 2016 intimated the grant of Connectivity of 600 MW to the Petitioner at the presently existing 230 kV Pugalur Sub-station and the allotment of 2 (two) bays of 300 MW each at the CTU's substation at Pugalur, Tamil Nadu; and also directed to sign Connection Agreement as per format CON-6 prior to the physical interconnection being given. Accordingly, the Petitioner and the Respondent entered into Connection Agreement dated 5.7.2017.

6. The Petitioner raised a work order upon the Respondent for providing consultancy and supervisory services for execution of 2 (two) 230 kV bay extension work at 400/230kV Sub-Station of PGCIL, Pugalur. The Respondent raised its invoice against the said work order, and an amount of INR 1,72,50,000 (Indian Rupees One Crore Seventy Two Lacs and Fifty Thousand only) inclusive of tax was remitted / deposited by the Petitioner with the Respondent.

7. Meanwhile, in pursuance to the connectivity granted, a Bay Consultancy Agreement was signed between the two parties on 6.10.2016 ("Bay Consultancy Agreement").

8. Subsequently, the Commission by Order dated 15.5.2018 notified the detailed procedure for grant of Connectivity to projects based on renewable energy sources to Inter-State Transmission System (“Detailed Procedure”). Regulation 5.1(2) of the Detailed Procedure inter alia reads as follows:

Sl. No.	Present Status	Status upon notification of this Procedure	Remarks
2.	Applicants who have been granted Connectivity and have signed the bay implementation agreement and have paid the initial advance as per the agreement.	Stage-II Connectivity subject to fulfillment of conditions in Clause 9.2	Deemed grantee of Stage-II Connectivity to the extent of Connectivity applied. The documents are required to be submitted within 9 months of issue of this Procedure.

9. The Petitioner, having executed the Bay Consultancy Agreement and having remitted the initial advance / deposit against consultancy and supervisory services for execution of 2 (two) 230 kV bay extension work at 400/230kV Sub-Station of PGCIL, Pugalur, was deemed to have been granted Stage – II Connectivity approval for 600 MW.

10. Further as per the above Detailed Procedure, the Petitioner had to fulfill conditions as per Clause 9.2.2 of the Detailed Procedure, 2018 within a time period of 9 (nine) months from the date of issue of the Detailed Procedure. Clause 9.2.2 of the Detailed Procedure is quoted below:

*“9.2.2 An entity who is a grantee of Stage-I Connectivity or who has applied for grant of Stage-I and Stage-II Connectivity simultaneously, and is not covered under Clause 9.2.1 above, and having achieved the following milestones:*

*(i) Ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II connectivity; and*

*(ii) Achievement of financial closure, (with copy of sanction letter)*  
or

*Release of at least 10% funds towards generation project execution supported by Auditor’s certificate regarding release of such funds through equity.”*

The timeline as per the above was till 15.2.2019.

11. In compliance with the requirements under the Detailed Procedure for Stage-II Connectivity approval, the Petitioner has acquired approximately 50% of the land out of the total land required for the 600 (six hundred) MW capacity. The details of the land along with the document / registration number were duly submitted to PGCIL on 14.2.2019.

12. The Petitioner has also made efforts to qualify under various bids initiated by the nodal agencies namely Solar Energy Corporation of India ("SECI") and NTPC particularly considering the connectivity has been to Inter State Transmission Systems. In all the auctions held, the minimum capacity for the plant which could be offered in the bid for connectivity to the Interstate lines / Regional Grid has been 50 (fifty) MW. However, in line with the erstwhile Regulation 2(1)(b)(i)(c), the connectivity sought by the Petitioner as the lead generator has been with the individual capacity of each plant being less than 50 MW but in aggregate the capacity being 600 MW. The submission of the bids by individual generators was not feasible.

13. The Petitioner submits that the recent bid initiated by SECI by way of Request for Selection No. SECI/C&P/WPD/1200MW/T6/RfS/122018 dated December 21, 2018 for ISTS-connected is for 1200 MW Wind Power Projects in India (Tranche-VI) with an end date of 5.2.2018, is also based on the individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-state projects.

14. Despite the above circumstances beyond the control of the Petitioner, the parent company of the Petitioner – ReGen Powertech Private Limited ("RPPL") has undertaken various measures to develop a project to utilize the connectivity. RPPL has made substantial investments to the tune of about INR 378,03,00,000 (Three Hundred Seventy Eight Crores

Three Lakhs only). The CTU has also filed a Petition No. 145/MP/2017 dated 5.7.2017 before the Commission in regard to the above anomalous situation which had developed.

15. By order dated 15.5.2018, vide which detailed procedure for Connectivity to renewable projects was issued, the Commission has addressed many of the issues. However, the limitation for the intended individual generating plants of capacity less than 50 MW, which have been granted Connectivity to the Grid by way of the erstwhile regulation 2(1)(b)(i)(c) of the Regulation, needs to be considered and decided.

16. The Commission has brought out amendments on the subject of Connectivity, (LTA and MTOA) by bringing 7th (Seventh) Amendment to the Connectivity Regulations dated 9.1.2019. Though there does not appear to be any material change in the content of concerned regulation regarding renewable generators of Capacity less than 50 MW intending to obtain grant of connectivity in the Lead Generator Mode, the erstwhile Regulation 2(1)(b)(i)(c), (under which Connectivity was granted to the Petitioner) has been amended as Regulation 2(1)(b)(i)(cc). In regard to the generators (of capacity less than 50 MW), Regulation 8A of the 7th Amendment in Connectivity Regulations provides for the individual Generators with capacity less than 50 MW to transfer the connectivity and LTA approval but only one year after the commercial operation of the project. Prior to such transfer, the provision allows the parent company to utilize the LTA and Connectivity granted to a subsidiary and vice versa.

17. Since the Petitioner has not been able to participate in SECI / NTPC bids, the requirement to achieve financial closure has not been there. However, as per Clause 9.2, the Petitioner is now required to demonstrate release 10% (ten percent) of the funds through equity and provide an auditor's certificate confirming the same.

18. CTU, by way of its notice dated 11.1.2019, received by the Petitioner on 30.1.2019, requested submission of the documents before February 14, 2019 failing which the Stage – II Connectivity would be revoked without further notice.

19. The Petitioner explained the above detailed circumstances of the Petitioner and the difficulties faced by it in complying with the provisions of Clause 9.2 / 9.3.2 of the Detailed Procedure before the CTU in a meeting held on 30.1.2019 at the Respondent's registered office. Subsequently, Petitioner vide Letter dated 31.1.2019 to CTU sought for an extension of time for filing the requisite documentation.

20. In the said meeting, the Petitioner had requested that the time for submission of documents be extended until the next SECI / NTPC bids are completed and the period permitted thereunder for financial closure achievement thereafter, since financial closure or any substantial investment more than that which has been made, cannot entirely be undertaken without a viable project bid that is granted.

21. The Detailed Procedure notified for grant of Connectivity has not laid down the procedure for grant of extension or the implications of the revocation of grant of Stage – II Connectivity. The Respondent further issued a communication dated 4.2.2019 for submission of necessary documents under Clause 9.2 of the Detailed Procedure as part of deemed Stage – II grant of connectivity.

22. The Petitioner has substantially fulfilled the requirement under Clause 9.2 by means of investment of 10% through equity. The investments have been made by RPPL (the Petitioner is a 100% subsidiary of the RPPL), in respect of the proposed project, which well exceeds the requirement under Clause 9.2.2 (ii). The estimated project cost of the wind power projects is INR 3240 Crores (at Rs. 5.40 crores per MW). The funds invested in the wind power projects

INR 378.03 Crores i.e. exceeding 10% of INR 3240 crores. Petitioner's Auditor vide its letter dated 6.2.2019 has submitted the following details of investment as equity contribution to CTU:

<b>Sl. No.</b>	<b>Particulars</b>	<b>Vendor</b>	<b>Amount (INR in Cr.)</b>
1	Cost of making and prosecuting applications for Connectivity and LTA, Bank Guarantee amount invoked	PGCIL	0.38
2	Bay Consultancy Charges	PGCIL	1.72
3	Wind Resource Assessment	ReGen	2.00
4	Pre-operative expenses	Various	3.25
5	Land and pathway rights	P Devaraj	47.20
6	Land and pathway rights	Jagannatha Perumal Renewable Energy Pvt Ltd	25.26
7	Inventory of finished goods, spares and consumables	Various	298.22
	<b>TOTAL</b>		<b>378.03</b>

23. Thus there is compliance of both the conditions under Clause 9.2.2. Accordingly, the Petitioner vide Letter dated 8.2.2019 submitted its compliance and an undertaking to the same effect. The Petitioner had included a list of land locations for the proposed project and location map in compliance with the land rights requirement under Clause 9.2.2 (i) and further included the Certificate for investment of funds.

24. Further the Petitioner by letter dated 14.2.2019 reiterated its compliance and submitted notarized list of land locations for compliance under Clause 9.2.2. However there has been no communication from the Respondent accepting the compliance.

25. The Seventh Amendment to Connectivity Regulations has facilitated the transfer of connectivity and LTA granted to subsidiary by the parent and vice versa. Even though such transfer may be undertaken only after one year from the date of commissioning of the project, the utilization of such connectivity and LTA is also permitted by way of the same Clause 8A of the Amendment. However the Respondent has not accepted the compliance yet and it is



apprehended that the deemed Stage – II Connectivity granted to the Petitioner may be revoked.

**Submission of Respondent PGCIL vide affidavit dated 12.3.2019:**

26. With the notification of the Detailed Procedure, 2018, the Connectivity granted in accordance with the earlier Detailed Procedure were considered as Deemed Stage-II Connectivity grantee as per the progress achieved by the generation projects, however they were required to submit the documents for fulfilling the eligibility within 9 months from the date of notification of the Renewable Detailed Procedure (i.e. 15.5.2018) upon failure to achieve the milestones Stage-II Connectivity is liable be revoked by CTU.

27. The Respondent submitted that the Petitioner through its parent entity i.e. ReGen Powertech Private Limited (RPPL) has initially submitted Connectivity application for 600 MW in Aug, 2011 as Generator for the Wind Farm at Dindigul, Tamil Nadu. The Connectivity was granted at Pugalur 400/230kV substation by the Respondent vide intimation dated 23.12.2011 after consultation in 13th Meeting of Southern Region constituents regarding LTOA applications held on 20.10.2011.

28. The Petitioner vide letter dated 4.3.2016 (after more than 4 years of grant of Connectivity) has requested to withdraw/surrender the Connectivity granted for 600 MW at Pugalur 400/230kV substation and submitted afresh Connectivity application as the Lead Generator wherein the Petitioner [ReGen Wind Farm (Vagarai) Pvt. Ltd.] which is the 100% owned subsidiary of ReGen Powertech Private Limited. The Respondent as per the request of the Petitioner withdrew the earlier grant of connectivity vide letter dated 16.8.2016.

29. The Respondent has granted Connectivity as Lead Generator as per the fresh application of the Petitioner vide Intimation dated 16.8.2016 after discussion in the 20<sup>th</sup>

Meeting of SR constituents regarding LTOA applications held on 13.7.2016. The Petitioner entered into Consultancy Agreement with PGCIL on 6.10.2016 for construction of bays in its scope of work for providing BoQ & tender documents and paid initial advance as per the agreement on 26.12.2016.

30. The Petitioner also submitted 4 nos. of LTA applications (2 nos. of 80 MW and 2 nos. of 40 MW each) for 240 MW quantum out of the 600 MW Connectivity granted in May, 2016 with target beneficiaries in NR. The LTAs were granted on November, 2017 after the consultation with regional beneficiaries in the 20<sup>th</sup> meeting of Southern Region, 24<sup>th</sup> meeting of WR & 10<sup>th</sup> meeting of NR constituents regarding LTA & Connectivity applications held on 13.7.2016, 21.12.2016 & 30.5.2017 respectively. However Grant of LTAs were revoked vide letter dated 4.7.2018 due to failure of the Petitioner to sign the LTA Agreement, as per the CERC Connectivity Regulations, 2009 and Detailed Procedure, 2010.

31. With the notification of the Detailed Procedure, 2018, and by virtue of Para 5.1 of the said Procedure, the Connectivity granted to the Petitioner was regularized as Deemed Stage-II Connectivity and the same was communicated vide CTU letter dated 10.10.2018.

32. The progress of entities granted Connectivity and LTA is monitored regularly in the JCC meetings on a quarterly basis. In the 25<sup>th</sup> JCC Meeting of generation projects granted LTA in SR held on 28.12.2018, all the grantees of Stage-II Connectivity under the Detailed Procedure, 2018 were reminded of their obligation to submit requisite documents under Para 9.2. The Petitioner was again reminded vide letter dated 11.1.2019 regarding submission of the requisite documents in accordance with the Detailed Procedure, 2018 by 14.2.2019 i.e. within 9 months from the date of notification (i.e. 15.5.2018) of the Detailed Procedure, 2018.

33. In response to the Respondent's reminder the Petitioner vide letters dated 8.2.2019 and 14.2.2019 has submitted a List of locations and a location map of the land in which land use rights have been procured for 50% land use rights and auditor's certificate certifying investment of funds towards generation project execution. The Respondent vide letter dated 28.2.2019 has informed that the Petitioner do not fulfill the requirements as stipulated in the Detailed Procedure, 2018 and the same cannot be accepted in compliance of clause 9.2 & 9.3 of the Detailed Procedure, 2018.

34. Respondent has clarified to the Petitioner that with respect to land locations, no documentary proof of ownership or lease rights or land use rights has been submitted. In this respect an advisory was issued earlier on the Respondent's webpage wherein all applicant have been required to submit documents to substantiate ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II connectivity along with an undertaking on company letterhead specifying clearly the details regarding ownership or lease rights or land use rights for 50% of the land required as well as total land requirement for the capacity of Stage-II connectivity.

35. With regard to the documents for 10% release of funds from the equity towards development of generation project, it is seen that the auditors certificate has been submitted after inspection of books of account of a collective entity i.e. "ReGen" which allegedly includes ReGen Powertech Pvt. Ltd. & ReGen Wind Farm (Vagarai) Pvt. Ltd. (100% owned subsidiary of ReGen Powertech Pvt. Ltd.). It is stated in the said certificate that investment of Rs. 298.22 crore out of total Rs. 378.03 crore have been made for inventory of finished goods, spare and consumables. In view of the above, it cannot be construed that the said investment have been made and funds released towards execution of generation project by ReGen Wind Farm (Vagarai) Pvt. Ltd in terms of Para 9.2. As per clause 9.2.2 (ii), the Petitioner is required to submit documentary proof for 'the release of at least 10% funds towards generation project

execution supported by Auditor's certificate regarding release of such funds through equity". Further in accordance with clause 9.3.2 of the Detailed Procedure, the Stage-II grantee is also required to submit documents regarding achievement of financial closure. Thus in view of the same, the Petitioner has failed in submission of the required documents within the stipulated time lines. Therefore, the treated deemed Stage-II Connectivity is liable for revocation in terms of the provisions of the Detailed Procedure, 2018.

36. If the Petitioner is allowed to retain its Stage-II Connectivity despite not having complied the requirements of 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. In this regard, it may kindly be observed that at the same location where the Petitioner is presently a Deemed Stage-II Connectivity grantee (i.e. the existing Pugalur 400/230kV substation), the Respondent has had to reject the Connectivity sought by M/s Sprng Energy Pvt. Ltd. for 200 MW even though the said entity has demonstrated its ability to meet the criteria under Para 9.2 as it could not be accommodated at the existing Pugalur 400/230kV substation. Accordingly, M/s Sprng Energy Pvt. Ltd. was desirous of availing connectivity at existing Pugalur 400/230kV substation, however it was proposed for grant of Stage-II Connectivity at the new Pugalur-II 400/230kV substation which is yet to be taken-up for implementation alongwith the future LTA applications. However, looking into the timelines of implementation of new substation, the applicant has had to withdraw its Stage-II Connectivity application and has shifted the location of the generation project.

37. It was this kind of redundancy or sub-optimal utilization of ISTS connectivity infrastructure that was sought to be remedied by the Hon'ble Commission through its directions in Petition No. 145/MP/2017. In Petition No. 145/MP/2017, the commission cleared its view that:

*“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 and 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”.*

In light of above, Petitioner has failed not only to meet the above milestones as stipulated but has also failed to attend the quarterly Joint Coordination Committee meetings since June 2018.

38. This Petition may be dismissed and the Respondent may be permitted to revoke the Deemed Stage-II Connectivity as per Detailed Procedure, 2018 and the directions “not to take any coercive measure” as issued in the RoP dated 28.2.2019 may suitably be modified so as to consider the availability of the bays presently earmarked for the Petitioner under its Deemed Stage-II Connectivity for allocation to eligible applicant in the normal course.

**Rejoinder to the reply of PGCIL vide affidavit dated 20.3.2019:**

39. The Respondent is proceeding on the wrong premise that the Petitioner is required to comply cumulatively with the provisions of Clause 9.2.2 and 9.3.2 of the achievement of financial closure and also release of at least 10% funds towards generation project execution supported by the auditor’s certificate relating to the release of funds. A perusal of Clause 9.2.2 of the Detailed Procedure, 2018 would indicate that the achievement of financial closure or release of at least 10% funds through equity are two alternatives provided at this stage of the Petitioner’s compliance. The Petitioner is entitled to comply with the conditions of Clause 9.2.2 with either achievement of financial closure or release of at least 10% funds through equity. The Petitioner can, thereafter comply with the other conditions, financial closure or 10% release of the equity within a period of 9 months from the date of grant of Stage II Connectivity as specifically provided under Clause 9.3.2 of the Detailed Procedure, 2018.

40. The Respondent's claim that the Petitioner has not fulfilled prerequisites under Clause 9.2.2 and the basis therefore being the advisory issued by the Respondent is denied in entirety. For the purpose of convenience, the Petitioner hereby reproduces the advisory issued by the Respondent:

*"The applicant shall submit documents to substantiate ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II connectivity along with an undertaking on company letterhead specifying clearly the details regarding ownership or lease rights or land use rights for 50% of the land required as well as total land requirement for the capacity of Stage-II connectivity."*

41. The Petitioner submitted the letter of compliance and an undertaking both dated 8.2.2019 (hereinafter referred to as the "Undertaking") to the Respondent. Upon specific oral instructions from the Respondent, the Petitioner in lieu of the letter of compliance further submitted a letter dated 14.2.2019 along with a notarized list of land locations evidencing land use rights obtained by the Petitioner for compliance under Clause 9.2.2(i) and the advisory issued by the Respondent (hereinafter referred to as the "Letter of Compliance").

42. The Undertaking and the Letter of Compliance, in entirety, clearly provided proof of land use rights for 114 wind turbine locations which exceeds the 50% land requirement (114 x 2.8 MW = 319.2 MW) for the 600 MW wind power project(s) as prescribed under Clause 9.2.2(i). Further, the Petitioner had also represented in its undertaking that land locations were procured based on the estimated use of the Petitioner's 2.8 MW rated capacity WTG (part of MNRE issued Revised List of Models and Manufacturers) for wind power project(s) of total installed capacity of 600 MW, thereby stating the total land requirement for the entire project capacity. Therefore, the Respondent's submission that the Petitioner has failed to provide the required documents in respect of land use rights for 50% of the land requirement for the Stage II Connectivity is untenable.

43. The Respondent, during and after submission of the Undertaking and the Letter of Compliance by the Petitioner, never raised any objections, and on the contrary, it was as instructed by the Respondent. The notarized list of land locations provided vide the Letter of Compliance upon specific oral instructions from the Respondent clearly evidences land use rights obtained by the Petitioner and therefore, fulfills the obligation for proof under the advisory and Clause 9.2.2(i). Without prejudice to the above the Petitioner has now submitted a copy of the land user rights agreement evidencing land use rights over the project land to the Respondent vide letter dated 18.3.2019.

44. Respondent has raised the objection in its reply to the present petition that the investment of 10% funds by way of equity has been made by ReGen Powertech Private Ltd. ("RPPL"), the parent company of the Petitioner. With regard to above mentioned objection the Petitioner humbly submits that objection raised by the Respondent is wrong and arbitrary, and that the Respondent has failed to appreciate the provisions of law and the further amendments to the CERC Regulation. The Petitioner reiterates the Preliminary Submissions hereinabove. The Petitioner sought and was granted connectivity as the lead generator as it had the prerequisite capacity of less than 50 MW along with each member generator, as required under the erstwhile Regulation 2(1)(b)(i)(c) of the Connectivity Regulations, 2009. While the connectivity was granted, the condition for application (capacity of less than 50 MW) has prevented the Petitioner from applying for SECI / NTPC bids since the minimum capacity for the plant which could offer the bid and connect to the Central Sector Regional Grid is and continues to remain 50 (fifty) MW. The Respondent was very well aware of the above and the Petitioner has been pursuing legal solutions to this roadblock.

45. The Hon'ble Commission vide its notification dated 9.1.2019 has brought out amendments on the subject of Connectivity, (LTA and MTA) by bringing the 7th (Seventh) Amendment to the Connectivity Regulations (hereinafter referred to as the "Amendment"). The Amendment provides for the individual Generators with capacity less than 50 MW to transfer

the connectivity and LTA approval but only one year after the commercial operation of the project. Prior to such transfer, the provision allows the parent company to utilize the LTA and Connectivity granted to a subsidiary and vice versa. Thus, the Petitioner has rightly submitted that it has, through RPPL, invested in the project and substantial inventory of about INR 300 Crores was created. Such investment made by RPPL on behalf of the Petitioner exceeds the prerequisites under Clause 9.2.2(ii). The equity investment of 10% by RPPL, of which the Petitioner is the 100% owned subsidiary, is valid under subsisting law and should be viewed favourably since the Petitioner has been precluded from participating in the bids independently. The Respondent is wrong in not considering the material fulfillment of the obligations under Clause 9.2.2(ii).

46. The Explanatory Memorandum to draft Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Seventh Amendment) Regulations, 2018 (hereinafter referred to as the “Explanatory Memorandum”) states as under:

**“3. Transfer of Connectivity and LTA:**

*3.1. The Commission vide order dated 29.9.2017 in Petition No. 145/MP/2017 inter alia observed as under:*

*120. The Commission has considered this issue. Though there is no provision for transfer of connectivity to any other entity, RfS issued by SECI allows creation of SPVs for project implementation. The Respondents have submitted that such SPVs face difficulties in implementation of their projects since they cannot utilize the connectivity granted to their parent companies.....*

*122. Keeping in view the fact that creation of SPV is an option under RfS issued by SECI and that a number of companies are executing the projects through creation of 100% subsidiaries after winning the bids, we are of the view that the 100% subsidiary companies should be allowed to utilize the connectivity granted to the parent company.....”*

*3.2. In view of the above, it is hereby clarified that a person who has been granted Connectivity or LTA shall not transfer, assign or pledge its connectivity or LTA and the associated rights and obligations to any other person. Only, the 100% subsidiary companies shall be allowed to utilize the connectivity granted to the parent company and vice versa.”*

47. Thus, it is clear that the connectivity granted to the subsidiary may be utilized by the parent company even prior to commissioning of a project. The actions of the Respondent are not consistent with the spirit of the Amendment.



48. The Respondent has raised the objection that the investment of funds for creation of inventory of consumables, spares and finished goods may not be considered compliance with the pre-requisite under Clause 9.2.2(ii). The Petitioner has been in complete compliance with the requirements and has submitted an auditor's certificate to that effect to substantiate compliance with the prerequisite under Clause 9.2.2(ii). The requirement provided in the said Clause is to demonstrate investment and commitment which is clearly established with creation of inventory of consumables, spares and finished goods in sufficient compliance. In the absence of any specific guidelines regarding the nature of the equity investment to be made under Clause 9.2.2(ii), the Petitioner (through its parent company) has invested a substantial amount of equity in developing assets for utilization in the Project. Since no other on ground developments can be undertaken without winning a bid, and since the Petitioner has been committed to development of a project, the Petitioner and RPPL have made the above-mentioned investments and the same was certified by way of an auditor's certificate. Therefore, the Petitioner has undertaken all measures required to be undertaken and has acted with prudence in a bonafide manner for developing a project and obtaining the grant of connectivity.

49. The Respondent has further raised the objection that the Petitioner has not fulfilled its obligation for financial closure under Clause 9.3.2 of the Detailed Procedure. The Petitioner humbly submits that this objection raised by the Respondent is based on an incorrect interpretation of Clause 9.3.2 of the Detailed Procedure, which is arbitrary, untenable and unsustainable. It is clear from Clause 9.3.2 that the requirements under the said clause are required to be fulfilled nine months from the grant of the Stage II Connectivity. The Petitioner herein, while it is a deemed Stage II connectivity grantee, is yet to receive the grant of Stage II Connectivity. It is stated that the compliance under 9.2.2 was achieved and documents and undertakings submitted for the sole purpose of obtaining the Stage II Connectivity. The Respondent has also, in its communication dated 28.2.2019 (in response to the Petitioners

letters dated 8.2.2019 and 14.2.2019) acquiesced that the Petitioner's "deemed Stage II Grant of Connectivity is liable to be revoked".

50. The Petitioner has been unable to participate in the bids announced by the SECI / NTPC. In all the auctions held thus far, the minimum capacity for the power project which could offer a bid for connectivity to the Interstate lines / Regional Grid has been 50MW. However, in line with the erstwhile Regulation 2(1)(b)(i)(c) under the Connectivity Regulation, the connectivity sought by the Petitioner as the lead generator has been with the individual capacity of each plant being less than 50 MW but in aggregate the capacity being 600 MW. The submission of the bids by individual generators has not been feasible. In these circumstances, without a viable project, the fulfillment of financial closure by the Petitioner was not possible. Thus, the Respondent despite being aware that the Petitioner has been handicapped by policy lacunae has sought to arbitrarily and unreasonably enforce prerequisites not envisioned by the Detailed Procedure prior to grant of Stage II Connectivity.

**Hearing Dated 9.7.2019:**

51. The Commission vide ROP dated 9.7.2019 directed as below:

- a) The Petitioner to place on record by 19.7.2019 the title documents filed by it in compliance with clause 9.3.2 of the Detailed Procedure.
- b) PGCIL to verify its records as to whether it has received the land documents and title deeds and submit the same on affidavit by 26.7.2019 after verifying existing records/freshly submitted records about the compliance/non-compliance by the Petitioner.
- c) PGCIL was further directed to submit the details of applicants seeking stage-II Connectivity at the same location.
- d) Interim direction dated 28.2.2019 shall be continued till further order.

**Compliance of ROP in Hearing Dated 9.7.2019:**

52. The Petitioner vide letter dated 18.7.2019 has submitted the land documents in pursuance of directions of Commission through ROP in hearing dated 9.7.2019.

53. The Respondent vide Affidavit dated 31.7.2019 has filed the compliance of ROP in hearing dated 9.7.2019 and has submitted that, at present, there are no pending applications for grant of Stage-II connectivity at Pugalur (SR) where connectivity to the Petitioner's project has been granted. Therefore, vacation of bays by the Petitioner, may not immediately or automatically result in allocation of the same to any entity. The vacated bays will be available for allocation to new stage-II connectivity applicant in the ordinary course. With regard to the direction of this Commission to verify the records for receipt of the land documents and title deeds by the Petitioner and its compliance thereof, the Respondent has submitted that it has not received the said records. Further, the physical copy of the documents which the Petitioner was directed to submit is yet to be received by the Respondent. However, after accessing the copies of the record filed by the Petitioner on the CERC e-filing Portal on 19.7.2019, the following observations have been made on a prima facie scrutiny of the documents:

- a) The documents submitted by the Petitioner are in a vernacular language and these cannot be examined especially as the Petitioner has not provided any official language translations or any other aid for interpretation;
- b) The Petitioner has claimed in its submissions as well as during the course of proceedings on 9.7.2019 that it had already submitted the required land-rights related documents vide letter dated 18.3.2019. However, the deeds uploaded by the Petitioner on the CERC Portal on 19.7.2019 have been digitally signed on dates much later than the claimed date of submission of the same documents to the Respondent on 18.3.2019.
- c) The alleged land use agreement was signed by the Petitioner on 10.6.2018. However, it is difficult to comprehend as to why the said agreement dated 10.6.2018 was submitted by the Petitioner after the period of 9 months had ended, i.e. on 18.3.2019.
- d) The covering letter does not sufficiently explain as to whether the land use rights had been acquired by the Petitioner within the stipulated timeline i.e. by 14.2.2019 or that the requirements of Para 9.3.2 had already been fulfilled by Petitioner by the said date,
- e) As per advisory issued by CTU on its webpage, applicants who are submitting documents under Para 9.2 or 9.3 regarding land rights for the land required, are required to submit a 'title report' in the Applicant's favour executed by a registered advocate, showing

inter alia, clear and present vesting of land rights (ownership or lease rights or land use rights). Additionally applicants are also required to submit the same information through an undertaking on company's letterhead signed by authorized signatory under company seal. The said title report and the abovementioned undertaking are yet to be submitted by the Petitioner to the Respondent.

f) Regardless of the above, there is nothing submitted on part of the Petitioner to substantiate that the ownership/lease rights or land use rights for 50% of the land required for the capacity of Stage-II connectivity was obtained.

54. The Petitioner vide letter dated 16.8.2019 has submitted the English translated versions of the land documents in compliance of RoP dated 9.7.2019.

### **Analysis and Decision:**

55. The Petitioner has submitted that in compliance with the requirements for Stage-II Connectivity approval under the Detailed Procedure under Clause 9.2.2(i), the Petitioner has acquired approximately 50% of the land out of the total land required for the 600 MW capacity and Clause 9.2.2(ii) of the Detailed Procedure has been fulfilled by means of investment of 10% through equity. The Petitioner had included a list of land locations for the proposed project with location map in compliance with the land rights requirement under Clause 9.2.2 (i) and Auditor's certificate dated 6.2.2019 for compliance of clause 9.2.2 (ii). The investments have been made by RPPL (the Petitioner is a 100% subsidiary of the RPPL), in respect of the proposed project. Petitioner, vide letter dated 8.2.2019 to CTU, had submitted its compliance and an undertaking to the same effect. Further, the Petitioner by letter dated 14.2.2019 reiterated its compliance and submitted notarized list of land locations. The Petitioner vide letter dated 18.7.2019 has submitted the land documents on e-filing portal of the Commission in pursuance of directions of Commission through ROP of hearing dated 9.7.2019. The Petitioner vide affidavit dated 16.8.2019 has also submitted the English translated versions of the land documents in compliance of RoP dated 9.7.2019.

56. Respondent has submitted that although the Petitioner vide letters dated 8.2.2019 and 14.2.2019 has submitted a list of locations and a location map of the land showing land use rights have been procured for 50% of land required and auditor's Certificate certifying investment of funds towards generation project execution, it has not submitted any documentary proof of ownership or lease rights or land use rights. The Respondent vide letter dated 28.2.2019 informed the Petitioner that it does not fulfill the requirements as stipulated in the Clause 9.2 and 9.3 of Detailed Procedure, 2018. The relevant portion of CTU's letter dated 28.2.2019 is reproduced as below:

*"With respect to land locations, no documentary proof of ownership or lease rights or land use rights has been submitted. In this respect an advisory has also been issued earlier on the CTU webpage wherein applicant has been advised to submit documents to substantiate ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II connectivity along with an undertaking on company letterhead specifying clearly the details regarding ownership or lease rights or land use rights for 50% of the land required as well as total land requirement for the capacity of Stage-II connectivity.*

*With regard to the documents at Sl. No.2, it is seen that the auditors certificate has been submitted after inspection of books of account of "ReGen" which includes ReGen Powertech Pvt. Ltd. & ReGen Wind Farm (Vagarai) Pvt. Ltd. (100% owned subsidiary of ReGen Powertech Pvt. Ltd.). It is stated in the said certificate that investment of 298.22 crores out of total Rs. 378.03 crores have been made for inventory of finished goods, spare and consumables. In view of the above, it cannot be construed that the said investment have been made and funds released towards generation project execution by ReGen Wind Farm (Vagarai) Pvt. Ltd. However as per clause 9.2.2 (ii), RWFVPL is required to submit documentary proof for 'the release of at least 10% funds towards generation project execution supported by Auditor's certificate regarding release of such funds through equity'. Further in accordance with clause 9.3.2 of the Detailed Procedure, the Stage-II grantee shall also submit documents regarding achievement of financial closure."*

57. The Respondent PGCIL has submitted that, at present, there are no pending applications for grant of Stage-II connectivity at Pugalur (SR) where connectivity to the Petitioner's project has been granted.

58. On the land documents filed by Petitioner on 19.7.2019, the Respondent PGCIL has submitted that the such documents have not been received by the Respondent before and that they are in a vernacular language and cannot be examined since official translations or any other aid for interpretation has not been provided by the Petitioner. Respondent has also submitted that the deeds uploaded by the Petitioner on the CERC Portal on 19.7.2019 have

been digitally signed on dates much later than the claimed date of submission of the same documents to the Respondent on 18.3.2019. Further, as per advisory issued by CTU on its webpage, applicants who are submitting documents under Para 9.2 or 9.3 regarding land rights for the land required, are required to submit a 'title report' in the Applicant's favour executed by a registered advocate showing, inter alia, clear and present vesting of land rights (ownership or lease rights or land use rights). The said title report and the abovementioned undertaking are yet to be submitted by the Petitioner.

59. Petitioner vide its rejoinder dated 20.3.2019 has submitted that the requirement provided in the clause 9.2.2(ii) is to demonstrate investment and commitment which is clearly established with creation of inventory of consumables, spares and finished goods. In the absence of any specific guidelines regarding the nature of the equity investment to be made under Clause 9.2.2(ii), the Petitioner (through its parent company) has invested a substantial amount of equity in developing assets for utilization in the Project. No other on-ground developments can be undertaken without winning a bid. Since the Petitioner has committed to the development of the project, the Petitioner and RPPL have made the above-mentioned investments, which has been certified by way of an auditor's certificate.

60. We have considered the submissions of Petitioner and Respondents. We observe that CTU has issued an advisory on its webpage stating that applicants who are submitting documents under Para 9.2 or 9.3 regarding land rights for the land required, are required to submit a 'title report' in the Applicant's favour executed by a registered advocate showing, inter alia, clear and present vesting of land rights (ownership or lease rights or land use rights) through an undertaking on company's letterhead signed by authorized signatory under company seal.

61. The provisions of Detailed Procedure for "Grant of Connectivity to projects based on Renewable Sources to Inter-State Transmission System" are as follows:

*" Clause 5.1*

Sl. No.	Present Status	Status upon notification of this Procedure	Remarks
2	Applicants who have been granted Connectivity and have signed the bay implementation agreement and have paid the initial advance as per the agreement	Stage-II Connectivity subject to fulfillment of conditions in Clause 9.2	Deemed grantee of Stage-II Connectivity to the extent of Connectivity applied. The documents are required to be submitted within 9 months of issue of this Procedure.

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## **9.2 Eligibility for Stage-II Connectivity**

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9.2.2 An entity who is a grantee of Stage-I Connectivity or who has applied for grant of Stage-I and Stage-II Connectivity simultaneously, and is not covered under Clause 9.2.1 above, and having achieved the following milestones:

(i) Ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II connectivity; and

(ii) Achievement of financial closure, (with copy of sanction letter)

Or

Release of at least 10% funds towards generation project execution supported by Auditor's certificate regarding release of such funds through equity.

Note: In case Stage-I Connectivity is granted to a parent company and it is eligible for grant of Stage-II Connectivity as per Clause 9.2 above for execution of the generation projects through its 100% owned SPV / 100% owned Subsidiary, the parent company will apply for Stage-II Connectivity for such capacity for which it is eligible."

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"9.3.2 After grant of Stage II connectivity, the grantee covered under Clause 9.2.2 shall have to achieve the following milestones and submit the proof to CTU within nine months from date of grant of Stage-II Connectivity:

(i) In case of an entity who has submitted the proof of release of at least 10% funds shall submit documents regarding achievement of financial closure;

(ii) In case of entity who has submitted documents regarding achievement of financial closures shall submit the proof of release of at least 10% funds.

9.3.3 In the event of failure to achieve above milestones as listed in Clause 9.3.1 or Clause 9.3.2 above, as applicable, Stage-II connectivity shall be revoked by the CTU under intimation to the grantee."

62. We observe that the Petitioner is a deemed Stage-II grantee and as per the Detailed Procedure a deemed Stage-II grantee under Clause 5.1(2) has to submit the documents as per Clause 9.2 within 9 months of issue of the Detailed Procedure i.e. by 15.2.2019. We also observe that as per Clause 9.3 of the said Procedure, a Stage-II grantee is required to submit

specified documents within 9 months of date of grant of Stage-II connectivity. In this case since the Petitioner is a deemed Stage-II grantee which means it is granted Stage-II as on date of issuance of the Detailed Procedure i.e 15.5.2018, date for submission of documents for compliance of clause 9.3 shall be 9 months from Stage-II grant i.e. by 15.2.2019.

63. The Petitioner was directed in RoP dated 9.7.2019 to submit documents in compliance of Clause 9.3.2 i.e land documents and documents of achievement of financial closure, and CTU was directed to verify existing/freshly submitted documents and report about the compliance of the same.

64. Petitioner has submitted the land documents for compliance of Clause 9.2.2 of the Detailed Procedure. CTU had stated that the Petitioner has submitted land documents in vernacular language and hence it has not submitted any views on the same. However, the petitioner vide Affidavit dated 16.8.2019 submitted English translated version of land documents on which CTU has not submitted any comments.

65. Petitioner has not submitted any documents of financial closure for compliance of Clause 9.3.2 as directed in RoP dated 9.7.2019.

66. In light of above discussions we observe that Petitioner has not fulfilled the requirements of submissions of documents as per Clause 9.3 of the Detailed Procedure.

67. Petitioner has prayed for time extension for fulfilling the criteria in Clause 9.2.2 and 9.3.2 of the Detailed Procedure until next SECI/NTPC bids are completed and sufficient time thereafter to achieve financial closure. In this context, Commission in order dated 29.09.2017 in Petition No. 145/MP/2017 observed that 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. Thus, extension till unspecified



time to achieve the requisite under clause 9.3.2 of the Detailed Procedure cannot be granted to the Petitioner.

68. In this case Petitioner has not submitted documents in compliance of clause 9.3.2, which was specifically sought vide RoP dated 9.7.2019, even when 9 months time period had expired on 15.2.2019. Hence, we direct that Stage-II connectivity for the Petitioner shall be revoked as per clause 9.3.3 of the Detailed Procedure. CTU shall allocate the bays to other applicants as per the Connectivity Regulation and Detailed Procedure.

69. Petition No. 48/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)**