

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION No. 529/MP/2020

CORAM:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Date of Order: 21st August, 2020

In the matter of:

Petition under Section 79(1)(c) of the Electricity Act, 2003 and Regulation 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in inter-State Transmission System and related matters) Regulations, 2009 seeking relaxation of Regulation 8A of the said Regulations to remove the hardship being faced by Srijan Energy System Private Limited in transferring Stage-II connectivity and Long-Term Open Access granted to it by way of Stage-II connectivity intimation bearing No. C/CTU/ConSt.-II/WR/1200000312 dated 14.6.2018 and LTA intimation bearing No. C/CTU/W/07/LTA/1200002251 dated 29.11.2019 respectively by PGCIL.

And

In the matter of:

1. Srijan Energy System Private Limited,
Office No. 1, Gandhi Colony,
Jaora, Ratlam,
Madhya Pradesh - 457226

2. Continuum Power Trading (TN) Private Limited
Office 102, 1st floor,
El Tara BLD, Behind Delphi BLD,

Hiranandani, Powai,
Mumbai –400076,
Maharashtra

.... **Petitioners**

Vs.

1. Power Grid Corporation of India Limited
Saudamini, Plot No. 2, Sector- 29,
Gurugram, Haryana- 492001

2. Solar Energy Corporation of India Limited,
1st Floor, D-3, A Wing, Religare Building,
District Centre, Saket,
New Delhi, Delhi 110017

.... **Respondents**

Parties Present:

Shri Sanjay Sen, Sr. Advocate, SESPL and CTN
Shri Mazag Andrabi, Advocate, SESPL and CTN
Shri Ujjwal Surana, SESPL and CTN

Order

The instant Petition has been filed under Section 79(1)(c) of the Electricity Act, 2003 and Regulation 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State transmission system and related matters) Regulation, 2009 (hereinafter referred to as “the 2009 Connectivity Regulations”) seeking relaxation of Regulation 8A of the said Regulation to remove the hardship being faced by Srijan Energy System Private Limited (SESPL), Petitioner No. 1 and Continuum Power Trading (TN) Private Limited (CTN), Petitioner No. 2, in transferring Stage-II Connectivity and Long Term Open Access granted to it by way of Stage-II Connectivity Intimation dated 14.06.2018 and LTA Intimation dated 29.11.2019, respectively by Power Grid Corporation of India

Ltd. (PGCIL), the Respondent No. 1. The Petitioners have made the following prayers:

- a) *Relax Regulation 8A of the 2009 Connectivity Regulations and Clause 5.2.1 of the Detailed Procedure to allow the transfer of Stage-II Connectivity (C/CTU/Con St-II/WR/1200000312 dated 14-06-2018) and LTA (C/CTU/W/07/LTA/1200002251 dated 29-11-2019) granted to SESPL to its sister company, CTN, which is now wholly and directly controlled by CWEL;*
- b) *Direct PGCIL to transfer Stage-II Connectivity granted to SESPL by way of Stage-II Connectivity Intimation bearing no. C/CTU/Con St-II/WR/1200000312 dated 14-06-2018 to CTN;*
- c) *Direct PGCIL to transfer LTA granted to SESPL by way of LTA Intimation bearing no. C/CTU/W/07/LTA/1200002251 dated 29-11-2019 to CTN;*
or
- d) *Grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner.*

Submissions of the Petitioners

2. The Petitioners have submitted that in order to set up 300 MW wind power project in the State of Gujarat, Petitioner No. 1 (SESP) had applied for Connectivity to the inter-State transmission system for 300 MW at the 765/400/220 kV Bhuj PS ("Bhuj PS") vide application dated 04.04.2016 and the same was granted by PGCIL vide intimation dated 29.07.2016 in accordance with provisions of the 2009 Connectivity Regulations. The Connectivity Intimation dated 29.07.2016 was subsequently amended by PGCIL vide letters dated 31.03.2017 and 11.07.2017 to reflect the revised Transmission System and project commissioning schedule. Subsequently, Petitioner No. 1 and PGCIL also entered into a Transmission Service Agreement (TSA) on 11.07.2017.

3. The Petitioners have submitted that Solar Energy Corporation of India Limited (SECI), Respondent No. 2, vide Request for Selection (RFS) dated 05.02.2018,

invited proposals for setting up ISTS-connected Wind Power Projects (“WPP”) of aggregate capacity of 2,000 MW on Build Own Operate (BOO) basis. In furtherance of RFS invited by SECI, the Petitioner No. 1 participated in the bid process and emerged as a successful bidder at a tariff of Rs. 2.51/kWh for 250 MW capacity. The Petitioner No. 1, in terms of Clause 3.5(C) of RFS, used the net worth of Continuum Wind Energy Limited, Singapore (CWEL), its ultimate parent company, in the capacity of an Affiliate to qualify under the financial eligibility criteria. SECI issued Letter of Award (LOA) dated 01.06.2018 to the Petitioner No. 1 for development of 250 MW ISTS connected WPP in the State of Gujarat for generation and sale of wind power. As per LOA, the Petitioner No. 1 had the option to form a SPV (special purpose vehicle) for execution of the wind power project. Pursuant to the award of LOA and in terms of the provisions of the RFS, the Petitioner No. 1 through its wholly owned subsidiary, Continuum Power Trading (TN) Private Limited i.e. Petitioner No. 2, entered into a Power Purchase Agreement (PPA) dated 04.09.2018 with SECI for development of the wind power project in the State of Gujarat and supply of power therefrom.

4. The Petitioners have submitted that pursuant to notification of the Detailed Procedure for “Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System” dated 15.05.2018 (hereinafter referred to as the “Detailed Procedure”) under Regulation 27 of the 2009 Connectivity Regulations, PGCIL vide letter dated 14.06.2018 informed the Petitioner No .1 as under:

- a) In terms of provisions of the Detailed Procedure, the applicants who had been granted Connectivity, signed the bay implementation agreement and paid the initial advance as per the bay implementation agreement prior to the notification of the Detailed Procedure, shall have the status of deemed Stage-II

Connectivity grantee subject to fulfillment of the conditions specified in Clause 9.2 of the Detailed Procedure; and

b) Since the Petitioner No.1 had been granted Connectivity, had signed the bay implementation agreement and paid the advance prior to the notification of the Detailed Procedure, the Petitioner No. 1 shall be deemed Stage-II Connectivity grantee subject to submission of the requisite documents within 9 months of issuance of the Detailed Procedure.

5. The Petitioners have submitted that PGCIL vide letter dated 28.12.2018, in furtherance of the requests (vide letters dated 09.12.2018 and 17.12.2018) of the Petitioner No. 1, revised the Stage-II Connectivity to reflect the changes in the Transmission System. The Petitioner No. 1 vide application dated 30.08.2019 applied for Long Term Access (LTA) for transfer of 125 MW power from Bhuj PS of PGCIL in Gujarat to Madhya Pradesh Power Transmission Corporation Limited and the same was granted vide intimation dated 29.11.2019. PGCIL also directed the Petitioner No. 1 to sign the requisite LTA Agreement and Transmission Service Agreement in terms of provisions of the 2009 Connectivity Regulations. Pursuant to the grant of LTA, the Petitioner entered into Long Term Access Agreements dated 24.12.2019 with PGCIL.

6. The Petitioners have submitted that the Petitioner No. 2 had successfully managed to reach advanced stages of financial closure of the wind power project by February 2020. However, the lenders thereafter brought up certain concerns in regard to the financial strength of its immediate parent company, i.e. SESPL (Petitioner No. 1) and the parent company of SESPL, Continuum Wind Energy (India) Private Limited ("CWEIPL"). This issue delayed the achievement of financial closure for the wind power project. It was the concern of the lenders that the Petitioner No. 1 has a small paid-up capital of Rs. 203,550/- only and as of 31.03.2019, even the

parent company of Petitioner No. 1 (SESPL), i.e. CWEIPL, had a paid-up capital of only ₹ 80 crore, had issued debentures of ₹ 1517 crore, had an external debt of ₹ 186 crore and had obtained non-funded guarantee facilities of Rs. 165 crore from external lenders. The lenders also stated that almost all of the securities issued by CWEIPL had been pledged to various lenders. On the contrary, CWEL, the ultimate parent company of the Petitioners, is a debt free company, has a net worth of US\$ 120 million as of 31.03.2019 and none of its securities are pledged or encumbered. Therefore, the lenders are more comfortable in providing financing if the Petitioner No. 2 is directly owned by CWEL.

7. The Petitioners have submitted that the Petitioner No. 2 (CTN) vide letter dated 14.3.2020 requested SECI to allow the transfer of direct control of CTN from the Petitioner No. 1, to ultimate parent company of the Petitioner No. 1. SECI vide letter dated 8.5.2020 informed that it did not have any objection to the transfer of direct control and ownership of CTN to the ultimate parent company i.e. CWEL. The transfer of ownership was allowed on the following grounds:

- (a) SESPL had secured the SECI Bid on the basis of net worth of the ultimate parent company, CWEL; and
- (b) The 'Control' i.e. direct or indirect ownership of the CTN would remain the same even after transfer from the SESPL to the ultimate parent company, CWEL.

8. The Petitioners have submitted that after SECI's approval for transfer of direct control and ownership of CTN to CWEL, the Petitioner No. 1 is no longer the parent company of CTN and that status is now assumed by CWEL, which was in any case the ultimate parent company of CTN. The Petitioner has further submitted that the

Detailed Procedure allowed utilization of Connectivity and LTA by its 100% subsidiary company including SPV (special purpose vehicle). However, where such Connectivity and LTA is utilized by a 100% subsidiary company, the parent company has been restricted from selling its shareholding in the subsidiary company before the lock-in period of one year after the commencement of supply of power from such subsidiary.

The relevant extracts of the Detailed Procedure is as under:

“5.2 Utilisation of Connectivity granted to the Parent Company by its Subsidiary company (ies)

5.2.1 The Connectivity granted to a company may be utilised by its wholly owned (100%) subsidiary company(ies) including SPVs. In such cases, the parent company cannot sell its shareholding in the subsidiary company (ies) before the lock-in period of one year after the commencement of supply of power from such subsidiary.

In case of more than one wholly owned (100%) subsidiary of the same company, the lock-in period of one year shall apply from commencement of supply of power from the last such subsidiary. An illustration is given below:

“A company is granted Connectivity for 1000 MW and it wins a bid for 250 MW. It forms five wholly owned (100%) subsidiaries of 50 MW each. In such a case lock-in period shall be 1 year from commencement of supply from last subsidiary (i.e. subsidiary which is commissioned last) out of this 250 MW. ...”

9. The Petitioners have submitted that bare perusal of the Order dated 28.09.2017 in Petition No. 145/MP/2017, which forms the basis of the Detailed Procedure, makes it clear that this restriction was incorporated into the Detailed Procedure to (i) eliminate the practice of trading of Connectivity by connectivity grantees for the purposes of earning a premium, which inevitably raised the cost of the renewable energy power project; (ii) ensure there is no "renting" of net worth for the purpose of qualifying for the bid and (iii) ensure that the entity on the basis of whose technical/ financial net worth the bid has been won, remains committed to the project until it stabilizes.

10. The afore-stated restriction in regard to transfer of Connectivity and LTA to 100% subsidiary/ parent company has also been inserted in the 2009 Connectivity Regulations by the 7th Amendment dated 09.01.2019 to the 2009 Connectivity Regulations.

11. The Petitioners have submitted that if change in the ownership of Petitioner No. 2 had not taken place, the Connectivity and LTA granted to the SESPL would have been automatically utilized by CTN, the then 100% subsidiary SESPL without any hurdles and in consonance with Clause 5.2.1 of the Detailed Procedure and Regulation 8A of the 2009 Connectivity Regulations. However, in view of the change in ownership of CTN from SESPL to the ultimate parent company, CEWLS, CTN vide its letter dated 1.6.2020, informed PGCIL of the above developments in the ownership of CTN and sought (a) approval of transfer of Stage-II Connectivity granted to SESPL to CTN; and (b) approval of transfer of LTA granted to SESPL to CTN. However, no reply has been received so far from PGCIL.

12. The Petitioners have submitted that even though CTN is not a direct subsidiary of SESPL anymore, but it is a fellow 100% subsidiary under the direct 'Control' of the same ultimate parent company, CWEL

13. Therefore, the Petitioners have submitted that the utilization of the transmission system created by PGCIL for the CTN is ensured and spirit of the 2009 Connectivity Regulations and the Detailed Procedure is preserved. There is absolutely no trading of the Connectivity or LTA by the grantee and the intra-group reorganization/ change in ownership has been effected only to enhance bankability of the wind power project in the current difficult financial market. Further, by way of the

change in ownership, CTN has been brought closer to CWEL which only ensures implementation of the wind power project.

14. The execution of the wind power project is underway and the present status is as follows:

(a) The pooling substation and 220kV double circuit line (73 km) connecting the pooling substation to Bhujpool Substation of PGCIL at Nirona is already commissioned and charged by the EPC Contractor;

(b) Sanction letter for entire debt required for the 250 MW wind power project has already been received from a premier financial institution and execution of definitive legal financing documents is scheduled for second week of June 2020;

(c) Approximately Rs.100 crore has already been paid to the EPC contractor;

(d) The execution of first phase of 126 MW has already commenced and first 50 MW of the Wind Project is expected to be offered to SECI/ PGCIL for commissioning in August 2020; and

(e) SCOD of the wind power project as per the PPA and the extension provided by SECI is November 2020. Permission to transfer Connectivity and LTA will enable CTN to commission its wind power project on or before SCOD.

15. The Petitioners have submitted that the change in ownership of CTN is in consonance with objectives of the restriction introduced by way of the Detailed Procedure and the Seventh Amendment to the 2009 Connectivity Regulations. The Petitioners are not indulging in the practice of trading of Connectivity and in fact, the ownership of the wind power project has been assumed by the ultimate parent company i.e. CWEL whose net worth was the basis of qualifying for the bid floated by

SECI. Ownership by CWELS will ensure that CWELS remains committed to the wind power project until it stabilizes. Accordingly, the Petitioners have prayed for relaxing provisions of Regulation 8A of the 2009 Connectivity Regulations and Clause 5.2.1 of the Detailed Procedure to allow the transfer of Stage-II Connectivity granted to SESPL (Petitioner No.1) to CTN (Petitioner No. 2), its sister company, which is now wholly and directly controlled by CWEL.

Submissions during the hearing

16. The Petition was heard on 6.8.2020. The Petitioners reiterated the submissions made in the Petition. Further, the Petitioners submitted that with regard to Connectivity and LTA, Regulation 8A of the 2009 Connectivity Regulations allows 100% subsidiary companies to transfer their Connectivity and LTA to the parent company and vice versa one year after achieving the commercial operation of the renewable generating station. However, till such transfer, the subsidiary companies are allowed to utilise the Connectivity and LTA granted to the parent company and vice versa. The Petitioners further submitted that in the present case, had the change in the ownership of CTN not been effected on basis of the concerns of the lenders, the Connectivity and LTA granted to SESPL (Petitioner No. 1) would have been automatically utilised by CTN (Petitioner No. 2), its former 100% subsidiary, without any hurdles. However, in view of the change in ownership of CTN from SESPL to the ultimate parent company, CWEL, the Petitioners are restricted from doing so as per Regulation 8A of the Connectivity Regulations. After hearing the Petitioners, the Commission reserved the Order in the Petition.

Analysis and Decision

17. The Petitioners have sought relaxation of Regulation 8A of the 2009 Connectivity Regulations to remove difficulty being faced by SESPL (Petitioner No. 1) in transferring Stage-II Connectivity and Long-Term Access (LTA) granted to it by PGCIL to its former 100% subsidiary and now sister company, CTN (Petitioner No. 2), which is now wholly and directly controlled by ultimate parent company, CWEL (Continuum Wind Energy Limited, Singapore).

18. The Petitioner has mainly submitted that pursuant to award of LOA, Petitioner SESPL through CTN, its wholly owned subsidiary, entered into a Power Purchase Agreement with SECI on 4.9.2018. In terms of the said PPA, CTN has successfully managed to reach advance stage of financial closure of the wind power project. However, the lenders brought up certain concerns regarding the financial strength of SESPL, immediate parent company of CTN, and also of CWEIPL (Continuum Wind Energy (India) Private Limited), the parent company of SESPL. However, since CWEL (Continuum Wind Energy Limited, Singapore), the ultimate parent company, is a debt-free company, the lenders were more comfortable in providing financing if CTN was directly owned by CWELS rather than CWEIPL through SESPL. Accordingly, CTN vide its letter dated 14.3.2020, requested SECI to allow transfer of direct control of CTN from SESPL, parent company to CWELS, the ultimate parent company, which was allowed by SECI. Consequently, SESPL is no longer the parent company of CTN and the said status is now assumed by CWEL, which in any case was the ultimate parent company of CTN. However, with regard to Connectivity and LTA, Regulation 8A of the 2009 Connectivity Regulations allows 100% subsidiary

companies to transfer their Connectivity and LTA to the parent company and vice versa one year after achieving the commercial operation of the renewable generating station.

19. We have heard the submissions of the Petitioners. SESPL (Petitioner No. 1) has sought transfer of LTA and Connectivity to CTN (Petitioner No. 2). At this stage, it is necessary to understand the shareholding pattern of the Petitioner.:

- (a) Continuum Wind Energy Limited, Singapore (CWEL) is the ultimate parent company of SESPL (Petitioner No. 1) and CTN (Petitioner No. 2);
- (b) Continuum Wind Energy (India) Private Limited (CWEIPL) is under the control of CWEL and is the parent company of SESPL;
- (c) SESPL is under the control of CWEL;
- (d) CTN is currently sister concern of SESPL. Earlier SESPL was the parent company of CTN.

20. Regulation 8A of the 2009 Connectivity Regulation that deals with the issue of transfer of Connectivity and LTA, reads as under:

“8A. Transfer of Connectivity and LTA

A person shall not transfer, assign or pledge its connectivity or LTA either in full or parts and the associated rights and obligations to any other person:

Provided that the above provision shall not be applicable to applicants defined under Regulation 2(1)(b)(i)(g): Provided further that 100% subsidiary companies shall be allowed to transfer their connectivity and LTA to the parent company and vice versa one year after achieving commercial operation of Renewable Energy generating station(s):

Provided further that transfer of Connectivity and LTA from the parent company to more than one 100% subsidiary shall be permitted one year after the commercial operation of the generating station of the last subsidiary and subject to minimum capacity as per Regulation 2(1)(b):

Provided also that till such Connectivity and LTA are transferred, the concerned subsidiary company(ies) shall be allowed to utilize the Connectivity and LTA granted to the parent company and vice versa.”

From the above, we note that Regulation 8A of the 2009 Connectivity Regulations stipulates that 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 100% subsidiary companies shall be allowed to utilize the connectivity or LTA granted to the parent company and vice versa. Connectivity and LTA can be transferred to 100% subsidiaries companies and vice versa one year after commercial operation of the generating station.

21. We observe that in the instant case, the generating station (wind power project) has not achieved commercial operation. Further, SESPL is seeking to transfer Connectivity and LTA to CTN, its sister company, which is now under the direct control of CWEL, i.e. the ultimate parent company of SESPL. We observe that Regulation 8A does not provide for such transfer of Connectivity and LTA to sister company. The Petitioners have also submitted that their prayer is not covered by Regulation 8A of the 2009 Connectivity Regulations and Petitioners have sought relaxation of Regulation 8A of the 2009 Connectivity Regulations in order to enable SESPL to transfer the Connectivity and LTA to CTN.

22. Regulation 33A of the 2009 Connectivity Regulations that deals with 'Power to Relax', reads as under:

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

23. Regulation 33A specifies that 'Power to relax' is to be exercised in order to remove the hardships arising out of the operation of the provisions of the 2009 Connectivity Regulations. It is well-settled principle that the provision of power to relax must not be used in a manner that would defeat the intent and purpose of any Regulation. There has to be sufficient reason to justify relaxation by establishing

conclusively by the party that the circumstances are not created due to act of omission or attributable to the party claiming the relaxation. The power of relaxation is exercisable in exceptional circumstances on case to case basis and there cannot be any omnibus relaxation in the manner sought by the petitioner.

24. The Petitioner has not placed anything on record to show its inability to follow the Regulations. In our view, the present situation has been created by the Petitioners themselves and the provisions of the Regulations did not come in way of the Petitioners at any point of time. The fact is that the Petitioners being fully aware of the Regulations, proceeded to transfer the ownership of CTN to CWEL, the ultimate parent company. They did so at the behest of the lenders in order to achieve financial closure for the wind power project that CTN is required to establish in terms of PPA signed with SECI. Therefore, we are of the opinion that no case is made out by the Petitioners for exercise of Power to Relax for allowing SESPL (Petitioner No.1) to transfer the Connectivity and LTA to CTN (Petitioner No. 2). Accordingly, the prayers of the Petitioners are rejected.

25. Petition No.529/MP/2020 is disposed of in terms of the above.

sd/-

(Arun Goyal)
Member

sd/-

(I. S. Jha)
Member

sd/-

(P. K. Pujari)
Chairperson