

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI
Petition No. 331/MP/2020**

**Coram
Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member**

Date of Order: 28th January 2021

In the matter of:

Petition under Section 79(1)(c) and (d) read with Sections 61, 62 and other applicable provisions of the Electricity act, 2003 and Regulation 20 and 21 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 for the modified application of the provisions of regulation 7 of the sharing regulations dealing with the point of connection transmission charges and losses to the solar power projects set up in the designated solar parks under the Guidelines issued by the Central Government for development of the Solar Parks.

And

In the matter:

1. Andhra Pradesh Solar Power Corporation Private Limited
3rd Floor, Vidyut Soudha
Gunadala, Vijayawada Krishna
Andhra Pradesh-520004
2. Karnataka Solar Power Development Corporation Limited,
2nd Floor, South Block-2,
Beeja Raja Seed Complex Building,
Hebbal, Bellary Road,
Bengaluru 560 024,
3. Gujarat Power Corporation Limited
Block No. 8, Sixth Floor,
Udhyog Bhavan, Sector-11,
Gandhinagar 382 011
4. Solar Energy Corporation of India Limited
D-3, 1st Floor, Wing-A,
Prius Platinum Building
District Centre, Saket
New Delhi-110017

....Petitioner

Versus

1. Powergrid Corporation of India Limited
/Central Transmission Utility
'Saudimini', Plot-2
Sector-29, Gurgaon-122001
2. Central Electricity Authority
Sewa Bhawan,
R.K. Puram, Sector-1,
New Delhi-110016

....Respondents

Parties Present:

1. Shri M. G. Ramachandran, Sr. Advocate, SECI
2. Ms. Poorva Saigal, Advocate, SECI
3. Ms. Tanya Sareen, Advocate, SECI
4. Shri S. Ramana Reddy, SECI
5. Shri K. J. Nagaraju, KSPCL
6. Shri R. G. Patel, GPCL
7. Shri Manoj Mathur, SECI

Order

The present petition is being filed by the Petitioners seeking modified application of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as 'Sharing Regulations, 2010') in regard to the levy of transmission charges and adjustment of transmission losses related to the solar power projects that are set up in the designated solar parks with Grid connectivity through the Inter State Transmission System (hereinafter referred to as 'ISTS') Network.

2. The Petitioners have made the following prayers:

- a) *Declare the development / augmentation / up-gradation of ISTS transmission network connecting the Solar Park with the national grid as a project of national importance;*

- b) *Relax / Modify the provisions of Regulation 7 of the Sharing Regulations, 2010 and provisions dealing with the payment of the transmission charges and transmission losses concerning the solar power development in the manner mentioned in the Petition and to the extent of its application to the solar parks and solar power projects set up in the solar parks.*
- c) *Remove difficulties in the implementation of the Regulations relating to the payment of transmission charges and transmission losses concerning the solar power development in the manner mentioned in the Petition and to the extent of its application to the solar parks and solar power projects set up in the solar parks.*
- d) *Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

Background

3. The Petitioner No.1, Andhra Pradesh Solar Power Corporation Private Limited (hereinafter referred to as the 'APSPCL') is a joint venture company incorporated under the provisions of the Companies Act, 2013 between Solar Energy Corporation of India (SECI), Andhra Pradesh Power Generation Corporation Limited (APGENCO) and New & Renewable Energy Development Corporation of Andhra Pradesh Limited (NREDCAP) formed for development of Solar Parks in the state of Andhra Pradesh under the scheme of "Development of Solar Parks and Ultra Mega Solar Power Project" issued by Ministry of New and Renewable Energy, Government of India (MNRE).

4. The Petitioner No.2, Karnataka Solar Power Development Corporation Limited (KSPDCL) is a joint Venture company incorporated under the provisions of the Companies Act, 2013 between SECI and Karnataka Renewable Energy Development Limited (hereinafter referred to as 'KREDL') formed for development of solar parks in Karnataka under the scheme of "Development of Solar Parks and Ultra Mega Solar Power Project" issued by MNRE.

5. The Petitioner No.3, Gujarat Power Corporation Limited (GPCL) is a Public Sector Undertaking under Government of Gujarat incorporated under the provisions of the Companies Act, 2013 that is primarily engaged in the business of generation and distribution of power through various sources. It has also been designated as nodal agency by the Government of Gujarat for development of solar parks.

6. The Petitioner No.4, SECI is a Government of India Enterprise and a company incorporated under the provisions of the Companies Act, 2013. SECI has been designated as the nodal agency for the implementation of the scheme of “Development of Solar Parks and Ultra Mega Solar Power Project”.

Submissions of the Petitioners

7. The Petitioners have made the following submissions:

(a) The Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as ‘the 2010 Sharing Regulations’) provides for exemption from payment of transmission charges and losses for the solar power projects connected to the ISTS (inter-State transmission system).

(b) The 2010 Sharing Regulations is premised on individual Solar Power Developers (SPDs) establishing a solar power project with an obligation to declare the commercial operation of the project by the Scheduled Commercial Operation Date (SCOD) determined in advance and the SPDs having an obligation to complete the project by the said date.

(c) Solar Power Park Developers (SPPDs) being Petitioners 1 to 3 have applied for Connectivity and Long Term Access (LTA) in ISTS in terms of the communication of Ministry of New and Renewable Energy (MNRE). In such cases, the SPDs having taken LTA for use of the ISTS from SCOD, should be liable for payment of the transmission charges when there is a delay in achieving CoD of the project subject to the condition

that LTA has been operationalized. This is in accordance with the regulations notified by the Commission and guidelines/ directions issued by MNRE.

(d) The 2010 Sharing Regulations, while addressing the issues relating to individual solar power projects being set up, do not fully address the issues in regard to the solar power projects being set up in the solar park. The Central Government has evolved a scheme for setting up solar parks in different States in the country for active promotion of solar power generation as part of JNNSM (Jawaharlal Nehru National Solar Mission) to achieve the target of 100 GW of solar power by 2022. In case of solar projects being developed in solar parks, there are inherent challenges of mismatch of schedule of operationalization of LTA and achieving of COD by solar power projects for various reasons.

(e) There has arisen a need to address such challenges by way of socializing the transmission charges and losses in the context of solar projects established in solar parks to the extent where the mismatch cannot be attributed to any act or omission by the SPDs and in the context of involvement of the Petitioners as agencies promoting the establishment of the projects in Solar Parks.

(f) MNRE has been notifying the scheme for implementation and development of the solar parks in the country commencing from the financial year 2014-15. It has accorded administrative approval on 12.12.2014 for implementation of the scheme for development of Solar Parks and Ultra Mega Solar Power Projects and has issued the Guidelines for the development of solar park in October 2015. Thereafter, in February 2016, it issued the revised Guidelines for development of the solar park under the JNNSM.

(g) It is of utmost importance that the solar park of 500 MW and above capacity is provided evacuation facilities by the transmission licensee, i.e. the CTU/STU, Inter-State Transmission Licensee and Intra-State Transmission Licensee by laying down the transmission system connecting the solar park with the Grid and to undertake necessary up-gradation of the Grid both connecting the lines and also the upstream lines and system. Further, the cost of laying and up-gradation of transmission system (inter-State or intra-State) is not loaded onto the solar park or the solar power projects in order to

ensure that the solar power generation is promoted in accordance with the policy of the Central Government.

(h) Hence, the provisions of the 2010 Sharing Regulations are required to be applied with appropriate modifications to provide exemption from the payment of transmission charges and transmission losses for solar power projects set up in the solar parks considering the following aspects:

(i) The development of the solar power project inside the solar park is by many SPDs and not with reference to an individual SPD;

(ii) Each SPD will connect their project to the pooling substation of the solar park through internal transmission system;

(iii) The solar park as a whole and through the Solar Power Park Developers such as the Petitioners 1, 2 and 3 will be dealing with the ISTS outside the solar park for evacuation of the power generated by many of the SPDs establishing the solar power projects in the solar park;

(iv) The capacity of evacuation of ISTS from the solar park including up-gradation of the Grid required at various upstream points has to be on the basis of the total capacity of the solar power projects envisaged to be established in the solar park;

(v) The solar parks generally provide for establishment of 500 MW to 1000 MW or more in order to have an economic and aggressive promotion of solar power at a particular place and to avoid decentralization of the solar power projects in other places;

(vi) Concentration of solar power projects in solar park helps in an organized development of solar power and development of common infrastructure amenities, facilitation of the land and other requirements of the solar power projects. The solar park also enables solar power developers to concentrate on establishing the solar power projects and not get bogged down with innumerable agencies for clearances etc.; and

(vii) Transmission networks associated with solar parks may be declared by the Commission as projects of national importance and accordingly charges incurred for the development and operation of such projects may be socialized in appropriate and equitable manner as per the provisions of the 2010 Sharing Regulations 2010 with certain modifications.

(i) The solar power park developer (SPPD) provides services for development of the solar park. SPPDs are not in a position to absorb the cost implication of the delay that may occur in establishment of solar power projects in the solar park, more particularly when such delays are attributable to the different agencies including agencies responsible for selection of SPDs through bidding process who would in turn establish the project. Further, there may be situations where a solar park is not in a position to identify and award the project in the entirety i.e. in one go. The solar power park developers may be affected by number of other possibilities delaying the selection of SPD to establish solar power projects.

(j) There may be a mismatch with the development of the ISTS to be established by the CTU/ Inter-State Transmission Licensee undertaking the transmission project including necessary up-gradation to provide connectivity and for evacuation of solar power from the projects and the solar energy generation by the SPDs. On account of the mismatch and other related aspects, entire capacity of evacuation line from the pooling substation of the solar park to the Grid may not be fully utilized in the beginning.

(k) If the transmission charges and losses under the Long term Access in case of the solar power project being established in solar park is exempted only from the date of the commercial operation of the solar power projects as provided in the existing Regulations, there will be a serious issue of meeting the liabilities to pay such charges and adjustment of losses prior to such commercial operation date. Also, commercial operation date of solar power projects being established in solar parks may be achieved in phases. In these circumstances, the solar power park developer as an intermediary nodal agency would not be in a position to absorb the entire cost of payment of such transmission charges and losses pending the establishment of the solar power projects to the full capacity of the solar park. Levying of such charges and losses would seriously

affect the ability of the Solar Power Park Developers in the execution of the projects which would adversely impact the development of the solar capacity in the Country.

(l) If socializing of the transmission charges and losses is not considered for the period prior to the Commercial operation Date in the circumstances other than the default or delay on the part of the SPDs or the intermediary agencies, there will be serious financial consequences to the intermediary agencies such as the Petitioners who are undertaking the developmental work for promotion of solar parks.

(m) Further, if delay in utilization of the entire capacity of the ISTS established and/or upgraded is for reasons attributable to Solar Power Park Developers, the SPPDs should be held liable to pay liquidated damages provided for in the agreement and the said damages payable by the SPPD may be paid in part towards adjustment in the sharing of transmission charges.

(n) Bidding for selection of solar power projects are generally carried out in a phased manner. However, it may be beneficial for the transmission infrastructure developing agency to carry out the development/ augmentation of the transmission network considering the proposed park capacity. This requires having a maximum time period allowed for utilization of the entire capacity of the ISTS. Such maximum time period may be decided considering the time being taken for conclusion of bidding process and the construction period allowed under the PPA. In view of this, it is proposed to allow a maximum time period of around 4 years or time period as deemed fit by the Commission. The excess transmission charges be socialized in the same manner as in the case of the existing regulations providing for no transmission charges payable after the Commercial Operation Date of the solar power projects. Till such time, available capacity may be utilized for usage under short term and/ or medium term open access.

(o) In all other cases, if the delay is not on account of any factor attributable to and in the absence of any negligence on the part of the intermediary agencies such as the Petitioners or the SPPD, the transmission charges till the utilization of the entire capacity of the ISTS established and upgraded be socialized till maximum time period.

(p) There may also be cases where the solar park established for 1000 MW, is utilized for a long term capacity for 250 MW only on account of the reasons beyond the control of SECI/Solar Power Park Developer/State Government concerned. In such cases, in the absence of there being any default or failure on the part of the above agencies, the cost of establishing/ upgrading ISTS be socialized and can be considered for utilization by the CTU for other purposes, Long Term, Medium Term or Short Term.

(q) The Commission may also consider that during the period from the commissioning of the transmission system till the commissioning of the solar projects by SPDs in solar parks for reasons other than those attributable to the SPD concerned for the unutilized capacity of the ISTS constructed and/or upgraded and connected to the solar park be allowed Interest during Construction (IDC) and Incidental Expenses during Construction (IEDC) till such capacity in the solar power project is operational and such IDC and IEDC be socialized till the maximum time period. During such period, available capacity may be used for the short term or medium term transfer of power. For the period going beyond the maximum time period, parties (intermediary agencies, SPDs, state agencies) who is at default should be liable to pay such charges as per the provisions of the 2010 Sharing Regulations. IDC, IEDC or transmission tariff payable till the utilization of the entire transmission capacity established for evacuation of the power from the Solar Park may be met out of the funds created through mechanism of Unscheduled Interchange Charges.

(r) The transmission charges liability prior to the commercial operation of SPDs in solar parks by operationalization of LTA in a phased manner may be 25% as against 100% of the LTA capacity. This will facilitate selection of the Solar Power Developers in the solar parks in a phased manner. This is proposed since for a solar park having capacity of around 1500 MW, it takes around 18 to 24 months in finalizations of the bids and another 15 months' time period is being provided for commissioning of the projects. In view of this, solar park developers may be permitted a total time of around 4 years for utilization of 75% of the entire evacuation capacity established for the Solar Park. If the solar park achieves the above extent of utilization in aggregate 75% of the evacuation capacity of the inter-State transmission system developed for connectivity to solar park in the above period of 4 years, the same may be taken up as fulfilling the due obligation

of SPPD and the capital cost of balance 25% be also recovered under the 2010 Sharing Regulations socializing the same as in the case of 75%. During the intervening period, IDC and IEDC may be allowed to the transmission licensees and the same may be considered for the socialization as submitted hereinabove.

(s) In terms of Section 20 of the 2010 Sharing Regulations, the Commission has the power to relax to provide for the above-mentioned suggested modifications limited to the solar projects set up in the solar park and in regard to the obligation of SPPD. Further, in terms of Regulation 21 of the 2010 Sharing Regulations, the Commission has the power to remove difficulties which has arisen in the implementation of Regulation 7 dealing with the transmission charges and adjustment of losses insofar as the solar power projects set up in the solar park are concerned.

Proceedings during Hearing dated 20.8.2020

8. The Commission vide RoP for hearing dated 20.8.2020 admitted the Petition. In response to the Commission's observations that the socialization of transmission charges and losses as sought for by the Petitioners would lead to passing of the inefficiencies of various agencies to the distribution licensees and in turn to the consumers at large and that the Petitioners have sought to invoke the 'power to relax' and 'power to remove difficulties' on generic basis, learned senior counsel sought two weeks' time to place on record the affidavit regarding difficulties being faced by the Petitioners. Considering the request of the learned senior counsel for the Petitioners, the Commission directed the Petitioners to file an affidavit on the above aspect. The Commission reserved order in the matter on subject to above.

9. The Petitioners (APSPCL, KSPDCL and GPCL) in response to the direction issued during the hearing dated 20.8.2020 have submitted affidavits regarding difficulties being faced by them result in delay in CoD of respective solar parks.

Submissions of APSPCL

10. APSPCL has vide affidavit dated 07.09.2020 has mainly submitted as under:

(a) Ananthapuramu Ultra Mega Solar Park (1500 MW) is being developed by it at NP Kunta and Gativeedu for which PGCIL has granted LTA for 1500 MW vide letter dated 07.10.2015 and APSPCL has entered into an agreement for LTA with PGCIL on 17.12.2015 (APSPCL has also entered into Transmission Agreement and Connection Agreement with PGCIL to pay charges & costs on same date). APSPCL had proceeded to sign the LTA even though it is not a generator or a grid connected entity and rather it was signed to facilitate operationalization of LTA by PGCIL when the solar projects are commissioned.

(b) The delay in commissioning of 850 MW capacity of solar projects at Ananthapuramu Ultra Mega Solar park is not attributable to either SPPD or SPD. PGCIL has raised a bill for an amount of Rs. 42,63,000/- towards transmission charges for the period from 11.07.2016 to 09.08.2016 due to delay in commercial operation of solar generation as per the 2010 Sharing Regulations. PGCIL has also issued notice for regulation of power supply for the purported default of APSPCL in making of payment of the amount of Rs 42, 63,000/-.

(c) Solar power developers have declined to pay the transmission charges stating that they have got time extension from SECI/NTPC and that the delay in commissioning of their solar power projects is not attributable to them.

(d) APSPCL has not factored in these charges in one-time solar park development expenses and annual O&M charges to be collected from solar power developers because these charges cannot be anticipated and quantified in advance. Also, there is no other source of revenue to APSPCL to meet this expenditure. APSPCL being SPPD has no control either on timely bidding for selection of solar project developers nor on timely commissioning of the solar projects. APSPCL being a SPPD doesn't have any revenue stream for servicing of any transmission charges or pass through mechanism to any customer.

(e) In view of the delay in selection of developers by NTPC and SECI and due to COVID-19 pandemic situation, PGCIL be directed to grant exemption from payment of inter-State transmission charges till the COD of the solar projects is achieved.

Submissions of KSPDCL

11. KSPDCL vide affidavit dated 07.09.2020 has mainly submitted as under:

(a) It has developed 2000 MW Pavagada Solar Park in 2 phases each of 1000 MW and it has been granted LTA for phase I of 1000 MW from 01.09.2017 and for phase II of 1000 MW from 01.09.2018.

(b) KSPDCL has entered into Transmission Service Agreement and LTA Agreement with POWERGRID on 11.05.2016 and has submitted BG of Rs.100 crores towards contract performance.

(c) There has been a short delay in regard to 400 MW solar generation capacity of Phase-I wherein COD was achieved in March 2019, whereas PGCIL has operationalized LTA in September 2018 itself. It will be not in the interest of justice that KSPDCL is required to pay the transmission charges in respect of 400 MW capacity out of the 2000 MW when, KSPDCL and SECI have undertaken all that was under their control for timely implementation of the capacity in the solar park.

(d) KSPDCL has paid an amount of Rs.13,76,23,335/- to PGCIL towards transmission charges under protest and subject to the outcome of the present Petition. Facts and circumstances of the present case clearly establish a need for an appropriate measure to deal with the situation where there is a delay in the renewable projects getting commissioned in the solar/ wind park through agencies such as KSPDCL, either as a policy decision or by way of regulatory measures by this Commission in consultation with the Ministry of Power and/or of Ministry of New and Renewable Energy, Government of India. Accordingly, the Commission may implead the Government of India as a party in the present proceedings and consider all the relevant aspects so as to ensure that the development agencies such as KSPDCL are not affected on account of extraneous circumstances in the finalization of the solar power

projects/ wind power projects and when there is clearly no negligence, default, failure, inaction or imprudent action attributable to them.

Submissions of GPCL

12. GPCL has, vide its affidavit dated 07.09.2020, mainly submitted as under:

(a) Gujarat Power Corporation Ltd. (GPCL) has mainly submitted that it is setting up 700 MW Raghnesda Ultra Mega Solar Park. Gujarat Urja Vikas Nigam Ltd. (GUVNL) shall purchase 140 MW (20% of total capacity) from solar power project to be set up in the Park at Raghnesda (District Banaskantha) at the tariff determined through competitive bidding process and balance shall be for sold outside the State.

(b) Since 80% power was envisaged to be supplied outside the State, GPCL signed the agreement for Long Term Access (LTA) with PGCIL on 13.10.2016. GPCL had proceeded to sign the LTA even though GPCL is not a generator or a grid connected entity that is normally required to sign the LTA.

(c) GUVNL had to issue multiple tenders for conducting competitive bidding for the 700 MW Raghnesda Solar Park on account of poor response of bidders and high tariff discovered in the bidding. Therefore, considerable time elapsed in finalization of project developers itself. Out of 700 MW, project developer for 100 MW is yet to be finalized and hence, it is likely to take almost 1.5 to 2 years from now for commissioning this 100 MW capacity. However, LTA is getting operationalized for the entire 700 MW with effect from September 2020. In addition to delay in initial selection of developers, selected developers may also delay commissioning of their projects beyond the scheduled commissioning date.

(d) Projects of 500 MW were scheduled for commissioning during November 2020 and project of 100 MW was scheduled for commissioning during May 2021 but due to the COVID-19 and the resultant imposition of lockdown by the Government, all the construction activities have remained disrupted since March 2020. Hence, there is delay in implementation of solar projects by solar project developers in the solar park.

(e) PGCIL has notified that its transmission system is ready and that it shall start billing of transmission charges from September 2020 since exemption from payment of transmission charges for solar projects is only after their commissioning. PGCIL has asked GPCL to open a Letter of Credit of Rs.37.98 crore towards monthly transmission charges of Rs.18.09 crore applicable with effect from September 2020 till the solar projects are commissioned.

(f) The Commission under the Guidelines under Section 61 and 63 of the Electricity Act, 2003 has the power to adjust equity considering the interest of agencies such as GPCL which is facilitating the development of renewable power by establishing the solar park. This may be considered as there is no lapse or negligence or delay by GPCL in development of solar park.

(g) PGCIL may be directed to extend the time period for operationalization of LTA up to April 2021 for 500 MW capacity, up to Oct 2021 for 100 MW capacity and up to April 2022 for 100 MW capacity as an interim measure due to unprecedented situation of COVID-19 and poor response in the bidding process undertaken by GUVNL for the balance 100 MW capacity.

(h) The Commission may also implead the Government of India as a party in the present proceedings.

Analysis and Decision

13. We have considered submissions of the Petitioners. The Petitioners have prayed to declare the development/ augmentation/ up-gradation of transmission network connecting the solar park with the national grid as a project of national importance and accordingly requested that the transmission charges and losses incurred for the development and operation of such projects may be socialized by modifying the provisions of the 2010 Sharing Regulations. In effect, the Petitioners have requested that solar power projects located in the solar parks should be exempted from payment of transmission charges and losses and that the same should be recovered from the common pool (PoC) of transmission charges. There is no

provision in the 2010 Sharing Regulation regarding declaration of any project as being of national importance. The only provision related to exemption from payment of transmission charges and losses is in Regulation 7 of the 2010 Sharing Regulations and such exemption for a solar (or wind) project, is applicable only after commercial operation of the project. In our view, there being no such provision related to declaration of a project as project of national importance, the request of the Petitioners is beyond the scope of provisions of the 2010 Sharing Regulations.

14. The Petitioners have submitted that in terms of Regulation 7 of the 2010 Sharing Regulations, solar power projects are exempted from payment of transmission charges and losses, subject to certain conditions, for use of the ISTS. As per the Petitioners, there are inherent chances of mismatch in schedule of operationalization of LTA and declaration of commercial operation by the solar projects being developed in solar parks and, therefore, there is a need to address such challenges by way of socializing the transmission charges and losses where the mismatch cannot be attributed to any act or omission by the SPDs and in the context of involvement of the Petitioners as agencies promoting the establishment of the projects in Solar Parks. The Petitioners have also stated that they are engaged in development of the solar parks and are not in a position to absorb the costs for the delay that may occur in the establishment of the solar power projects in the solar park, more particularly when such delays are attributable to the different agencies including agencies responsible for selection of SPDs through bidding process. Further, there may be situations where a solar park is not in a position to identify and award the project in the entirety i.e. in one go. The solar power park developers may be affected by a number of other possibilities delaying the selection of the SPD to establish the solar power projects. If the transmission charges and losses are not socialized for the period prior to the commercial operation date of the solar

power projects (except for the circumstances other than the default or delay on the part of the SPDs or the intermediary agencies), there will be serious financial consequences to the intermediary agencies such as the Petitioners who are undertaking the developmental work for promotion of the solar parks.

15. The Petitioners, APSPCL and GPCL, have also submitted that neither are they generators nor are they a grid-connected entity and that they have signed the LTA Agreement with PGCIL solely for the purpose of facilitating development of solar power. We observe that Solar Power Park Developers are entities eligible to apply for Connectivity and Long Term Access as per 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'). The relevant provision of the 2009 Connectivity Regulations is extracted as under:

"2. Definitions

(1) In these regulations, unless the context otherwise requires:

xxxx

(b) 'Applicant' means

(i) The following in respect of grant of connectivity:

xxxx

(f) Any company authorised by the Central Government as Solar Power Park Developer;

xxxx

(iii) Any Company authorised by the Central Government as Solar Power Park Developer, in respect of long term access."

16. We also note that the Statement of Reasons dated 15.5.2015 issued along with the 5th amendment to the 2009 Connectivity Regulations (through which SPPDs were made eligible to apply for LTA and connectivity) state as under:

“Statement of Reasons:

Government of India has planned to set up Solar Parks for promotion of Solar Power. Ministry of New and Renewable Energy(MNRE) vide letter dated 12th December,2014, conveyed the intent of Government of India to provide a framework for setting up at least 25 Solar Parks in different parts of the country with a target of over 20,000 MW installed capacity of solar power in a span of 5 years from 2014-15 to 2018-19

“8. Transmission and evacuation of power from solar park: Interconnection of each plot with pooling stations through 66 kV /other suitable voltage underground or overhead cable will be the responsibility of the solar project developer. The designated nodal agency will set up the pooling stations (with 400/220, 220/66 kV or as may be suitable switchyard and respective transformers) inside the solar park and will also draw transmission line to transmit power to 220 kV/400 KV sub-station. The responsibility of setting up a sub-station nearby the solar park to take power from one or more pooling stations will lie with the Central Transmission Utility (CTU) or the State Transmission Utility (STU), after following necessary technical and commercial procedures as stipulated in the various regulations notified by the Central/State Commission.”

2. Implementation of the transmission and evacuation facility under the above framework requires a Solar Park Developer to apply for connectivity and long term access (LTA) to the CTU. Since the existing regulations of the Commission envisage a generating company or a bulk consumer as the eligible entity for the purpose of both connectivity and LTA, the Commission with due regard to the need for providing regulatory backing and support for promotion of solar energy in the overall interest of the nation’s energy security and in order to facilitate the Government of India in its endeavour to implement the ambitious goals for solar power generation, proposed to make the “Solar Power Park Developer” an eligible entity for grant of connectivity and LTA. Accordingly, amendments to 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 “Connectivity Regulations”)

“4.2.6 Sh. Vijay Menghani has suggested that a company of State Government or a private company may also be considered as eligible SPPD and wind developers may also be included. He has also suggested that proper risk management is to be ensured through prudence check while assessment of the capability of company to take responsibility of payment of transmission charges, relinquishment charges and payment of deviation charges at operation stage.

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4.3 Decision of the Commission

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4.3.2... As regards the comments of CEA, APP, PGCIL and Shri Menghani that the SPPDs of solar parks developed by the State Governments or any other company who may be interested

to develop solar park should be made eligible for applying for connectivity and long term access to ISTS, we are of the view that SPPD promoted by the concerned State Government or any other company should be recognised by the Central Government who shall carry out the due diligence about the capability and commitments of such companies to bear the transmission charges and losses on account of the connectivity and long term access of the solar power generators to the ISTS in their respective solar parks. As regards the suggestions of Shri Vijay Menghani regarding prudence check for the company being authorised as SPPD, it is clarified that responsibility to lay down the guidelines with regard to SPPD rests with MNRE.

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8.1 Comments received

8.1.1 PGCIL has submitted that SPPD should submit Construction Bank Guarantee while applying for connectivity which requires system strengthening for power evacuation as per the Regulations. PGCIL has also mentioned that directions are necessary for payment of transmission charges in case of delay in commissioning of generating unit, where the transmission system for evacuation has already been commissioned.

8.1.2 NTPC has suggested that in case of mismatch in commissioning of generating station vis-a-vis transmission system, any provision regarding bearing of transmission charges of transmission licensee /Annual fixed cost of the generator should be equitable to both the parties. It has also submitted that as commissioning of Solar Generation in the Solar Park would be in a phased manner. Accordingly, the commissioning of transmission system should also be in a phased manner matching with commissioning of generating capacity to reduce the impact of transmission charges on beneficiaries which would be levied through PoC mechanism. NTPC has also raised the issue of equitable payments by a transmission licensee and generator in case of delay by either of the two and that similarly treatment of delay of intervening system by SPPD should be addressed by the Commission. NTPC has also stated that development of transmission should be in a phased manner matching with commissioning of generating capacity.

8.2 Commission's decision:

8.2.1 With regard to the suggestions of PGCIL, it is clarified that SPPD who shall apply for Connectivity/Long term Access shall be liable to deposit Application Bank Guarantee/Construction Bank Guarantee as required under Connectivity Regulation. Further, SPPD shall also be liable for payment of transmission charges for delay in commissioning of generator and relinquishment charges towards transmission access under Connectivity Regulations and Sharing Regulations. Regulation 7(1)(u) of the Sharing Regulations provides that "No transmission charges for the use of ISTS network shall be charged to solar based generation" is applicable only when the power is evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station. Therefore, transmission charges for delay in commissioning of solar power generators shall be payable by such solar generators/SPPD on the same line as the liability for payment by the thermal and hydro generating station in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014."

17. As per above-mentioned provisions of the 2009 Connectivity Regulations read with Statement of Reasons issued with the 5th Amendment to the 2009 Connectivity Regulations, it

is clear that the Petitioners (as SPPDs) are entities eligible for applying to PGCIL for connectivity and LTA. Therefore, the contention of the Petitioner that they have applied for connectivity and LTA on behalf of SPDs, is not correct. The Petitioners have not applied for connectivity and LTA on behalf of solar power developers and rather they had applied for the same in their capacity as SPPD in terms of provisions of the 2009 Connectivity Regulations. Along with grant of connectivity and LTA, the Petitioners have also signed Connection Agreement, LTA Agreement and Transmission Agreement with PGCIL. Thus, they were aware of their responsibilities in terms of those agreements. Having applied for connectivity and LTA and being aware about their responsibilities, the Petitioners cannot now plead that they do not have financial capacity to pay for transmission charges. We also note that there is no provision for differential treatment to a SPPD vis-à-vis other entities in the 2009 Connectivity Regulations. Having been granted connectivity and LTA as per the provisions of the 2009 Connectivity Regulations, they are responsible for bearing charges towards connectivity and LTA granted to them.

18. The Statement of Reasons also clarifies that an SPPD who shall apply for connectivity or long term access shall be liable for payment of transmission charges for delay in commissioning of generator and relinquishment charges towards transmission access under provisions of the 2009 Connectivity Regulations and the 2010 Sharing Regulations. It was also clarified that transmission charges for delay in commissioning of solar power generators shall be payable by such solar generators/ SPPD. Thus, if SPPDs choose to apply for connectivity or LTA, they have to bear all consequential liabilities. Any sharing of responsibility including payment of transmission charges and losses between the SPPD and the SPDs can be governed by agreements, if any, amongst them, but in no case it can be shared by other entities through the PoC pool.

19. Accordingly, we reject the prayers of Petitioners seeking to exempt them from payment of transmission charges and losses in case of delay in commissioning of solar power projects in the solar parks.

20. The Petitioners have sought to invoke the provisions of the 2010 Sharing Regulations related to 'power to relax' and 'power to remove difficulties'. APSPCL, KSPDCL and GPCL have filed affidavits regarding difficulties being faced by them in their respective solar parks due to delay in commercial operation of generation projects. APSPCL, KSPDCL and GPCL have mainly submitted that they have taken Long Term Access and have entered into respective Transmission Service Agreement and LTA agreement as an agency to facilitate establishment of the solar power projects. Now, some generators in the solar park are delayed due to various reasons but the corresponding transmission system has achieved COD and that LTA either has been operationalized or is being planned to be operationalized by PGCIL before expected date of commercial operation of the generation projects. PGCIL has also asked the SPPDs to open Letter of Credit and to make payment of transmission charges in terms of provisions of the 2010 Sharing Regulations. The Petitioners have prayed to direct PGCIL to exempt the Petitioners from payment of transmission charges and from requirement of opening LC.

21. In our view, the provisions of the 2009 Connectivity Regulations as well as that of the 2010 Sharing Regulations have clear provisions as regards liability of an entity that has been granted LTA. The purported mismatch in operationalization of LTA and commissioning of solar power projects has been on account of delays in bidding process. Similarly, it has been claimed that some SPDs are delayed on account of reasons not attributable to the SPPDs or the SPDs. The Petitioners have requested that they should not be made liable to pay

transmission charges and losses on account of such delays and that these should be socialized. The Petitioners have not made out a case as to how the provisions of the 2010 Sharing Regulations have led to delay in bidding process or delay in commissioning of solar power projects. In such a situation, we do not consider it appropriate to use our 'power to relax' or 'power to remove difficulty' in terms of the 2010 Sharing Regulations.

22. The Petitioners have also sought to implead the Government of India as a party to the Petition vide their affidavits dated 7.9.2020. We observe that the Petitioner had not sought to implead the Government of India in its submissions and has raised it for the first time in the affidavit dated 7.9.2020. As, once the Order has been reserved in the petition, fresh cause of action cannot be raised by parties, the Petitioner is at liberty to file a separate petition for any issues with the Government of India.

23. Petition No. 331/MP/2020 is disposed of in terms of the above.

**sd/-
(Arun Goyal)
Member**

**sd/-
(I. S. Jha)
Member**

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