

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 79/MP/2021

Coram:

Shri P.K Pujari, Chairperson

Shri I. S. Jha, Member

Shri Pravas Kumar Singh, Member

Date of Order: 15th October, 2021

In the matter of:

Petition under section 79(1)(f) of the Electricity Act, 2003 read with Regulation 8A of the 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, 2019 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking directions to respondent to allow transfer of LTA and Connectivity from the Petitioner to its four 100% subsidiary SPVs in accordance with Regulation 8A of the aforesaid Regulations of 2019.

And

In the matter of:

Inox Wind Infrastructure Services Limited (IWISL),
Inox Towers, Plot 17, Sector-16A,
Noida- 201301

.....**Petitioner**

Vs

Power Grid Corporation of India Limited (PGCIL),
B-9, Qutub Institutional Area, Katwaria Sarai,
New Delhi-110016

.....**Respondent**

Parties Present:

Shri Naveen Chawla, Advocate, IWISL

Shri Mayank Bughani, Advocate, IWISL

Shri Bhupesh Juneja, IWISL

Shri Venkatesh Sonti, IWISL

Ms. Suparna Srivastava, Advocate, PGCIL

Shri Tushar Mathur, Advocate, PGCIL

Shri Soumya Singh, Advocate, PGCIL



ORDER

The instant Petition has been filed by Inox Wind Infrastructure Services Ltd. (IWISL) which is a wind power generator/ developer and is engaged in the business of providing wind energy solutions including infrastructure development for power generation through wind energy. The Petitioner successfully participated in the bidding process conducted by Solar Energy Corporation of India Limited (SECI) for selection of eligible entities for setting up wind power projects of 250 MW (50x5 MW) in Tehsil Dayapar, Lakhpatt and Nakhatrana and other adjoining area, District-Kutch, Gujarat.

2. The Petitioner has made following prayers in the instant Petition:

“(a) Direct the Respondent to allow the transfer of LTA and Connectivity from the Petitioner to the respective four SPVs, which have commissioned 200 MW power project (50 MW each) more than one year back as requested by the Petitioner in its Letter dated 25.09.2020 in accordance with Regulation 8A referred above;

“(b) Pass such other or further orders as the Hon’ble Commission may deem fit and proper in the facts and circumstances of the case;”

Submissions of the Petitioner

3. The Petitioner has mainly submitted as follows:

(a) SECI invited proposal vide Request for Selection (RfS) dated 28.10.2016 for setting up of grid connected wind power projects on "Build Own Operate" basis for an aggregate capacity of 1000 MW. This RfS issued by SECI specifically governs any change in controlling shareholding of the bidder in Clause 3.20. "Controlling shareholding" has been defined under the RfS as *“Controlling Shareholding shall mean not less than 51% of the voting rights and paid-up share capital in the Company/ Consortium.”*



(b) SECI issued an amendment to RfS wherein the qualification requirements provided under clause 3.5 of RfS were amended. Clause 3.5.10 was inserted to provide a mechanism for setting up a Special Purpose Vehicle (SPV) for execution of the awarded projects.

(c) In response to RfS, the Petitioner submitted its bid on 9.1.2017 for setting up five (5) wind power projects near Dayapar, Kutch in the State of Gujarat under the MNRE Scheme for total 250 MW, with each project being of 50 MW. SECI vide its Letters of Award dated 5.4.2017 confirmed that it has accepted the final offer of the Petitioner concluded as a result of e-reverse auction.

(d) As per the provisions under the RfS read with amendment thereto, the Petitioner formed the following five SPVs as its 100% owned subsidiaries for execution of each of the said five wind power projects awarded to it:

- i. Wind One Renergy Pvt. Ltd.
- ii. Wind Two Renergy Pvt. Ltd.
- iii. Wind Three Renergy Pvt. Ltd.
- iv. Wind Four Renergy Pvt. Ltd.
- v. Wind Five Renergy Pvt. Ltd.

(e) On 21.07.2017, a Power Purchase Agreement was entered into between the Petitioner and Power Trading Company India Limited in terms of the aforesaid RfS dated 28.10.2016. Subsequently, on 20.12.2017, the Power Purchase Agreement was amended to incorporate the names of the aforesaid Special Purpose Vehicles (SPVs).

(f) On 29.09.2017, while disposing off the Petition No.145/MP/2017 filed by the Respondent, PGCIL, the Commission directed the Respondent to prepare detailed procedure for grant of connectivity to projects based on renewable energy sources and held as under:



“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. However, in order to obviate the possibility of trading in connectivity, we are of the view that any sale of shares in the subsidiary company (ies) shall be allowed only after one year of the commencement of supply of power from the SPV. In case of more than one SPV, the lock-in period shall apply from commencement of supply of power from the last SPV. Further, in such cases, the parent company will act as principal generator and undertake all operational and commercial responsibilities for the renewable energy generating station(s) in following the provisions of the Indian Electricity Grid Code and all other regulations of the Commission, such as grid security, scheduling and dispatch, collection and payment/adjustment of Transmission charges, deviation charges, congestion and other charges etc. In case parent company wishes to exit and handover the Connectivity and LTA granted to it to its SPVs, one of the SPV shall have to take over as lead generator and be responsible for all activities stated above.”

(g) The Commission vide order dated 31.10.2017 in Petition No. 173/MP/2017 which was filed by the Petitioner, inter alia, has given the following direction:

“14. In the light of the above decision, the Petitioner is permitted to utilize the connectivity granted to the Petitioner by its fully owned SPVs for execution of the projects awarded through the competitive bidding carried out by SECI, subject to the terms and conditions given in Para 122 of the order dated 29.09.2017 in Petition No. 145/MP/2017.”

(h) Detailed Procedure for “Grant of Connectivity to Projects based on Renewable Sources to inter-State Transmission System” (in short, “the RE Connectivity Procedure”) was approved by the Commission on 15.05.2018. The RE Connectivity Procedure allowed utilization of connectivity by its 100% subsidiary company. However, sale of stake was permitted one year after COD.

(i) On 14.06.2018, the Respondent issued a letter to the Petitioner, granting Stage-II connectivity to the Petitioner for its 500 MW wind power plant at Dayapar, Kutch, Gujarat. This 500 MW quantum of connectivity was intended to be utilised for SECI Tranche-I 250 MW project along with another 250 MW awarded under SECI Tranche-II bid.



(j) On 09.01.2019, seventh amendment 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 referred to as “the 2009 Connectivity Regulations”) was notified incorporating the provisions with regard to renewable energy projects.

(k) On 14.03.2019, Respondent issued a letter to the Petitioner firming up beneficiaries of the 500 MW LTA from the Petitioner’s wind power projects in Dayapar Kutch, Gujarat.

(l) Meanwhile, the Commission vide its order dated 08.05.2019 in Petition No. 29/MP/2018 which was filed by the Petitioner, gave the following directions:

“15. According to above, the last SPV for the purpose of affecting the transfer of shareholding shall be the last SPV for each tranche considered separately i.e. last SPV for tranche-I shall be considered for transfer of connectivity and LTA for first 250 MW and subsequently the last SPV for tranche-II shall be considered for transfer of connectivity and LTA for the next 250 MW.

.....
.....

17. We are of the view that the Petitioner's contention is premature and that the argument of the Petitioner is speculative and is based upon conjectures. We are not inclined to go into this matter at this stage. However, the Petitioner in such cases may approach the Commission and the matter shall be dealt with as per the Regulations.”

(m) Four out of five aforesaid SPVs of the Petitioner were able to commission their respective projects under SECI Tranche-I project. On 12.07.2019, SECI terminated the Power Purchase Agreement in respect of the non-commissioned 50 MW project of the fifth SPV, i.e. Wind Four Renergy Pvt. Ltd. On 21.11.2019, i.e. 132 days after having terminated the Power Purchase Agreement, extension of SCOD was granted to all SECI Tranche-I Project including the non-commissioned 50 MW project of Wind Four Renergy Pvt Ltd.

(n) Consequently, the Petitioner’s SPV, Wind Four Renergy Pvt. Ltd. approached this Commission vide Petition No. 226/MP/2020 seeking extension of period of commissioning by another 132 days from the date of the order since



Wind Four Renergy Pvt. Ltd. was not in a position to execute the work after termination of PPA by SECI on 12.07.2019. On 11.08.2020, the final arguments were heard by this Commission in Petition No. 226/MP/2020 and the order was reserved.

(o) On 22.06.2020, SECI encashed the Performance Bank Guarantee of Rs. 10 crores in relation to the non-commissioned 50 MW project of Wind Four Renergy Pvt. Ltd.

(p) On 07.08.2020, restriction period of one year (in terms of Regulation 8A of the 2009 Connectivity Regulations) for LTA and Connectivity transfer from parent company to 100% subsidiary SPVs expired since only 200 MW (through four SPVs) out of 250 MW wind power projects could be commissioned.

(q) On 27.08.2020, the aforesaid four SPVs, which had commissioned their respective 50 MW wind power projects approached the Respondent PGCIL with a request to allow transfer of LTA and Connectivity from the parent company, i.e. the Petitioner. On 21.09.2020, the Respondent informed that such a request for transfer of LTA and Connectivity should come from the Petitioner, i.e. the parent company instead of SPVs approaching the Respondent for such transfer. Accordingly, on 25.09.2020, the Petitioner approached the Respondent requesting it to transfer LTA and Connectivity to its SPVs.

(r) On 01.10.2020, the Respondent informed the Petitioner and sought confirmation by SECI in respect of cancellation of 50 MW project which was being executed by Wind Four Renergy Pvt. Ltd. On 08.10.2020, SECI confirmed to the Respondent that *“Accordingly, SECI informs Powergrid that the PPA related to 50 MW Power Project stands terminated for the failure on the part of M/s. Wind Four Renergy Private Limited to commission the project within the time stipulated in the PPA and even during the extended time with liquidated damages. The Petition bearing No.226/MP/2020 filed by M/s. Wind Four*



Renergy Private Limited is however pending before the Hon'ble Central Commission."

(s) On 20.10.2020, the Respondent, after taking into consideration the information provided by SECI (vide letter dated 01.10.2020), informed the Petitioner as under:

"In light of the directions of CERC above in M/s IWISL's own petition, it is evident that the present request is not covered in the exceptions carved out by CERC either in Clause 5.2 of RE Detailed Procedure or the above mentioned Order dated 08.05.2019. In fact, CERC has advised M/s IWISL to approach the commission whenever any case of stalling of the last SPV arises and the Hon'ble Commission shall deal the matter as per the Regulations (refer Para 17 of the Order).

In view of the above, M/s IWISL's request for transfer of connectivity and LTA to its 100% subsidiaries (under Tranche-I) cannot be accepted at this stage and M/s IWISL is advised to approach the Hon'ble Commission in terms of CERC directions in Para 17 of the Order dated 08.05.2019"

(t) Consequently, for the purposes of transfer of connectivity and LTA from the Petitioner to its SPVs, in respect of the 250 MW wind power projects awarded to the Petitioner under Tranche-I of SECI, only 200 MW is to be considered, as SECI is treating the 50 MW power project being executed by Wind Four Renergy Private Limited as cancelled.

(u) In respect of the 200 MW wind power projects, in accordance with Regulation 8A of the 2009 Connectivity Regulations, the period of "one year after the commercial operation of the generating station of the last subsidiary" has expired on 07.08.2020.

Hearing dated 22.04.2021

4. The hearing in the instant Petition was held through video conferencing wherein the Commission admitted the Petition and directed to issue notice to the Respondent.



Submissions of Respondent, PGCIL

5. The Respondent PGCIL vide affidavit 21.06.2021 has submitted as follows:

(a) The Commission vide Order dated 08.03.2021 in Petition No. 226/MP/2020 titled Wind Four Renergy Pvt. Ltd. Vs. Solar Energy Corporation of India Limited (SECI) granted extension of time for commissioning of the Petitioner's 5th wind power project of 50 MW. From a perusal of the said Order dated 08.03.2021, it appears that Wind Four Renergy Pvt. Ltd. intended to execute its wind power project of 50 MW, though with an extended SCoD and accordingly, even on 11.08.2020 when the Order in the aforementioned Petition has been reserved, sought extension of SCOD. This has been done after the commissioning of its 4th wind power project on 07.08.2019.

(b) On 31.05.2017, SECI had issued another RfS under Tranche-II for setting up of 1000 MW ISTS-connected wind power project wherein the Petitioner was declared a successful bidder for 250 MW (in addition to 250 MW under Tranche-I). As such, the Petitioner undertook to develop 500 MW wind power projects under 2 Tranches of 250 MW each.

(c) For evacuating power from its wind power projects, the Petitioner, vide its application dated 30.05.2016, applied to the Respondent for grant of Connectivity to the inter-State transmission system (ISTS) for 500 MW at the Bhuj pooling station. Connectivity was granted to the Petitioner vide intimation dated 31.03.2017 and was to be effective from 30.07.2017 or availability of the Bhuj sub-station and its connectivity with the ISTS, whichever was later.

(d) After coming into force of the RE Detailed Procedure, the Petitioner was considered as a deemed Stage-II connectivity grantee and intimation to that effect was sent to it vide letter dated 14.06.2018. In addition to the Connectivity, the Petitioner vide application dated 30.11.2016 applied for grant of LTA for transfer of power from its wind power projects to the beneficiaries in Northern Region (400 MW) and Eastern Region (100 MW). LTA was granted to the



Petitioner vide letter dated 13.11.2017 subject to signing of LTA Agreement and fulfillment of other conditions as per the applicable Regulations. The said LTA was to be effective from 30.06.2018 or from the commissioning of the transmission system, whichever was later. The Petitioner signed LTA Agreement dated 04.12.2017 and a supplementary LTA dated 09.05.2019 with the Respondent. and the Respondent has also submitted an Application Bank Guarantee of Rs.50 lakh on 12.10.2017 and a Construction phase Bank Guarantee of Rs.25 crore on 03.03.2018.

(e) The Respondent, vide its email dated 01.10.2020 brought to the attention of the Petitioner the discussions held in the 29th Joint Coordination Committee Meeting of the Western Region held on 28.9.2020 in which the Petitioner had intimated that the last wind power project of 50 MW capacity (under Tranche-I) was under execution (60-70% work already completed) and the commissioning of the same was expected by December 2020 subject to the Order of this Commission in Petition No. 226/MP/2020. Accordingly, the Petitioner's request for transfer of Connectivity/ LTA could be considered only subsequent to completion of lock-in period of one year after the commercial operation of the last 50 MW SPV under Tranche-I. Alternatively, the Petitioner was advised to submit a letter from the bidding agency i.e. SECI certifying the same and clearly indicating that the revised quantum under Tranche-I awarded to the Petitioner had been reduced to 200 MW from 250 MW.

(f) Vide Order dated 08.03.2021 in Petition No. 226/MP/2020 filed by Wind Four Renergy Pvt. Ltd. seeking extension of time in commissioning of its wind power project, the Commission extended the commissioning date of the project by 132 days and directed that encashment of performance bank guarantee would be governed by the extended deadline. The Commission vide the aforementioned order declined to extend the SCoD by additional 60 days. Only the period of 132 days from 12.07.2019 (the date of termination of PPA) till 21.11.2019 (the date when Petitioner was intimated about the extension of



SCoD). In terms of that Order, SCoD was extended from 13.03.2020 (revised SCoD allowed by SECI) till 19.07.2020.

(g) However, as noted in the Minutes of the 29th Joint Coordination Committee Meeting of the Western Region held on 28.9.2020, the 50 MW wind power project had not been commissioned by then (after 3 months of the extended SCoD) and was still under construction with an expected completion indicated as December 2020. Subsequently, in the 30th and 31st Joint Coordination Committee Meetings of the Western Region held on 24.12.2020 and 26.03.2021 respectively, the Petitioner revised the schedule of commissioning of the 50 MW wind power project to March 2021 subject to outcome of Petition No. 226/MP/2020.

(h) While SECI has terminated the PPA executed by Wind Four Renergy Pvt. Ltd. and also invoked the performance bank guarantee, the total capacity of the wind power projects awarded to the Petitioner i.e. 250 MW (Tranche-I), has not been reduced by SECI. As on date, the Petitioner is the awardee/ developer of 250 MW wind power project (under Tranche-I) which is being developed by the 5 SPVs incorporated by the Petitioner. The Connectivity and LTA granted to the Petitioner continues to be for 250 MW (plus 250 MW of Tranche-II) together with its attendant rights, liabilities and consequences.

(i) In terms of Regulation 8A of the 2009 Connectivity Regulations, transfer of Connectivity from parent entity to its subsidiary is permissible only after the expiry of one year period from the date of commercial operation of the generation station 'of the last subsidiary' which, as clarified by the Commission in its Order dated 08.05.2019 in Petition No.29/MP/2018 means 'the last SPV for each tranche considered separately'. Since the period of one year from the date of commissioning of the wind power project under the last SPV (Wind Four Renergy Pvt. Ltd. in the present case) has not yet commenced, the question of transfer does not arise.



(j) The Petitioner has availed multiple extensions for commissioning the wind power project being executed by its last SPV and has itself apprised in the 29th, 30th and 31st meetings of Joint Coordination Committee of the Western Region held on 28.9.2020, 24.12.2020 and 26.3.2021 respectively that the 50 MW wind power project will be commissioned subject to outcome in Petition No.226/MP/2020.

(k) The prayers sought by the Petitioner under Regulation 8A of the 2009 Connectivity Regulations to allow the transfer of LTA and Connectivity from the Petitioner to the four SPVs which have commissioned 200 MW wind power project (50 MW each), may be an exercise either requiring relaxation of the provisions under 4th proviso to Regulation 8A of the 2009 Connectivity Regulations or carving out an exception thereunder. The Commission may decide on whether transfer of Connectivity/ LTA under the 4th Proviso to Regulation 8A of the 2009 Connectivity Regulations can be permitted in the case of termination of the PPA of any one (or more) of the individual subsidiaries executing renewable generation projects under a single LoA issued to the parent company based on the commissioning of the last 'existing' subsidiary and compliance with the mandatory one-year lock-in period by such last existing subsidiary. In the event that the aforesaid is considered permissible, directions may also be given as regards documents or proof that may be required to be provided by such an entity to the Respondent.

Rejoinder of the Petitioner to the reply of the Respondent, PGCIL

6. The Petitioner, vide affidavit dated 23.06.2021, has mainly reiterated its earlier submissions. The additional submissions are as follows:

(a) SECI vide letter dated 12.07.2019 has cancelled PPA with Wind Four Renergy Pvt. Ltd. (50 MW) as per MNRE Guidelines, clause 3.17(B) of RfS and Article 4.6.2 of PPA in respect of the non-commissioned 50 MW wind power



project. Also, SECI vide letter dated 08.10.2020 informed PGCIL that PPA against the non-commissioned 50 MW is terminated as the said project could not be commissioned up to extended SCOD of 13.03.2020.

(b) The Commission vide order dated 08.03.2021 in Petition No. 226/MP/2020 has condoned the delay from 12.07.2019 till 21.11.2019 (date of communication of extension of SCoD) and accordingly extended the commissioning deadline of the 50 MW wind power project by 132 days, with condition of pro-rata encashment of performance bank guarantee and with consequences of tariff reduction. However, the period of extension granted by this Commission vide order dated 08.03.2021 is rendered inconsequential as the period so granted had already lapsed much prior. Notably, reply in the said Petition was filed after 100 days by SECI and the final adjudication took almost 7 months after the order was reserved in August 2020.

(c) Subsequently, Wind Four Renergy Pvt. Ltd. has filed an Appeal before the Appellate Tribunal for Electricity (APTEL) against the order of the Commission dated 08.03.2021 in Petition No. 226/MP/2020 praying that SCoD be extended by 132 days from 08.03.2021 (excluding the period of pendency of the said Appeal). In the event the Petitioner succeeds in its Appeal, and the termination of the Power Purchase Agreement of Wind Four Renergy Pvt Ltd. as well as the cancellation of the said project by SECI is set aside by APTEL, the Petitioner undertakes to seek transfer of connectivity in respect of the said 50 MW project awarded to Wind Four Renergy Pvt. Ltd. only after expiry of one year from the date of its commissioning. However, such a scenario is contingent upon a favourable outcome of the said Appeal, i.e. a future event which is beyond the control of the Petitioner.

(d) The letter dated 08.10.2020 issued by SECI confirming that the said 50 MW project awarded to Wind Four Renergy Pvt. Ltd. has been cancelled, continues to remain in effect even today and the same has not been revoked by SECI. Upon confirmation from SECI that the 50 MW wind power project awarded



to Wind Four Renergy Pvt. Ltd. has been cancelled, effectively the capacity of Tranche-I projects awarded to Petitioner with valid PPAs becomes 200 MW and, therefore, the last subsidiary for Tranche-I would be read as the last subsidiary to have commissioned and commenced commercial operation, out of the remaining four SPVs.

(e) The grant of transfer of Connectivity from the Petitioner to its four SPVs will, however, not change the role of the Petitioner as the lead generator in respect of the said projects rather would allow the Petitioner to recoup its capital for capacity development and project execution. Further, the subsidiaries as independent entities would be bound by their respective obligations qua their respective projects.

Hearing dated 25.06.2021

7. The parties made arguments based upon their submissions in the Petition, the reply and the rejoinder. The Respondent, PGCIL also submitted that it does not have any objection for transfer of 200 MW of LTA and Connectivity to the Petitioner's four SPVs. However, the rights and liabilities with respect to the remaining 50 MW should be settled and discharged by the Petitioner before the transfer. The Respondent further submitted that the Petitioner in the Appeal before APTEL (against the order dated 08.03.2021 in Petition No. 226/MP/2020) has submitted that after the removal of legal hurdles (termination of the PPA of Wind Four Renergy Pvt Ltd. as well as the cancellation of the said project by SECI is set aside), the Petitioner will transfer Connectivity in respect of the 50 MW project awarded to Wind Four Renergy Pvt. Ltd. after expiry of one year from the date of its commissioning.



Analysis and Decision

8. Submissions made by the Petitioner and the Respondent have been considered and documents on record have been perused.

9. SECI invited bids for Tranche-I of wind power projects of aggregate 1000 MW vide its RfS dated 28.10.2016. Vide an amendment in clause 3.5.10 of RfS, a mechanism was provided for setting up wind power projects through SPVs (100% subsidiary). Against RfS of SECI, the Petitioner participated and won bid for setting up five (5) wind power projects of 250 MW (5x50 MW) in Tehsil Dayapar, Lakhpat and Nakhatrana and other adjoining area in District of Kutch, Gujarat. The Petitioner formed five SPVs as its 100% owned subsidiaries for execution of 50 MW each of wind power projects, namely Wind One Renergy Pvt. Ltd., Wind Two Renergy Pvt. Ltd., Wind Three Renergy Pvt. Ltd., Wind Four Renergy Pvt. Ltd. and Wind Five Renergy Pvt. Ltd. SECI awarded LOA to these five SPVs for 50 MW each separately on 05.04.2017. Also, PPAs were signed between these five SPVs and PTC separately for 50 MW each on 21.07.2017.

10. The Petitioner applied to the Respondent for grant of Connectivity of 500 MW to ISTS for 250 MW each of wind power projects under Tranche-I and Tranche-II of SECI. The Petitioner was granted connectivity by the Respondent for 500 MW on 31.03.2017. After coming into force of the RE Detailed Procedure, the Petitioner was considered as a deemed Stage-II connectivity grantee and intimation to that effect was sent to it by the Respondent vide letter dated 14.6.2018.



11. The Petitioner also applied for grant of LTA vide application dated 30.11.2016 for transfer of power from its wind power projects to the beneficiaries in Northern Region (400 MW) and Eastern Region (100 MW) which was granted by the Respondent vide letter dated 13.11.2017. The issue in the instant petition is related to Connectivity and LTA for 250 MW of Tranche-I wind power projects of SECI.

12. The Petitioner has commissioned 200 MW (4X50 MW) through its four SPVs of 50 MW capacity each, under SECI Tranche-I out of 250 MW. CODs of these wind power projects are as follows:

SPV Name	Wind One Renergy Pvt. Ltd.	Wind Two Renergy Pvt. Ltd.	Wind Three Renergy Pvt. Ltd.	Wind Five Renergy Pvt. Ltd.
Commissioning Date	02.07.2019	04.07.2019	29.06.2019	04.07.2019
COD	05.07.2019	06.07.2019	05.07.2019	07.08.2019

13. The Petitioner has not been able to commission wind power project of 50 MW in respect of one of its SPVs, Wind Four Renergy Pvt. Ltd. Therefore, SECI had cancelled its PPA for the said project on 12.07.2019 (later on PPA was reinstated and SCOD was extended up to 13.03.2020) and subsequently SECI encashed the Performance Bank Guarantee of Rs. 10 crores with regard to the non-commissioned project. Aggrieved by cancellation of PPA and subsequent delayed communication of extension of SCOD, Wind Four Renergy Pvt. Ltd. filed Petition No. 226/MP/2020 before the Commission. The Commission vide order dated 08.03.2021 extended SCOD up to 19.07.2020. However, the extended SCOD had expired by the time the order of the Commission was issued and the wind power project of 50 MW had not been commissioned. The matter has been appealed before APTEL and is pending adjudication.



14. The Petitioner has requested to allow transfer of Connectivity and LTA against 200 MW (commissioned four SPVs) out of 250 MW, to its commissioned SPVs after considering the lock-in period of one year from the last commissioned SPV/ subsidiary. The Petitioner has submitted that PPA with respect to the Wind Four Renergy Pvt. Ltd. having been cancelled and performance bank guarantee having been encashed by SECI, the lock-in period of one year as per the provisions of Regulation 8A of the 2009 Connectivity Regulations needs to be considered with effect from 08.07.2019 i.e. COD of last commissioned SPV.

15. In its reply, the Respondent PGCIL objected to transfer of Connectivity/ LTA from the Petitioner to SPVs stating that the Petitioner has not informed about its inability to commission the wind power project under Wind Four Renergy Pvt. Ltd. and that it has been postponing COD of that project in various JCC meetings. However, we note that during the hearing held on 25.06.2021, the Respondent, PGCIL submitted that it does not have any objection to transfer of 200 MW of LTA and Connectivity to the Petitioner's four SPVs but rights and liabilities w.r.t. the un-commissioned 50 MW should be settled and discharged by the Petitioner before the transfer of Connectivity and LTA of 200 MW to the commissioned subsidiaries of the Petitioner.

16. We have considered the submissions of the Petitioner and the Respondent, PGCIL. Regulation 8A of the 2009 Connectivity Regulations provides as follows:

“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.”

17. As per above-quoted provisions of the 2009 Connectivity Regulations, we observe that Connectivity and LTA can be transferred from parent company to its 100% subsidiary company(ies) and vice-versa only after one year of achieving commercial operation of the generating station of the last subsidiary subject to minimum capacity of 50 MW.

18. In another matter, the Petitioner had approached the Commission vide Petition No. 29/MP/2018 wherein vide order dated 08.05.2019, the Commission held as follows:

“15. In regard to the clarification sought by the petitioner for the treatment of last SPV under different tranches of SECI’s bidding, we have perused the relevant provisions of the Detailed procedure dated 15.05.2018 which is provided as follows;

‘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.”

According to above, the last SPV for the purpose of affecting the transfer of shareholding shall be the last SPV for each tranche considered separately i.e. last SPV for tranche-I shall be considered for transfer of connectivity/LTA for first 250 MW and subsequently the last SPV for tranche-II shall be considered for transfer of connectivity/LTA for the next 250 MW.

16. *The Petitioner has also raised the issue that the restrictions imposed by the Commission in order dated 29.9.2017, may prove detrimental to the project developer who is executing the projects through several SPVs, particularly so in the circumstances where the commencement of supply from the last SPV has not begun and gets stalled, for reasons not attributable to and beyond the control of the successful bidder.*

17. *We are of the view that the Petitioner’s contention is premature and that the argument of the Petitioner is speculative and is based upon conjectures. We are not inclined to go into this matter at this stage. However, the Petitioner in such cases may approach the Commission and the matter shall be dealt with as per the Regulations.”*

19. In the above-quoted order, a view was taken by the Commission that last SPV for the purpose of transfer shall be considered tranche-wise. As regards submission of the Petitioner (that was also the Petitioner in Petitioner No. 29/MP/2018) that there may be circumstances where commencement of supply from the last SPV has not begun due to reasons beyond control of the project developer, the Commission opined that the contention of the Petitioner was speculative and that in such cases, such project developer may approach the Commission.

20. The instant matter also involves transfer of Connectivity and LTA for wind power projects being executed through SPVs of the Petitioner under Tranche-I of



SECI. In terms of the order dated 08.05.2019 in Petition No. 29/MP/2018, the last SPV for the purpose of affecting transfer of shareholding shall be the last SPV for each tranche considered separately. However, in the instant case, the Petitioner has approached the Commission for allowing transfer of Connectivity and LTA to its four commissioned SPVs totaling 200 MW (out of 250 MW under Tranche-I) since one SPV (Wind Four Renergy Pvt. Ltd.) could not commission its wind power project of 50 MW. It has been noted earlier that wind power projects under four out of five SPVs have declared COD with latest SPV having COD as 07.08.2019.

21. SECI has cancelled PPA for the said project (Wind Four Renergy Pvt. Ltd.) and also encashed the Performance Bank Guarantee of Rs. 10 crores with regard to the non-commissioned project. SECI, through a letter dated 08.10.2020 addressed to the Respondent, stated as under:

“3. In view of the failure on part of M/s. Wind Four Renergy Private Limited to commission the power project by 13.03.2020, the project stands cancelled and SECI had encashed the Performance Bank Guarantee submitted by M/s. Wind Four Renergy Private Limited with respect to the said Project in terms of PPA.

4. M/s. Wind Four Renergy Private Limited had filed a Petition bearing No.226/MP/2020 before Hon’ble Central Electricity Regulatory Commission (Central Commission) seeking relief of extension of time to commission the power project and revision of scheduled commissioning date. The Hon’ble Central Commissioning had reserved order in the above mentioned Petition on 11.08.2020.

5. Accordingly, SECI informs Powergrid that the PPA related to 50 MW Power Project stands terminated for the failure on the part of M/s. Wind Four Renergy Private Limited to commission the project within the time stipulated in the PPA and even during the extended time with liquidated damages. The Petition bearing No.226/MP/2020 filed by M/s. Wind Four Renergy Private Limited is however pending before the Hon’ble Central Commission.”

22. Vide order dated 08.03.2021 in Petition No. 226/MP/2020, the Commission extended SCOD of the wind power project of Wind Four Renergy Pvt. Ltd. up to



19.07.2020. However, Wind Four Renergy Pvt. Ltd. could not commission its wind power project of 50 MW even by the extended SCOD allowed by the Commission. It is noted that Wind Four Renergy Pvt. Ltd. has filed an Appeal before APTEL against the said order dated 08.03.2021 of the Commission. As there is no interim relief or stay has been granted by APTEL, status of PPA for this 50 MW wind power project remains terminated as on date.

23. The issue before the Commission is transfer of LTA and Connectivity for 200 MW, though Tranche-I of SECI under which SPVs of the Petitioner were implementing the wind power projects was for 250 MW and in view of the fact that SECI has cancelled the PPA for 50 MW as the project was not commissioned within the extended SCOD.

24. The Petitioner has contended that transfer of Connectivity and LTA cannot be withheld on account of speculation in relation to proceedings in the Appeal before APTEL. Despite the fact that the Petitioner has filed the Appeal before the APTEL, the legal and factual position qua the status of 50 MW wind power project awarded to Wind Four Renergy Pvt. Ltd. remains unchanged - the wind power project of 50 MW is not commissioned and SECI has cancelled PPA and encashed the performance bank guarantee furnished by Wind Four Renergy Pvt. Ltd.

25. During the hearing of the matter on 25.06.2021, the Respondent PGCIL stated that it does not have an objection for transfer of 200 MW of LTA and Connectivity from the Petitioner to the four SPVs of the Petitioner. However, it requested that rights and liabilities with respect to the remaining 50 MW should be settled.



26. We have also noted the following from the documents submitted by the parties:

(i) CTU intimated grant of Connectivity of 500 MW on 31.03.2017 while SECI awarded LOA of 50 MW each to five SPVs of the Petitioner on 05.04.2017.

(ii) In the LOA issued by SECI and PPA with PTC, there was no mention of project capacity of 250 MW rather separate LOA each of 50 MW has been issued. Also, separate PPA for 50 MW each had been signed by SPVs of the Petitioner with PTC.

(iii) SECI has, vide its letter dated 8.10.2020, certified that PPA in respect of the fifth SPV of 50 MW has been terminated.

(iv) As per RfS:

“Project” is defined by the separate point of injection into the grid at the interconnection /metering points at ISTS substation or in case of sharing of transmission lines, by separate injection at pooling point. Each project must also have a separate boundary, control system and metering.

“Project Capacity” means the maximum AC capacity at the point of injection on which Power Purchase Agreement shall be signed.

27. Thus, after the termination of PPA in respect of Wind Four Renergy Pvt. Ltd., the wind power capacity to be developed by the Petitioner stands reduced to 200 MW under Tranche-I instead of 250 MW for which LoA was signed (followed by PPAs with PTC), subject to the outcome of the Appeal filed by the Petitioner before APTEL.

28. The effective project capacity having been reduced to 200 MW, the question for consideration is of transfer of LTA and Connectivity from the Petitioner to its four SPVs that have commissioned their respective wind power projects and also have completed one year since the last SPV (out of four SPVs that have achieved COD) commissioned its wind power project. We are of the view that no useful purpose



would be served by awaiting the outcome of the Appeal filed by the Petitioner before APTEL and not allowing the Petitioner in the interim to transfer its LTA and Connectivity in respect of these four SPVs that have commissioned their respective wind power projects.

29. In this background, we allow the Petitioner to transfer LTA and Connectivity to four SPVs that have commissioned their respective wind power projects totaling 200 MW as one year is already over since the last SPV (out of four SPVs that have achieved COD) that has commissioned its wind power project on 07.09.2019.

30. The question, however, remains regarding the status of the remaining 50 MW if the Petitioner succeeds in the Appeal before APTEL. During the hearing dated 25.6.2021, the Petitioner has submitted and accepted that the liability of the remaining 50 MW rests with the Petitioner. The Respondent submitted that the Petitioner in the Appeal before APTEL (against the order dated 08.03.2021 in Petition No. 226/MP/2020) has submitted that after the removal of legal hurdles (if the termination of the PPA of Wind Four Renergy Pvt Ltd. as well as the cancellation of the said project by SECI is set aside by APTEL), the Petitioner will transfer the Connectivity in respect of the 50 MW project awarded to Wind Four Renergy Pvt. Ltd. only after expiry of one year from the date of its commissioning.

31. We are, therefore, of the view that there is no immediate need of discharging this liability as the Petitioner shall keep the bank guarantee(s) alive and pay for all the charges in respect of LTA and Connectivity for 50 MW that is not transferred to SPV



(Wind Four Renergy Pvt. Ltd.). PGCIL/ CTU shall ensure that the Petitioner is billed as per provisions of applicable regulations for this 50 MW.

32. The Petition No. 79/MP/2021 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson

