

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 144/MP/2019

Coram:

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

Date of Order: 14.12.2022

In the matter of:

Petition under Section 79(1)(c) of the Electricity Act, 2003 read with Regulation 27 and Regulation 33A of 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 for extension of time for 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.

And In the matter of:

Airpower Windfarms Private Limited,
9th Floor, Godrej Coliseum, C Wing,
Sion-Trombay Road, Sion (East),
Mumbai-400022, Maharashtra.

.....Petitioner

Versus

Powergrid Corporation of India Limited,
(Central Transmission Utility of India Limited),
'Saudimini', Plot-2,
Sector 29, Gurgaon-122001.

...Respondent

For Petitioner : Shri Amit Kapur, Advocate, AWPL
Shri Pratyush Singh, Advocate, AWPL
Shri Akshat Jain, Advocate, AWPL

For Respondent : Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Tushar Mathur, Advocate, CTUIL



Ms. Soumya Singh, Advocate, CTUIL
Shri Bhaskar Laxmanrao Wagh, CTUIL
Shri Sidhart Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Ms. Kavya Bhardwaj, CTUIL

ORDER

Airpower Windfarms Private Limited has filed the present petition under Section 79(1)(c) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Regulation 27 and Regulation 33-A 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 (hereinafter referred to as 'the Connectivity Regulations') for extension of time with regard to infusion of equity as provided under Clause 9.3.2 of the Detailed Procedure issued by the Central Electricity Regulatory Commission for grant of connectivity to projects based on renewable sources to the inter-State Transmission System dated 15.5.2018, (hereinafter referred to Detailed Procedure (pre-revised)). The Detailed Procedure for 'Grant of Connectivity to projects based on renewable sources to inter-State transmission system" was revised on 20.2.2021. Therefore, the same is hereinafter referred to as the 'Revised Detailed Procedure'.

2. The Petitioner has made the following prayers:

- "a) *Grant to the Petitioner the extension of time by 5 (five) months for 10% equity infusion as provided under the Connectivity Regulations read with the Detailed Procedure and the timeline specified under Clause 9.3.2 of the Detailed Procedure;*



- b) *Restrain the Respondent from revocation of Stage-II Connectivity and encashing the Bank Guarantee(s) dated 19.9.2018 furnished by the Petitioner till the decision in the present petition;*
- c) *Grant ad-interim ex-parte Orders in terms of prayer (b) above; and*
- d) *Pass any such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case."*

3. In support of its prayers, the Petitioner has made the following submissions:

- a) The Petitioner is a Renewable Energy Power Development, namely, Wind Energy Projects at different places in India while the Respondent, Powergrid Corporation of India has been notified by the Central Government as Central Transmission Utility (CTU) under section 38 of the Act to discharge various functions of planning and co-ordination relating to inter-State transmission system. (However, during pendency of the present petition, the Ministry of Power, Government of India, vide Gazette Notification dated 9.3.2021 has notified Central Transmission of Utility of India Limited (CTUIL), a Government Company and a wholly owned subsidiary of POWERGRID, as the CTU under section 38 of the Act). Accordingly, we have hereinafter used in this order, the expression 'CTUIL' in place of 'CTU'.
- b) The Petitioner is establishing a 250 MW Wind Farm Project at Khambaliya, Devbhumi Dwarka in the State of Gujarat (hereinafter referred to as 'the Project'). For evacuation of power from the said Project, the Petitioner in terms of the provisions of the Connectivity



Regulations, applied for Stage-I Connectivity and the CTUIL through its letter dated 13.7.2018 granted Stage-I Connectivity in respect of the said Project with connectivity at Jam Khambaliya Pooling Station. Jam Khambaliya Pooling Station is owned, operated and maintained by the Powergrid Corporation of India Limited (PGCIL) being part of inter-State Transmission System.

- c) Grant of Stage-I Connectivity required the Petitioner to apply for Stage-II Connectivity and Long Term Access (LTA) in order that system strengthening may be planned, if need be, and that the Petitioner was required to develop a 220 kV single circuit transmission line from 400/220 kV Pooling Station of the Petitioner to Jam Khambaliya Pooling Station.
- d) The Petitioner applied for Stage-II Connectivity of its said Project at Jam Khambaliya Pooling Station and the CTUIL vide its letter dated 24.8.2018 granted Stage-II Connectivity to the Petitioner subject to fulfilment of certain provisions of Clause 9.2.2 of the Detailed Procedure (pre-revised). Accordingly, the Petitioner submitted ownership/lease rights/land use rights for 50% of the land required for the capacity of Stage-II Connectivity as well as achievement of financial closure with sanction letter.



- e) Later, the Petitioner and the Respondent entered into Transmission Agreement for Connectivity on 11.9.2018. Besides this, the Petitioner also furnished a Bank Guarantee of ₹5 crore to the Respondent which was subsisting, valid and enforceable till 1.6.2020, with undertaking to renew and maintain the same as per the provisions of Detailed Procedure and Grant of Connectivity of Stage-II from time to time.
- f) The Petitioner acquired 100% of the land required for construction of 250 MW Wind Farm Projects and also fulfilled various requirements for establishing the said Project, such as establishment and execution of 114 Wind Turbines of 2.2 MW capacity each, achieved financial closure of the Project on 10.7.2018, received developer's permissions for setting up of entire 250 MW Project from Gujarat Energy Development Agency (GEDA) and No Objection Certificate (NOC) from Airports Authority of India (AAI) for construction of respective sites allotted to the Petitioner.
- g) Owing to the General Election in the country, the investors were then waiting for the formation of the new Government whereupon there would be significant increase in the bidding processes for selection of bidders to generate and supply electricity from non-conventional sources, such as Wind Power. In addition, there were certain issues/ambiguity in relation to the changes made post promulgation of CGST rate Notification No. 27/2018 and Notification No. 24/2918



dated 31.12.2018 for which the Indian Wind Turbine Manufacturer Association ('IWTMA') had taken up the matter before the GST Committee, Ministry of Finance.

- h) The Petitioner was not informed about the firm co-ordinates of Jam Khambaliya Sub-station to which the Project being established by the Petitioner is intended to be connected and the said sub-station is envisaged to come later. The Petitioner wrote a letter dated 14.3.2019 to the Respondent requesting it to share the details of location of the proposed Jam Khambaliya Sub-station.
- i) The Petitioner kept on informing the Respondent between December, 2018 to March, 2019 about the status of the Project in the Joint Co-ordination Committee Meetings conducted by CTUIL and was also submitting the quarterly reports on regular basis of the development made in the establishment of the Project to the Respondent.
- j) There is delay in infusion of 10% equity, which is required to be infused within a period of 9 months from the date of grant of Stage-II Connectivity given on 24.8.2018.
- k) The location of Jam Khambaliya ISTS Pooling Station and 400 kV bay number where the dedicated 400 kV transmission line is required to be terminated is yet to be confirmed by the Respondent. The timeframe for construction and execution of the Jam Khambaliya Pooling Station



which is to be set up through the process of Tariff Based Competitive Bidding has also not been decided/declared and this fact is evident from the Empowered Committee on Transmission dated 21.12.2018.

- l) Accordingly, the Petitioner may be allowed a period of 5 months for fulfilling the conditions mentioned in the Detailed Procedure.
- m) According to the Petitioner, Section 79 of the Act read with Regulation 33A of the Connectivity Regulations empowers the Commission to remove hardship of an affected party arising out of “Change in Law” and “*force majeure*” events and to address the unforeseen impact. The Detailed Procedure notified by the Commission being procedural in nature, does not bar the Commission to exercise its powers to extend the time for completion of the conditions required under the said Procedure.
- n) The timeline specified under Clause 9.3.2 of the Detailed Procedure dated 15.5.2018 can, therefore, be extended by the Commission in the present case where the Petitioner has been affected by the events which were beyond its control and the Petitioner has not, in any manner, acted contrary to the Regulations.

4. The matter was mentioned before the Commission on 24.5.2019 and the Commission directed the Respondent not to take any coercive action against the



Petitioner. The Commission further directed the Petitioner to serve notice upon the Respondent and to file reply in the matter and the Petitioner to file rejoinder.

5. The Respondent has filed its reply vide affidavit dated 31.5.2019. The main submissions of the Respondent are as follows:

- a) In the 22nd & 23rd JCC meetings for generation projects in the Western Region held on 20.12.2018 and 25.3.2019 respectively, all the grantees of Stage-II connectivity under the Detailed Procedure (pre-revised) including the Petitioner were reminded of their obligations to submit all documents required under Clause 9.3.2 of the Detailed Procedure (pre-revised).
- b) On 29.1.2019, the Petitioner applied to the Respondent for grant of 250 MW LTA for transfer of power from its proposed Project. The said application of the Petitioner for grant of LTA was discussed in the 35th Meeting of the Western Region constituents regarding connectivity and Long-term access applications in Western Region held on 26.2.2019. Pursuant thereto, the Respondent vide letter dated 11.4.2019 granted LTA of 250 MW to the Petitioner. It was specified in the said grant that the grant of LTA was subject to signing of the requisite LTA Agreement within 30 days of LTA intimation and fulfillment of other conditions mentioned in the said intimation.



- c) The Petitioner vide letter dated 17.4.2019 apprised the Respondent that due to delay in issuance of Letter of Award (LOA) from SECI for the recently concluded Tranche VI bidding process and a further delay in signing of PPA with SECI, the Petitioner could not proceed with subsequent activities and requested the Respondent for an extension of at least two months to sign the LTA Agreement and to submit the required construction phase guarantee. In response, the Respondent, vide its letter dated 26.4.2019, informed the Petitioner to arrange signing of the LTA Agreement by 10.5.2019, failing which the 250 MW LTA granted to the Petitioner/AWPL shall be revoked.
- d) Upon failure of the Petitioner to sign LTA Agreement within the prescribed period of 30 days, the Respondent, vide letter dated 22.5.2019, issued 7 days' notice to the Petitioner to sign LTA Agreement, failing which the LTA granted to the Petitioner will be revoked with all associated consequences in terms of applicable Central Electricity Regulatory Commission's Regulations/Detailed Procedures without any further notice in this regard. The Petitioner also failed to sign the LTA Agreement by 29.5.2019.
- e) The Petitioner also failed to submit the mandatory documentary proof of 10% equity infusion as required under clause 9.3.2 of the Detailed Procedure, (pre-revised) within the stipulated period of 9 months from the date of grant of Stage-II Connectivity, i.e. on or before 24.5.2019.



Reasons cited for not signing the LTA by the Petitioner was delay in grant of LOA by SECI while reasons given for delay in submitting proof of grant of fund of 10% for project commissioning were General Elections and pending GST clarifications. The Petitioner has not mentioned anything regarding the LTA grant made to it and the non-signing of LTA Agreement with the Respondent.

- f) Since there is failure on part of the Petitioner to submit the required documentary proof within the prescribed mandatory period, the Stage-II Connectivity is liable to be revoked/cancelled in terms of clause 9.3.3 of the Detailed Procedure (pre-revised).

6. In response, the Petitioner vide rejoinder affidavit dated 24.6.2019 has submitted as follows:

- a) With regard to the issue of Long Term Access Agreement (LTAA) and cancellation thereof, the Respondent is confusing the issue by co-relating the grant of LTA with issuance of Stage-II Connectivity. The Stage-II Connectivity, in essence, is for allocation of bay at a particular sub-station and LTA is required for flow of power from Point A to point B. The grant of connectivity and signing of LTA operate in different fields and have different purposes.



- b) The LTA aspect needs to be considered independent of the connectivity issue. The Petitioner reserves the right to deal with LTA issue separately.
- c) In the present case there is no redundancy or under-utilisation or sub-optimal utilization of sub-station, as the sub-station is planned to be established by June, 2020. Further, the planned capacity for the sub-station in question as approved is 1500 MW and the allotment of the capacity as on date is 600 MW (including 250 MW allotted to the Petitioner) and as such there is no blocking of the available infrastructure.

7. It is worthwhile to mention here that during pendency of the matter and in the course of hearing the matter on 27.8.2020, it was urged on behalf of the Petitioner that there were certain subsequent developments which were required to be brought on record by way of an additional affidavit to effectively adjudicate the issue involved in the present petition. The Commission permitted the Petitioner to file an additional affidavit and the same was filed by the Petitioner on 10.3.2021. In this affidavit dated 10.3.2021, the Petitioner is seeking to surrender Stage-II Connectivity granted to it by the Respondent in view of certain events of *force majeure* which make the performance of obligations of the Petitioner under the Connectivity Agreement impossible and as such the same frustrates the Connectivity Agreement in terms of Section 56 of the Contract Act, 1872. Thus, in view of this affidavit dated 10.3.2021, the original prayer of the Petitioner for



grant of extension of five months' time for infusion of equity of 10% as per Connectivity Regulations has become infructuous. The issue which now remains to be decided is that on surrender of Stage-II Connectivity by the Petitioner on the alleged events of *force majeure*, whether the Petitioner can be discharged from its duties in terms of the Connectivity Agreement.

8. The Petitioner vide affidavit dated 10.3.2021 has made the following submissions:

- a) The Revenue Department, Government of Gujarat in its Resolution dated 27.11.2019, decided that SECI- I, II, III & IV bid winners would be allotted Government land as identified by bid winners (Pre-identified locations) while for SECI-V and all subsequent windfarm projects, the Government land will be allotted only in proposed Renewable Energy Park. Therefore, in the State of Gujarat, allotment of Government/revenue land has been restricted to SECI-I to SECI-IV bid winners only.
- b) The Developer Permissions granted by Gujarat Energy Development Agency (GEDA) were expiring, therefore, the Petitioner by its various letters dated 30.7.2020, 31.8.2020, 9.9.2020 and 24.9.2020 requested GEDA to extend the validity of all the Developer Permissions for a further period of 12 months to enable the Petitioner to construct and execute its Project.



- c) In response, GEDA vide its letters dated 11.9.2020 and 17.10.2020 rejected the Petitioner's request for extension of the validity of Developer Permission stating that the Developer Permissions of 250 MW given to the Petitioner were no longer valid for setting up its Project without disclosing any reasons.
- d) In the meeting on 28.11.2020, under the Chairmanship of the Chief Minister of Gujarat, the State Government decided that Wind Projects under SECI-V to SECI-VIII Tranche bid will be allowed to be established on the Government land allotted before 27.11.2019 and the land purchased by the developer (i.e. private land) before 27.11.2019.
- e) GEDA has been directed to give Developer Permission only for Wind Projects under SECI-V to SECI-VIII Tranche bid so that these wind projects can be completed timely.
- f) On consistent follow up with GEDA, the Petitioner was informed that the extension of Developer Permission was not being processed by GEDA on account of directions issued by the Revenue Department, Government of Gujarat vide Resolution dated 27.11.2019 whereby allotment of revenue waste land in Gujarat has been restricted only to bid winners up to SECI-I to SECI-IV wind tenders and for bid winners



post SECI-IV tenders, land is to be allotted based on the RE-Park Policy.

- g) In the absence of a valid Developer Permission from GEDA, the Petitioner cannot construct/establish and commission the proposed 250 MW Windfarm Project in Gujarat. Accordingly, the Petitioner would not be able to participate in current or future SECI tenders. As a result, the Stage-II ISTS Connectivity granted by PGCIL which is predicated upon, the Petitioner selling/supplying power to SECI through ISTS will remain unutilized.
- h) GEDA's refusal to extend the Developer Permissions has caused significant delay in construction/commissioning of the Project. Performance of obligations is predicated on availability of a valid Development Permission. However, despite all reasonable efforts by the Petitioner for performance of obligations under the Connectivity Agreement has been adversely impacted due to GEDA's refusal to extend the Development Permission on account of circumstances beyond the control of the Petitioner.

Delay in operationalization of Transmission System

- i) As per Stage-II Connectivity Agreement dated 11.9.2018 and PGCIL bay allocation letter dated 8.5.2020, connectivity was granted to the Petitioner for its 250 MW Project at 400/220 kV Jam Khambaliya ISTS Pooling Station (GIS). The date of operationalization of the



Connectivity was recorded as 1.12.2019. As per the minutes of the 2nd meeting of National Committee on Transmission (NCT) held on 4.12.2018, the date of completion of the scheme Jam Khambaliya Pooling Station for providing connectivity to RE projects (1500 MW) in Dwarka (Gujarat) was recommended as June, 2020. However, it is an admitted position that construction and execution of the transmission system i.e., Jam Khambaliya PS through which the Petitioner is to evacuate power has been delayed.

- j) In the minutes of 28th meeting of Joint Co-ordination Committee for Generation Projects in Western Region held on 30.6.2020, it was recorded that Transmission System for Jam Khambaliya PS and inter-connection facilities for providing connectivity to RE Projects in Dwarka, Gujarat was scheduled to be completed by June, 2021.
- k) Minutes of the meeting on Power System Planning and Appraisal-I Division, CEA, held on 21.9.2020 in terms of which SCOD of Jam Khambaliya Pooling Station was revised to 1.8.2021.
- l) Non-availability of the transmission system creates uncertainty with respect to evacuation of power from the Project, the burden of which falls on the Petitioner in so far as there is no liability on PGCIL till the system is not operationalized. Further, the delay in operationalization of the transmission system has a cascading effect on the overall



financial health of the Project as in the absence of operationalization of the transmission system, the Project would be stranded on account of non-availability of evacuation infrastructure. In such a situation, Interest During Construction (“IDC”) increases substantially.

Reciprocal obligation of PGCIL to provide transmission service in time

- m) Obligation of PGCIL to provide the transmission system in a timely manner was in the nature of a reciprocal promise and performance had to be done in terms of Section 52 of the Contract Act, 1872. Without Jam Khambaliya PS being commissioned in time, the Petitioner could not have been expected to perform its obligation under the Connectivity Agreement.

The Petitioner is restricted from participating in SECI Wind Tenders

- n) Subsequent to filing of the present petition, on 21.12.2020 SECI invited bids under Tranche-X for 1200 MW ISTS connected Wind Power Project under tariff based competitive bidding. In terms of Clause 45.24 of the Request for Selection (“RFS”) for Tranche-X issued by SECI, the delivery points for the projects i.e., the ISTS sub-station has to be chosen by the bidder only out of the list of ISTS sub-stations specified in the RFS documents. Thus, under SECI Tranche-X, bidders have been restricted to choose appropriate sub-stations of their choice.



- o) ISTS Pooling sub-stations specified in SECI Tranche-X do not include any of the PGCIL sub-stations in Gujarat including Jam Khambaliya PS where the Petitioner holds connectivity. This prevented the Petitioner from participating in the SECI tenders while adversely affecting the financial viability of the Project. Even though the Petitioner holds an ISTS Connectivity, but due to reasons beyond its control, it has been restricted to sell/supply power using such Connectivity. As a result, the Stage II Connectivity remain unutilized.

Outbreak of COVID-19 and consequent national lock-down

- p) In terms of OM of Ministry of Finance, Government of India dated 19.2.2020, adopted by MNRE vide Notification dated 20.3.2020, outbreak of Covid-19 pandemic and consequent lock-down qualify as an event of *force majeure* which had impacted the Petitioner's performance of obligations under the Connectivity Agreement.

Delay in grant of NOC from Airports Authority of India (AAI) and Ministry of Defence (MOD) with respect to Khambaliya Airstrip.

- q) On 10.7.2019, MNRE/MOD had issued NOC to the Petitioner with respect to Jamnagar Airforce base. In the said NOC, height restriction was imposed by MOD for 13 locations of wind turbines falling within 20 km of Khambaliya Airstrip.
- r) Initially, the Petitioner did not apply for NOC with respect to Khambaliya Airstrip as the same was not included in the exhaustive list



of 344 Aerodromes provided under Schedules III to V of the Ministry of Civil Aviation Notification G.S.R. 751 (E) dated September, 2015. Upon further enquiry from relevant authorities, the Petitioner discovered that Khambaliya Airstrip was last operational in the 1970s and lies unused today. Since location of the Project could not have been changed at that stage and to avoid any prospective issues, on 17.10.2019, the Petitioner proactively applied to MOD through MNRE seeking NOCs for all Project locations including Khambaliya Airstrip also.

- s) After multiple follow-ups and physically visiting the offices of MNRE and MOD, NOCs for Khambaliya Airstrip were finally issued after almost 7 months on 30.4.2020, 12.5.2020 and 13.5.2020. This led to unnecessary delay in construction work with respect to 13 locations of wind turbines falling within 20 km of Khambaliya Airstrip during 10.7.2019 to 13.5.2020.

Connectivity Agreement stands frustrated in terms of Section 56 of the Indian Contract Act, 1872 (1872 Act) and the Petitioner is relieved of its obligations under the Connectivity Agreement

- t) There is physical impossibility to perform obligations under the Connectivity Agreement as the Petitioner cannot construct the Project in the absence of a valid and subsisting Developer Permission from GEDA. Accordingly, it becomes impossible to construct and



commission the associated pooling sub-station and dedicated transmission line (DTL) as required under the Connectivity Agreement.

- u) The Connectivity Agreement was solely for evacuation of power from the Project. Since, the Petitioner has been restricted to construct/establish the Project the Connectivity Agreement stands frustrated.
- v) The Petitioner had been making all possible efforts to get the Developer Permissions extended. However, due to change in Government of Gujarat Policy, issuance of DP was restricted to SECI-V to SECI-VIII bid winners only and the Petitioner is not one of them.
- w) It becomes impossible for the Petitioner to utilize the Stage-II Connectivity, the very substratum of which has been eroded due to the Connectivity Agreement becoming frustrated and the Petitioner being restricted to participate in SECI Tranche-X Wind Tender.
- x) Since there is no relief provided under the Connectivity Agreement on account of *force majeure*, the Petitioner has no option but to take recourse under Section 56 of the Contract Act, 1872 as the performance has been rendered impossible due to a *force majeure* event, being GEDA's refusal to extend the validity of the Development Permission.



9. The Respondent vide affidavit dated 18.11.2021 has made following submissions:

- a) Detailed Procedure (pre-revised) has been repealed and Revised Detailed Procedure is approved by the Commission for 'Grant of Connectivity to Projects based on renewable sources to inter-State Transmission System' under Regulation 27 of the Connectivity Regulations on 20.2.2021.
- b) The Revised Detailed Procedure, provides for the following two main post-grant compliances of a Stage-II Connectivity grantee:
 - Submission of documents under Clause 9.3.2 (non-bidding route)
 - Completion of dedicated transmission line(s) and generator pooling sub-station(s) under Clause 11.2(A).
- c) As per Clause 9.3.2 of the Detailed Procedure (pre-revised), Stage-II Connectivity Grantees were required to achieve certain milestones from the date of grant of Stage-II Connectivity and submit the requisite documents as proof to CTUIL within nine months from the date of such grant. The Petitioner was granted Stage-II Connectivity on 24.8.2018 and the period of 9 months has ended on 24.5.2019. However, in view of the Commission's directions regarding "no-coercive action", the Stage-II Connectivity was not revoked by CTUIL.
- d) The case of the Petitioner for submission of documents is now governed by Clause 9.3.2 of the Revised Detailed Procedure, which



provides that Stage-II Connectivity Grantees shall achieve the milestones and submit the proof to CTUIL within nine months from date of grant of Stage-II Connectivity or within nine months prior to SCOD of sub-station at which Stage-II Connectivity is granted, whichever is later.

- e) As per Clause 9.3.2 of the Revised Detailed Procedure, the last date for compliance by the Petitioner shall be 9 (nine) months prior to the SCOD of Jam Khambaliya PS. The SCOD of the said sub-station is 30.11.2021. Therefore, the last date for compliance by the Petitioner is 29.2.2021. As on date, the Petitioner is a defaulter in terms of Clause 9.3.2 of the Revised Detailed Procedure. However, no action has been taken by CTUIL in this regard in the light of no-coercive action directions of the Commission.
- f) The progress of the Petitioner's Generation Project was regularly monitored in various Joint Co-ordination Meetings. Recently in the 33rd JCC Meeting of Generation Projects granted Connectivity/LTA in WR held on 27.9.2021, wherein it was recorded that the Petitioner was required to complete the Dedicated Transmission Line (DTL) matching with the commissioning schedule of the Jam Khambaliya ISTS Sub-station i.e. by November, 2021, failing which Stage-II connectivity shall be revoked and Conn-BG1 and Conn-BG2 shall be encashed, as per provisions of Clause 10.8 of the Revised Detailed Procedure. In the meeting, it was also recorded that the Petitioner is required to submit



the necessary documents as per Clause 9.3.2 of the Revised Detailed Procedure.

- g) As 'No-coercive' direction of Commission is continuing from 24.5.2019, the Stage-II Connectivity for the Project of the Petitioner at Jam Khambaliya PS has not been revoked by the CTUIL.
- h) The commissioning status of ISTS bay at Jam Khambaliya PS where the Petitioner's dedicated transmission line is proposed to be connected, is scheduled to be executed matching with its revised SCOD i.e. on 30.11.2021.
- i) The Revised Detailed Procedure does not provide any specific treatment in the case of surrender of Stage-II Connectivity. However, surrender of Stage-II Connectivity is failure of the Stage-II Connectivity grantee to complete the DTL and generator pooling sub-station(s) and as such Stage-II Connectivity is liable to be revoked and Conn-BGs are liable to be encashed as per the provisions of the Revised Detailed Procedure.
- j) Surrender of Stage-II Connectivity is also failure to achieve the milestones (under Clause 9.3.1 or Clause 9.3.2 of the Revised Detailed Procedure, as the case may be), wherein Clause 9.3.4 of the Revised Detailed Procedure provides that Stage-II Connectivity shall be revoked by CTUIL under intimation to the grantee and Conn-BG1 and Conn-BG2 shall be encashed by CTUIL in accordance with the provisions under Clause 10.8(b) of the Revised Detailed Procedure. In



other words, as per the said Clause 10.8(b), both Conn-BG1 (amounting to ₹50 lakh) and Conn-BG2 (amounting to ₹3 crore) are liable to be encashed and the remaining amount of ₹1.50 crore would be returned to the Petitioner. Further, in terms of the Commission's directions given vide order dated 26.7.2021 in Petition No. 477/MP/2020, if a Stage-II Connectivity grantee deposits the amounts encashable under Conn-BG(s) with CTUIL through NEFT/RTGS, the respective Conn-BG(s) shall not be encashed by CTUIL.

10. We have considered the submissions of the Petitioner and Respondent. The Petitioner has contended that due to certain events beyond its control including events of *force majeure* which initially delayed and now rendered the construction of the Project and performance of the Petitioner's obligations impossible under the Connectivity Agreement.

Analysis and Decision

11. The Petitioner has contended that due to Gujarat Energy Development Authority's refusal to extend the Developer Permissions, the Petitioner was unable to commission its Project. The Petitioner has submitted that it was granted Stage-I Connectivity on 13.7.2018 and Stage-II Connectivity on 24.8.2018 by the Respondent in respect of 250 MW Wind Farm Project with connectivity at Jam Khambaliya PS, which is a part of the ISTS. The Petitioner has contended that Connectivity Agreement was executed between the Petitioner and Respondent on 11.9.2018, pursuant thereto, the Petitioner furnished a Connectivity Bank



Guarantee of ₹5 crore in favour of the Respondent which is still valid. It is contended that the Petitioner took substantial steps and also acquired 100% land for construction of 250 MW Project including achieving financial closure for the Project on 20.7.2018, received Developer Permissions for the Project from Gujarat Energy Development Agency (GEDA), NOC from Airports Authority of India for construction at the sites allotted to the Petitioner.

12. The Petitioner has contended that Revenue Department, Government of Gujarat, issued Resolution dated 27.11.2019, and decided that SECI- I, II, III & IV bid winners would be allotted Government land as identified by bid winners (Pre-identified locations) while for SECI-V and all subsequent windfarm projects, the Government land will be allotted only in proposed Renewable Energy Park. Therefore, in the State of Gujarat, allotment of Government/revenue land has been restricted to SECI- I to IV bid winners only. It is contended that GEDA, State Nodal Agency (SNA) in Gujarat, is responsible for endorsing location of renewable developers including wind turbines. It is further contended that the Petitioner after grant of Stage-II Connectivity applied to GEDA for Developer Permissions and GEDA granted the same on various dates at different locations as applied by the Petitioner for setting up the Project. It is contended that the Petitioner applied for extension of validity of all the Developer Permissions through various letters for a further period of 12 months for approvals for setting up the Project of 250 MW at different locations but the same was rejected by GEDA.



13. We have considered the contentions of the Petitioner and perused the record carefully. The Petitioner has furnished copies of Development Permissions of its Project which have been discussed in the subsequent paragraph.

14. We notice from the record that the Petitioner was granted Stage-I and Stage-II Connectivity on 13.7.2018 and 24.8.2018 respectively by the Respondent in respect of 250 MW Wind Farm Project with connectivity at Jam Khambaliya PS, which is a part of the ISTS. In terms of Clause 9.3.2 of the Detailed Procedure (pre-revised), it was required to acquire ownership on lease rights or land use rights for 50% of the land, achieve financial closure or submit proof of release of at least 10% funds towards commissioning of the Project to the CTUIL within 9 months from the date of grant of Stage-II Connectivity i.e. 24.8.2018. However, the said proof was not submitted by the Petitioner to the CTUIL within the said period of 9 months i.e. by 23.5.2019. On 24.5.2019, the Petitioner filed the present petition before the Commission after lapse of 9 months period praying for extension of time of five months for infusion of equity of at least 10% for setting up the Project under the Connectivity Regulations and Detailed Procedure (pre-revised) notified thereunder on the ground that due to General Elections in the country, it could not find potential investors as they were then waiting for formation of the Government, and that there was certain ambiguity with regard to applicability of rates of CGST on Notification No. 27/2018 and Notification No. 24/2018. No material is placed before us by the Petitioner for consideration that in what way the Petitioner was affected by General Election



and CGST Notifications. We do not find any merits in the contentions of the Petitioner that it was affected by General Election and Notifications of CGST. Accordingly, these contentions of the Petitioner are rejected.

15. The Petitioner contends that it was Revenue Department, Government of Gujarat, Resolution dated 27.11.2019, which earmarked that only SECI bid winners, namely, I, II, III and IV will be allotted Government land at the pre-identified locations. For SECI-V and all subsequent windfarm projects, Government land will be allotted only in proposed Renewable Energy Park. The Petitioner submitted in paragraph 21 of its petition that it had already acquired 100% of the land required for construction of 250 MW Wind Farm Projects and also fulfilled various other requirements for establishing the Project. Thus, the plea taken by the Petitioner that it was in a precarious position by Notification dated 27.11.2019 of the Revenue Department, Government of Gujarat directing that Government/revenue land has been restricted to SECI-I to SECI-IV bid winners and proposed Renewable Energy Park does not hold water. Moreover, the Developer Permissions granted by GEDA to the Petitioner remained valid for approximately one year and beyond one year. The Petitioner has failed to show what prevented it from making use of the Developer Permissions granted to it by the GEDA for setting up of the Project prior to 27.11.2019.

16. The Petitioner has contended that construction and completion of the transmission system i.e. Jam Khambaliya PS through which the Petitioner is to evacuate power got delayed. The Petitioner has also contended that in the



absence of transmission system, the Project would be stranded on account of non-availability of evacuation infrastructure which will increase Interest During Construction (IDC).

17. We have considered the above contentions of the parties and have gone through the record. We do not find any force in the contention of the Petitioner for not starting the implementation of its project considering that non-availability of the transmission system creates uncertainty with respect to evacuation of power from the Project, particularly when CEA and NCT in its meeting dated 4.12.2018 confirmed about commissioning of Jam Khambaliya PS. Rather, it seems there was lack of seriousness on the part of the Petitioner in implementation of the project as it failed to achieve the milestones as envisaged in Clause 9.3.2 of Detailed Procedure (pre-revised) at the time when it filed the present petition before the Commission on 24.5.2019.

18. The Petitioner has contended that it was restricted from participating in SECI Wind tenders since SECI invited location specific tenders where Jam Khambaliya was not covered.

19. We have considered the above submissions of the Petitioner and have perused the record. We observe that Petitioner got the Stage-II Connectivity on the basis of land documents and it could establish its project either through winning bid in tender invited by SECI or NTPC or States or any other authorized agency or on merchant basis. The Connectivity of the project nowhere required



petitioner to win bid in specific SECI bids. Accordingly, we reject this contention of the Petitioner.

20. The Petitioner has contended that due to outbreak of Covid-19 and consequent national lock-down its Project was delayed. The Petitioner has further contended that MNRE in its Notification dated 17.4.2020, directed all the renewable energy implementing agencies under MNRE to treat the national lock-down due to Covid-19 as *force majeure* event and the States to consider lock-down due to Covid-19 as a *force majeure* event. The Petitioner has contended that due to nationwide lock-down, the obligations and performance of the Petitioner were impacted and the obligations of the Petitioner under the Connectivity Agreement were significantly delayed and hampered the construction of 250 MW Project.

21. We have considered the above contentions of the Petitioner. As we have observed above while examining the pleas of the Petitioner for change in Government of Gujarat Policy and consequent refusal of GEDA to extend the validity of Developer Permission granted to the Petitioner that it was for the Petitioner to plan and commission the Project prudently by taking the steps well in time at its end. Further, Covid-19 restrictions were imposed by the Government of India after 20th March, 2020 much after the grant of Stage-I Connectivity on 13.7.2018 and Stage-II Connectivity on 24.8.2018. Thus, we have no occasion in the present case to examine the plea of the Petitioner for outbreak of Covid-19 and consequent national lock down.



22. The Petitioner has contended that Airports Authority of India (AAI) and Ministry of Defence (MOD) with reference to Khambaliya Airstrip issued NOC to the Petitioner for Jamnagar Airforce base and in the said NOC height restriction was imposed by MOD for 13 locations of wind turbines falling within 20 km of Khambaliya Airstrip due to which the Project of the Petitioner was delayed. The Petitioner has contended that initially the Petitioner did not apply for NOC with respect to Jamnagar Airforce base as it was not included in the exhaustive list of 344 Aerodromes provided under Schedules-III to V of the Ministry of Civil Aviation Notification GSR 751(E) September, 2015.

23. We have considered the above contentions of the Petitioner. The Petitioner has itself admitted that initially it did not apply for NOC with respect to Jamnagar Airforce base as it was not in the exhaustive list of 344 Aerodromes of Ministry of Civil Aviation Notification, September, 2015. We have already observed above that it was the job of Petitioner to plan and commission the Project prudently by taking the timely steps and as a prudent business person it should have taken stock of all the statutory compliances and prevailing circumstances before commencing the work. We do not find any merit in this contention of the Petitioner and the same is accordingly rejected.

24. For the reasons mentioned above in detail, we are of the view that the pleas of the Petitioner that refusal to extend the validity of the Developer Permission by GEDA and change in the land policy of Government of Gujarat, as discussed above, have no merits in the facts and circumstances of the case



to be covered under *force majeure* which allegedly frustrated the Connectivity Agreement. Accordingly, we reject these contentions of the Petitioner.

Treatment of Bank Guarantee

25. In view of above discussions, it is clear that the present petition has been filed under the Connectivity Regulations and detailed procedure made thereunder. The Revised Detailed Procedure has come into existence vide Commission's order dated 20.2.2021 in File No. L-1/(3)/2009-RE, whereby the pre-revised Detailed Procedure has ceased to have effect.

26. The provisions with regard to connectivity and bank guarantee have been laid down in Clause 5 of the Revised Detailed Procedure and they are as follows:

"5. Provisions with regards to Connectivity and Bank Guarantee

5.1 After coming into force of this Procedure, for an entity which has been granted Stage-II Connectivity under the Pre-revised Procedure,

(1) Any action already initiated for revocation of Stage-II Connectivity or encashment of Bank Guarantee prior to the issue of this Procedure shall be completed under the Pre-revised Procedure.

(2) Any action including revocation of Stage-II Connectivity or encashment of Bank Guarantee initiated after the issue of this Procedure shall be in accordance with this Procedure.

(3) Conn-BG submitted under the Pre-revised Procedure shall be treated as Conn-BG1 for Rs. 50 lakh and Conn-BG2 for the balance amount.

(4) In the event of encashment of such Conn-BG1 or Conn-BG2 as worked out in terms of sub-clause (3) of Clause 5.1 above, under Clause 10.8 of this Procedure:
(i) If the associated bay(s) at the ISTS sub-station is being constructed by Stage-II grantee itself, amount corresponding to Conn-BG1 shall be forfeited and balance amount being treated as Conn-BG2 under this Procedure shall be refunded.

(ii) If the associated bay(s) at the ISTS sub-station is being constructed by ISTS licensee, amount corresponding to Conn-BG1 and amount of Conn-BG2 in terms



of Clause 10.8(a) of this Procedure shall be forfeited and any excess amount submitted as Conn-BG under the Pre-revised Procedure shall be refunded.

27. As per Clause 5.1 (2) of the Revised Detailed Procedure, any action including revocation of Stage-II Connectivity or encashment of Bank Guarantee initiated after the issue of this Procedure shall be in accordance with this Procedure. No action as yet has been initiated for revocation of Stage-II Connectivity by the CTUIL as the Commission has given protection and interim relief from encashing the bank guarantee till final orders in the matter.

28. In the present case, the Petitioner was granted Stage-II Connectivity on 24.8.2018. The Petitioner in the present petition initially sought extension of time of five months to achieve the milestones. However, later it chose not to go with the said grant of extension of time to meet the milestones and sought relief that it may be allowed to surrender Stage-II Connectivity and the bank guarantee should be returned to it which was lying deposited with Respondent on various grounds of *force majeure* which made impossible for the Petitioner to commission its Project. As discussed above, we do not agree with the said pleas of the Petitioner and have already rejected them. There is no provision in the Revised Detailed Procedure to surrender the bank guarantee.

29. Clause 9.3.2 of the Revised Detailed Procedure provides as follows:

“9.3.2. After grant of Stage-II Connectivity, the grantees covered under Clause 9.2.2 shall have to achieve the following milestones and submit the proof to the CTU within nine months from the date of grant of Stage-II Connectivity or within nine months prior to SCOD of substation at which Stage-II connectivity is granted, whichever is later:



- (i) *In case of an entity who has submitted the proof of release of at least 10% of the project cost including the land acquisition cost through equity, duly supported by Auditor's certificate, shall submit documents regarding achievement of financial closure;*
- (ii) *In case of entity who has submitted documents regarding achievement of final closures shall submit the proof of release of at least 10% of the project cost including the land acquisition cost through equity, duly support by Auditor's certificate."*

30. Clause 9.3.4 of the Revised Detailed Procedure provides as follows:

"9.3.4. In the event of failure to achieve above milestones as listed in Clause 9.3.1 or Clause 9.3.2 above, as applicable, Stage-II Connectivity shall be revoked by CTU under intimation to the grantee and Conn-BG1 and Conn-BG2 shall be encashed by CTU in accordance with the provisions under Clause 10.8 (b) of this Procedure."

31. Clause 10.8 of the Revised Detailed Procedure provides as follows:

"10.8. Conn-BG1 and Conn-BG2 issued by a scheduled bank in favour of "Power Grid Corporation of India Ltd." shall be submitted as per FORMAT-RCON-BG, for the amount as detailed below:

(a) Conn-BG1 and Conn-BG2 shall be furnished by the Applicants as detailed below:

<u>Bay allocated</u>	<u>Conn-BG1</u>	<u>Conn-BG2</u>	<u>Additional Conn-BG2 for each additional bay</u>
132 kV	Rs. 50 Lakh	Rs. 3 crore	Rs. 3 crore
220/230 kV	Rs. 50 Lakh	Rs. 3 crore	Rs. 3 crore
400 kV	Rs. 50 Lakh	Rs. 6 crore	Rs. 6 crore

Provided that Conn-BG2 and Additional Conn-BG2 shall not be payable if the Stage-II Connectivity grantee constructs the bay by itself;

(a) In case Stage-II Connectivity is revoked in accordance with Clause 9.3.4 or Clause 11.2 of this Procedure, Conn-BG1 and Conn-BG2 shall be encashed.

Provided that Conn-BG2 shall be returned to the grantee if at the time of revocation of Stage-II Connectivity, the concerned transmission licensee has not awarded the package for construction of bay(s) in connection with Stage-II Connectivity.



(c) The proceeds of such encashed Conn-BG1 and Conn-BG2 shall be adjusted in Monthly Transmission charges under CERC (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020.”

32. The case of the Petitioner for submission of documents is covered by Clause 9.3.2 of the Revised Detailed Procedure which provides that Stage-II Connectivity Grantees shall achieve the milestones and submit the proof to CTUIL within nine months from date of grant of Stage-II Connectivity or within nine months prior to SCOD of sub-station at which Stage-II Connectivity is granted, whichever is later.

33. Learned counsel for CTUIL in the course of hearing the matter on 26.5.2022 submitted that revised SCOD of Jam Khambaliya PS was 30.11.2021 and it was put into commercial operation on 12.4.2022. It was also stated on behalf of CTUIL that TBCB licensee has completed the PS and the bays are lying unallocated and requested the Commission to take these facts into consideration while treating the bank guarantee submitted by the Petitioner. The SCOD of the said sub-station is 12.4.2022. Therefore, the last date for compliance by the Petitioner is 11.8.2021. As on date, the Petitioner is a defaulter in terms of Clause 9.3.2 of the Revised Procedure.

34. Surrender of Stage-II Connectivity in the present case is failure of the Petitioner to commission its Project, complete the DTL and generator pooling sub-station(s) and as such Stage-II Connectivity is liable to be revoked and Conn-BGs are liable to be encashed as per the provisions of the Revised Detailed Procedure. Further, surrender of Stage-II Connectivity is also failure to achieve



the milestones Clause 9.3.2 of the Revised Detailed Procedure, wherein Clause 9.3.4 of the Revised Detailed Procedure provides that Stage-II Connectivity shall be revoked by CTUIL under intimation to the grantee and Conn-BG1 and Conn-BG2 shall be encashed by CTUIL in accordance with the provisions under Clause 10.8(b) of the Revised Detailed Procedure. We observe that Petitioner had obtained Connectivity under pre-revised procedure and submitted BG for ₹5 crore which needs to be treated as Conn-BG1 and Conn-BG2 in terms of the Revised Procedure. In other words, as per the said Clause 10.8(b), both Conn-BG1 (amounting to ₹50 lakh) and Conn-BG2 (amounting to ₹3 crore) are liable to be encashed and the remaining amount of ₹1.50 crore would be returned to the Petitioner. We direct CTUIL to revoke the Stage-II Connectivity granted to the Petitioner and encash ₹50 lakh and ₹3 crore towards Conn-BG1 and Conn-BG2 respectively and return the balance amount to the Petitioner. Further, in terms of the Commission's directions given vide order dated 26.7.2021 in Petition No. 477/MP/2020, if a Stage-II Connectivity grantee deposits the amounts encashable under Conn-BG(s) with CTUIL through NEFT/RTGS, the respective Conn-BG(s) shall be returned by CTUIL on receipt of corresponding amounts.

35. In the light of above discussions and findings, Petition No. 144/MP/2019 is disposed of.

sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

