

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. : **144/MP/2019**

Subject : Petition under Section 79(1) of the Electricity Act, 2003 read with Regulations 27 and 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Terms Open Access in inter-State Transmission and related matters) Regulations, 2009 for time extension of infusion of equity as provided under clause 9.3.2 of the Detailed Procedure issued by the Central Commission for 'Grant of Connectivity to projects based on Renewable sources to the inter-State Transmission System' dated 15.5.2018.

Date of Hearing : 26.5.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K Singh, Member

Petitioner : Airpower Windfarms Private Limited (AWPL)

Respondents : Power Grid Corporation of India Limited (TPDDL)

Parties present : Shri Amit Kapur, Advocate, AWPL
Shri Pratyush Singh, Advocate, AWPL
Shri Akshat Jain, Advocate, AWPL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Tushar Mathur, Advocate, CTUIL
Ms. Soumya Singh, Adocate, CTUIL
Shri Bhaskar Laxmanrao Wagh, CTUIL
Shri Sidhart Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Ms. Kavya Bhardwaj, CTUIL

Record of Proceedings

The matter was called out for virtual hearing.

2. The learned counsel for the Petitioner made detailed submissions referring to his Note of Arguments (NoA) and affidavit dated 10.3.2021. The gist of the submissions made are as follows:

- a) The Petitioner is establishing a 250MW Wind Farm Project ("Project") at Khambaliya, Devbhumi Dwarka in the State of Gujarat. For the purpose of evacuating power from its Project, the Petitioner has been granted Connectivity to the Inter State Transmission system (ISTS) by CTUIL.
- b) The Petitioner was granted Stage 1 and Stage-II Connectivity by PGCIL on 13.7.2018 and 24.8.2018 for its Project. On 11.9.2018, the Petitioner and



PGCIL entered into Connectivity Agreement and Petitioner submitted a Bank Guarantee (BG) of Rs 5 crore in favour of PGCIL.

- c) In terms of Clause 9.3.2 of the Detailed Procedure, the Petitioner failed to submit proof for infusion of 10% funds towards execution of the Project to CTUIL within 9 months of the grant of Stage-II connectivity and accordingly the Petitioner initially filed the instant petition seeking extension of five months for infusion of 10% equity fund.
- d) The Commission vide RoP dated 24.5.2019 had granted interim protection to the Petitioner by restraining PGCIL from invocation of bank guaranteed till the decision of the instant petition.
- e) Subsequent to the filing of petition, various 'force majeure' events took place mainly (i) Refusal by Gujrat Energy Development Authority (GEDA) to extend the validity of Developer Permission granted to AWPL, due to change in the policy of Gujarat government (ii) delay by PGCIL in commissioning of Jam Kambaliya Pooling Station (from SCOD, June, 2020 till actual COD of April, 2022), (iii) restriction by SECI in participating Wind Tenders, (iv) outbreak of Covid-19 Pandemic, and (v) delay in grant of "No Objection" from Airport Authority, which made execution of the Project impossible.
- f) As the performance of obligation under the Connectivity Agreement is based on the Project being set up by the Petitioner, the termination of Project due to 'force majeure' events has frustrated the Connectivity Agreement. Accordingly, in view of the above, Petitioner has prayed to the Commission to surrender its Stage-II Connectivity and PGCIL be directed to return the bank guarantees.
- g) PGCIL did not file its reply to the Petitioner's affidavit dated 10.3.2021 on the issue of 'force majeure' events and accordingly, the said facts are deemed to be admitted.
- h) Jam Khambhaliya PS was commissioned in April,2022 i.e. with the delay of 22 months from SCOD i.e June, 2020. The obligation of PGCIL to provide the transmission system in timely manner was in the nature of a reciprocal promise and performance in terms of Section 53 of Indian Contract Act,1872.
- i) Placed reliance on APTEL's judgement dated 12.4.2022 in Appeal No. 53 of 2022 in case of Shapoorji Pallonji Infrastructure Capital Company Pvt. Ltd. Vs. PGCIL wherein in similar facts, APTEL had set-aside the Commission's order directing PGCIL to encash the BG of the generating company on account of revocation of Stage II Connectivity. Accordingly, PGCIL in the instant case cannot encash BG on account of surrender of Stage II Connectivity, if no loss has been suffered by PGCIL due to inability of Petitioner to discharge its contractual obligation.

3. The learned counsel for CTUIL submitted that the Petitioner expressed its intention to surrender Stage-II Connectivity only on 20.10.2021. The revised SCOD of the Jam Khambhaliya PS was 30.11.2021 and was put into commercial operation on 12.4.2022. She submitted that the TBCB licensee has completed the PS and the bays are lying unallocated and requested the Commission to take this factor into consideration while accounting the loss suffered by the PGCIL, while treating the BG submitted by the Petitioner. She further submitted that reliance placed by the Petitioner on the case of Shapoorji Pallonji Infrastructure Private Company Ltd. is misplaced as the facts in that case are different from the facts in the instant case. With respect to treatment of BG, she referred to CTUIL affidavit dated 18.11.2021 and submitted that the Revised Procedure does not provide for specific treatment of surrender of Stage-II Connectivity. She submitted that issue of 'force majeure' is not a relevant consideration in the provisions of Detailed Procedure or in the Revised



Detailed Procedure or in the Connectivity Agreement. CTUIL has to administer Connectivity grants including revocation and surrender in terms of the provisions of the Regulations, Procedures and Agreements. She submitted that CTUIL is entitled to encash the BG's in terms of Clause 10.8.(b) of the Revised Detailed Procedure.

4. In response, learned counsel for the Petitioner submitted that the contention of Respondent that the issue of surrender of Stage-II Connectivity was stated by the Petitioner in October, 2021 is incorrect as the intention to surrender the Stage-II connectivity was expressed by the Petitioner in March, 2021. Placing reliance on Commission's order dated 17.12.2018 in Petition No. 95/MP/2017 (Welspun Energy Ltd/ Vs. SECI), learned counsel submitted when the projects are delayed due to government delay and such events are beyond the control of the developer and same could not have been avoided despite reasonable care.

5. The learned counsel for the Petitioner submitted that CTUIL has not quantified their loss till date. The Petitioner has submitted the details of the amount incurred by the Petitioner towards implementation of the Project. The learned counsel further requested to extend the interim protection given by the Commission vide RoP dated 24.5.2019 from encashment of BGs by CTUIL till the disposal of the petition.

6. In response, the learned counsel for the CTUIL submitted that the CTUIL does not construct the transmission assets and the instant pooling station was constructed by Jam Khambhaliya Transmission Ltd under the TBCB route and four of the bays constructed by it are lying unused.

7. The Commission directed CTUIL not to take any coercive action against the Petitioner till final orders in the matter and the interim protection given in RoP dated 24.5.2019 would continue.

8. After hearing the Parties, the Commission reserved its order in the matter.

By order of the Commission

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(V. Sreenivas)
Joint Chief (Law)

