

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 628/MP/2020

Coram:

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

Date of order: 30.12.2022

In the matter of:

Petition under Section 79(1)(C), Section 79(1)(F) and Section 79(1)(K) of the Electricity Act, 2003 seeking directions from this Commission to Power Grid Corporation of India Limited to extend the long term access start date and extend the deadline from completion of the dedicated transmission line and pooling Sub-station.

And in the matter of:

1. Azure Power India Private Limited,
5th Floor, Southern Park, D-II Saket Place, Saket,
New Delhi – 110017.
2. Azure Power Forty-Three Private Limited,
5th Floor, Southern Park, D-II Saket Place,
Saket New Delhi – 110017.
3. Azure Power Forty-One Private Limited,
5th Floor, Southern Park, D-II Saket Place,
Saket New Delhi – 110017.
4. Azure Power Maple Private Limited 5th Floor,
Southern Park, D-II Saket Place, Saket
New Delhi – 110017.

.....Petitioners

Vs

1. Power Grid Corporation of India Limited,
Saudamini Plot 2, Sector 29, Near IFFCO Chowk,
Gurugram, Haryana-122001.
2. Central Transmission Utility of India Limited (CTUIL),
Saudamini Plot 2, Sector 29, Near IFFCO Chowk,
Gurugram, Haryana-122001.
3. Powergrid Khetri Transmission Limited,
Saudamini Plot 2, Sector 29, Near IFFCO Chowk,



Gurugram, Haryana-122001

4. Powergrid Ajmer Phagi Transmission Limited,
Saudamini Plot 2, Sector 29, Near IFFCO Chowk,
Gurugram, Haryana-122001.
5. Bikaner Khetri Transmission Limited,
C-105, Anand Niketan, New Delhi-110021.

..Respondents

For Petitioner : Shri Shashwat Kumar, Advocate, Azure Power
Shri Rahul Chouhan, Advocate, Azure Power
Shri Amitanshu Saxena, Advocate, Azure Power

For Respondents : Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Ms. Soumya Singh, Advocate, CTUIL
Shri Kashish Bhambani, CTUIL
Shri Yatin Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Rajneet Singh Rajput, CTUIL
Ms. Priyansi Jadiya, CTUIL

ORDER

Azure Power India Private Limited (hereinafter called "Petitioner No. 1") is a company incorporated under the Companies Act, 2013 which has been granted the Long Term Access (LTA) for a cumulative capacity of 1200 MW for supply of power generated from its three power projects developed by wholly owned subsidiaries of the Petitioner No.1, i.e. Petitioner No. 2 to 4 (i.e. Azure Power Forty-Three Private Limited, Azure Power Forty-One Private Limited and Azure Power Maple Private Limited respectively). The Projects to be developed by the Petitioners are as following:

Petitioner No. 2 - 600 MW Solar Power Project in Bikaner, Rajasthan
Petitioner No. 3 - 300 MW Solar Power Project in Bhadla, Rajasthan
Petitioner No. 4 - 300 MW Solar Power Project in Bhadla, Rajasthan

2. The Petitioners have made the following prayers:



“(a) Admit the present petition;

(b) Direct the Respondent to extend the deadline for completion of the Dedicated Transmission Line and Pooling Substation under the two Transmission Agreements for Connectivity both dated 01.10.2018 so as to keep aligned the same with Scheduled Commercial Operation Date of the power project being developed by Azure Power Forty Three Private Limited for the capacity of 600 MW i.e. to 31.01.2021 or as further revised;

(c) Direct the Respondent to:

- (i) extend the deadline for completion of the Dedicated Transmission Line and Pooling Substation under the Transmission Agreement for Connectivity dated 08.10.2018 to 07.06.2021; and*
- (ii) extend the date of operationalization/ start date of Long Term Access granted to Azure Power India Private Limited under the Agreements for Long Term Access dated 20.11.2018 and 20.07.2020, to 07.06.2021, which is to be utilized for supply of power from the power project of Azure Power Forty One Private Limited (Petitioner No. 3); so as to keep aligned the same with Scheduled Commercial Operation Date of the power project being developed by Azure Power Forty One Private Limited for the capacity of 300 MW i.e., to 07.06.2021 or as further revised;*

(d) Direct the Respondent to:

- (i) extend the deadline for completion of the Dedicated Transmission Line and Pooling Substation under the three Transmission Agreements for Connectivity dated 08.10.2018, 08.10.2018 and 26.10.2018 to 30.07.2021; and*
- (ii) extend the date of operationalization/ start date of Long Term Access granted to Azure Power India Private Limited under the three Agreements for Long Term Access dated 20.11.2018, 20.11.2018, 15.02.2019 and 20.07.2020, to 30.07.2021 which are to be utilized for supply of power from the power project of Azure Power Maple Private Limited (Petitioner No. 4); so as to keep aligned the same with Scheduled Commercial Operation Date of the power project being developed by Azure Power Maple Private Limited for the capacity of 300 MW i.e., to 30.07.2021 or as further revised;*

(e) Direct the Respondent to not take any coercive actions during the pendency of the present Petition, including, but not limited to, levying any charges on account of operationalization of Long Term Access and/ or any other financial or regulatory coercive action; and

(f) Pass such other and further orders/ directions as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case.”

3. Initially, the Petitioners impleaded Powergrid Corporation of India Limited, which has been notified by the Central Government as Central Transmission Utility (CTU) under section 38 of the Electricity Act, 2003, (hereinafter referred to as the “Act”) as the only Respondent in the matter and the Petitioners have prayed for



issuance of directions to PGCIL. However, during the proceedings in the matter, the Ministry of Power (MoP), 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 PGCIL, as the CTU under section 38 of the Act. Therefore, the Commission vide Record of Proceedings dated 13.1.2022 directed the Petitioners to implead CTUIL as Respondent besides directing to implead the other associated transmission licensees as Respondents. Accordingly, the Petitioners have impleaded CTUIL and three other associated transmission licensees as Respondents in the matter. As the reliefs sought is against the CTUIL, we have used the expression 'CTUIL' in place of 'PGCIL' wherever required.

4. Further during course of hearings, Petitioners submitted that they are not pressing the prayer for extension of the SCOD of the DTL and the PSS and to align the same with the SCOD of its generation projects, since the dedicated transmission system has been constructed within the timeline prescribed under the Revised Procedure. CTUIL also submitted that the prayer by the Petitioner seeking extension of the said timeline has become infructuous in view of Revised Procedure.

5. We have considered the submissions of the Petitioners and CTUIL. As the Petitioners are not pressing for their prayer for extension of the SCOD of DTL and the PSS and alignment of the same with the SCOD of the Petitioner's generation projects, we are not considering the said prayer and related submissions of the Petitioners in the instant Order.



Submission of the Petitioners:

6. The Petitioners have made the following submissions in the petition:
- a) Petitioner No.1 has been granted the LTA for a cumulative capacity of 1200 MW for supply of power generated from its three power projects developed by Petitioner No. 1's wholly owned subsidiaries i.e. Petitioner Nos. 2 to 4.
 - b) Petitioner No. 2 is setting up a 600 MW Solar Power Project in Bikaner, Rajasthan (P-2's Project) and the power generated is to be supplied to beneficiaries in Northern Region ("NR") and Eastern Region ("ER") pursuant to the bid conducted by Solar Energy Corporation of India (SECI).
 - c) Petitioner No. 3 is setting up a 300 MW Solar Power Project in Bhadla, Rajasthan ("P-3's Project") and the power generated is to be supplied to beneficiaries in ER and NR pursuant to the bid conducted by SECI.
 - d) Petitioner No. 4 is setting up a 300 MW Solar Power Project in Bhadla, Rajasthan ("P-4's Project") and the power generated is to be supplied to beneficiary in Western Region ("WR") pursuant to the bid conducted by SECI.
 - e) In 2018, SECI invited bids for development of solar ISTS power projects in various locations. The Petitioner No. 1 emerged as a successful bidder and was accordingly awarded the development and sale of 600 MW solar project (hereinafter to be called ("Project 1")) at Bikaner on 27.7.2018 which is to be developed by the Petitioner No. 2 who has entered into two Power Purchase Agreement (PPAs) with SECI both dated 31.10.2018 for supply of (2 X 300) MW power. Similarly, the 300 MW Solar Power Project (hereinafter to be called "Project 2") and another 300 MW solar power project (hereinafter to be called "Project 3"), both to be set up at Bhadla, Rajasthan and to be developed by Petitioner No. 3 and Petitioner No. 4 respectively were awarded to the Petitioner No. 1 on 10.1.2019 and 30.1.2019 respectively. The schedule commissioning of the Project was October, 2020.



- f) Petitioner No. 1 applied and availed Stage-II Connectivity and LTAs for evacuation of 600 MW power from Bikaner Sub-station of PGCIL.
- g) In July-August, 2018, Petitioner No. 1 applied for Stage-II Connectivity of and LTA for evacuation of cumulative capacity of 600 MW power from Bhadla Sub-station of the PGCIL with 15.10.2020 as start date.
- h) The details of the power projects won by the Petitioners whose power is to be evacuated from Bhadla and Bikaner Sub-stations is as follows:

| Tender reference | Project | Project Capacity | PPA reference | Project developer | PPA date |
|------------------|---------------|------------------|---------------|-------------------|------------------------------|
| SECI 2000 MW RFS | P-2's Project | 600 MW (2 X 300) | SECI 600 PPA | Petitioner No. 2 | 30.10.2018 (2 x 300 MW PPAs) |
| SECI - III | P-3's Project | 300 MW | SECI III PPA | Petitioner No. 3 | 17.9.2019 (300 MW) |
| SECI - IV | P-4's Project | 300 MW | SECI IV PPA | Petitioner No. 4 | 27.11.2019 (300 MW) |

- i) Stage-II Connectivity granted to Petitioner No. 1 for evacuation of 2 x 300 MW of power from Bhadla Sub-station has been utilized for evacuation of power from its two wholly owned subsidiaries i.e. Petitioner No. 3 and Petitioner No. 4 to the extent of 300 MW each. Similarly, the Stage-II Connectivity granted to Petitioner No. 1 for evacuation of 2 X 300 MW of power from Bikaner Sub-station has been utilized for evacuation of power from its another wholly owned subsidiaries i.e. Petitioner No. 2.
- j) The details of each of the TAs and LTAs entered into by the Petitioner No. 1 and BGs submitted are as follows:

| Project | Capacity | TA date | LTAA date | LTA start date as per LTAA | PGCIL Sub-stations | BG Amount (INR) | LTA BG amount (INR) |
|-----------|----------|------------|------------|----------------------------|--------------------|-----------------|---------------------|
| Project 2 | 300 MW | 1.10.2018 | 15.2.2019 | 15.10.2020 | Bikaner | 5 crore | 15 crore |
| | 300 MW | 1.10.2018 | 15.2.2019 | 15.10.2020 | Bikaner | 5 crore | 15 crore |
| Project 3 | 300 MW | 8.10.2018 | 20.11.2018 | 15.10.2020 | Bhadla | 5 crore | 15 Crore |
| Project 4 | 200 MW | 8.10.2018 | 20.11.2018 | 15.10.2020 | Bhadla | 5 crore | 10 crore |
| | 50 MW | 8.10.2018 | 20.11.2018 | 15.10.2020 | Bhadla | | 2.5 crore |
| | 50 MW | 26.10.2018 | 15.2.2019 | 15.10.2020 | Bhadla | | 2.5 crore |

Grounds for seeking extension



7. The Petitioner has made the following submissions in support of the reliefs sought:

i. Impact of outbreak of Corona Virus on project timelines

- a. Due to the outbreak of the corona virus, the government imposed lockdown across the country causing a lot of uncertainty about the completion of the Petitioners' projects in terms of the timelines mentioned in the respective PPAs as there were restrictions because of which supply of the projects' components were hampered leading to delays. The commissioning of the P-3's Project, P-4's Project and P-2's Project is contingent upon the installation of solar PV modules, inverters and other BOS components at the respective project sites.
- b. To deal with the difficulty being faced by the industry because of the pandemic, Ministry of New and Renewable Energy (MNRE) issued Office Memorandum (OM)'s dated 17.4.2020 and 13.8.2020 directing all RE implementing agencies of the MNRE to treat the lockdown as "*force majeure*" and that they may grant all renewable energy (RE) projects designated by MNRE which are under implementation on the date of lockdown a time extension of 5 months (25.3.2020 to 24.8.2020). Accordingly, SECI extended the SCOD of the projects of the Petitioners through its letters dated 21.5.2020 and 17.7.2020 as per the following dates:

| Project | Capacity | SCOD as per the PPA | Extended SCOD |
|----------------|-----------------|----------------------------|----------------------|
| Project 2 | 300 MW | 25.10.2020 | 31.1.2021 |
| | 300 MW | 25.10.2020 | 31.1.2021 |
| Project 3 | 300 MW | 1.03.2021 | 7.6.2021 |
| Project 4 | 300 MW | 23.04.2021 | 30.7.2021 |

ii. Mismatch in commissioning dates of PPA's with the LTA start dates



- a. Due to the outbreak of Covid-19 pandemic, CTUIL extended the timelines for completion of the transmission system for the Petitioners' projects as following:

| Project | Extension by CTUIL |
|----------------|---|
| Project 1 | March, 2021 |
| Project 2 | December, 2020 |
| Project 3 | December, 2020 (for 250 MW) and March, 2021 (50 MW) |

- b. On 27.7.2020, MoP issued an order whereby the LTA and the SCOD of the transmission facilities of the generator was to be extended by 5 months by CTUIL due to imposition of the lockdown.
- c. Accordingly, the Petitioner vide letter dated 14.8.2020, requested CTUIL to extend the LTA dates by 5 months in compliance to the MoP order.
- d. As per Regulation 27(2)(c) of the (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (2009 Connectivity Regulations), the CTUIL should construct/ modify the transmission elements in a coordinated fashion with the generating entity, so as to match the commissioning timelines of the generation station of such entity.

iii. TSA also recognizes the provision of “force majeure”

- a. Clause 14 of the TSA dated 20.11.2018 executed by CTUIL with ISTS Customers and ISTS Licensees, which govern the ISTS services, defines “force majeure” and the list of events provided in the TSA includes "Act of God" and as directed by MNRE vide OM dated 17.4.2020 and 30.6.2020, the outbreak of Covid-19 will be considered as a “force majeure” event.
- b. Accordingly, the Petitioners issued letters dated 18.2.2020, 20.2.2020, 28.3.2020, 18.6.2020 and 14.8.2020 to CTUIL requesting to extend the LTA



start date in consonance with the extended SCODs of the solar power projects developed by Petitioner No. 2 to 4. However, CTUIL has failed to extend the LTA start date and the deadlines for DTL and PSS.

c. Further, the Petitioner No. 1 requested MoP to intervene and support the Petitioner in: (a) waiver of the ISTS charges and losses for the time gap between the LTAA operationalization date and PPA SCOD

8. Petitioner made the following submissions vide affidavit dated 9.6.2021:

a) A meeting of the representatives of Central Electricity Authority, Central Transmission Utility, Transmission Service Providers, associated Long Term Transmission Customers, CTUIL and SECI was held on 21.9.2020. It was agreed in the meeting to extend the LTA start date of the Petitioners' projects. Accordingly, CTUIL extended the LTA operationalization dates of the said projects and it is as follows:

| Project | Capacity | LTA start date as per LTTA | LTA revised by PGCIL |
|-----------|----------|----------------------------|--|
| Project 2 | 300 MW | 15.10.2020 | 15.3.2021 or commissioning of ISTS proposed for LTA, whichever is later. |
| | 300 MW | 15.10.2020 | |
| Project 3 | 300MW | 15.10.2020 | |
| Project 4 | 200 MW | 15.10.2020 | |
| | 50 MW | 15.10.2020 | |
| | 50 MW | 15.10.2020 | |

b) SECI, on 9.2.2021, extended the SCOD of the 300 MW of the Project 1 up to May, 2021 and balance upto July, 2021. Similarly, SECI, vide its letter dated 1.12.2020, extended the SCOD of the Project 2 and Project 3 up to 1.8.2021 and 23.9.2021 respectively.

c) On 15.1.2021, MoP waived the levy of ISTS charges on solar and wind power plants which are commissioned upto 30.6.2023 and further directed that such projects which are granted extension in COD by the



competent authority, the commencement and the period of the LTA will also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.

Reply of CTUIL

9. CTUIL has filed its reply vide affidavit dated 19.9.2021 and written submissions on 22.4.2022. The gist of the submissions made by CTUIL in its reply and written submissions are as follows:

- a) MoP vide letters dated 27.7.2020 and 12.6.2021 extended the SCOD by 5 months and 3 months respectively and start date of LTAs associated with above ISTS projects was also directed to be extended by 5 months and 3 months. Accordingly, the start date of above LTAs granted to Petitioner No.1 was extended by 5 months and subsequently by 3 months vide letters dated 16.12.2020, 23.12.2020, 3.8.2021 and 10.8.2021.
- b) In terms of Regulation 15 of the 2009 Connectivity Regulations, the grant of LTA is from a stated date and the LTAA is required to be signed by the grantee recording the date of commencement of LTA. Thus, the entire mechanism for LTA grant, with or without system strengthening was made on the basis of date of LTA commencement date requested by LTA applicant so that power flow in the ISTS could be accommodated considering the ATC.
- c) Neither the 2009 Connectivity Regulations/ Detailed Procedure nor the LTTAs signed by the grantees provide for “extension” of the LTA commencement date.



d) In the entire regulatory scheme of connectivity and the LTA grant, the only relevant considerations were the transmission system availability as per the LTA commencement date indicated in the LTA application, the contractual privity was between the CTUIL (as the nodal agency) and the LTA grantee. The power purchase arrangements under the executed PPAs were not the underlying considerations and the CTUIL had no privity of contract whatsoever with the power purchaser or project implementing agency. There is no nexus between the project SCOD and the LTA commencement date agreed under the LTAA as has wrongly been contended by the Petitioner.

e) As per the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses), Regulations, 2020 (2020 Sharing Regulations), the Petitioners are liable to pay transmission charges where the COD of associated transmission system (which is not earlier than its SCOD) is achieved before the COD of project. Hence, under the present regulatory framework governing the commercial liability of a long-term customer, no exemption from aforesaid commercial liability is contemplated on account of the terms of the PPA between the generating station and the beneficiary or trader, as the case may be.

f) In case the Petitioner is permitted to avoid payment of transmission charges, it will have to be adjusted from the common pool (PoC) and may severely jeopardise the interest of other participants in the pool who will ultimately share the charges attributable to the Petitioner.

g) The reliance placed by the Petitioner No. 1 on the letters dated 17.2.2020 and 18.2.2020 (*force majeure* notice) made to PGCIL for



seeking extension of LTA start date on the ground of outbreak of Covid-19 pandemic is misplaced. The Commission in a number of orders observed that commercial issues affecting the generating station were not a relevant consideration in so far as obligations under the transmission agreements were concerned. The Commission had further reiterated that there was no provision to keep the LTA in abeyance either in the 2009 Connectivity Regulations or in the transmission agreements.

h) The letters dated 17.1.2020 and 18.2.2020 were clearly contradictory in their contents and what emerged was that the delay in commissioning of projects had in fact already been occasioned on account of non-finalization of power purchase arrangements and similar issues affecting the Petitioners- generators, which the Petitioners sought to camouflage under the plea of Covid-19 pandemic.

i) The relief by way of extensions in timelines as sought by the Petitioners due to the Covid-19 pandemic was admissible and the same was duly granted to the Petitioners by various MoP orders dated 27.7.2020 and 12.6.2021.

j) The Commission has already held that the provision for “no transmission charges for the use of ISTS network” for solar and wind power based generation projects was applicable only when the power was evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station. As such, transmission charges for delay in commissioning of solar power generators were payable by such solar generators on the same line as the liability to the payment by the thermal and hydro generating stations.



k) The MoP order dated 15.1.2021 extending the LTA commencement date is not in consonance with the prevailing regulatory regime notified by the Commission. As such, the Respondent is obligated to administer grants of Stage-II connectivity and LTA in terms of the applicable provisions of the Regulations/ Procedures of the Commission, unless the aforesaid order is duly recognized and incorporated in the said Regulations/ Procedures

l) The Respondent vide letters dated 26.8.2021 operationalized the LTAs from 1.9.2021 respectively for 50 MW LTA (firm beneficiary - MPPMCL), 200 MW LTA (firm beneficiary - MPPMCL) and 300 MW LTA (firm beneficiaries –GRIDCO-200 MW and BRPL-100 MW) in terms of the provisions of the extant Regulations/Procedures. The balance 50 MW LTA is yet to be made effective as its required transmission system has not been commissioned. With respect to the LTAs granted to the Petitioner at Bikaner, 400 MW (out of 600 MW) LTA was operationalized on 25.9.2021 and the balance 200 MW LTA has been operationalized on 20.11.2021. The Petitioner is liable to bear transmission charges in terms of applicable Regulations and Petitioner No.1 is also obligated to establish requisite payment security mechanism.

m) No coercive action has been taken against the Petitioner in view of the interim protection granted to the Petitioners by the Commission vide RoP dated 27.4.2021.

n) The reliance placed on MoP order dated 15.1.2021 is misplaced as it is not only inconsistent with the Regulations of the Commission but also applies prospectively and no benefit can accrue to the Petitioner under the same.



o) The reliance placed by the Petitioner on the “*force majeure*” clause under TSA dated 20.11.2018 is misplaced. The TSA executed under the Sharing Regulations comes into effect only when the associated transmission system is commissioned and brought into commercial operation, the provisions of the same are not applicable during the period of mismatch. The LTAA's also do not contain any “*force majeure*” provision. As such, the “*force majeure*” claim of the Petitioners under contractual provisions is untenable and is liable to be rejected.

p) The reliance placed by the Petitioners on the Electricity (Transmission System Planning, Development and Recovery of Inter-State Transmission Charges) Rules, 2021 (“2021 Rules”) to seek waiver from payment of transmission charges is also misplaced. The said Rules are not applicable in the present case as the same have been notified in the context of the General Network Access (GNA) and the provision for recovery of transmission charges will become effective from the date GNA Regulations gets notified.

q) The reliance placed on MoP orders dated 23.11.2021 and 30.11.2021 to seek waiver from payment of transmission charges during the period of mismatch is also untenable. The said orders are prospective in operation. Even otherwise, they are not in consonance with the applicable regulatory regime. The same cannot, therefore, inure to the benefit of the Petitioners.

Rejoinder to the reply of CTUIL



10. The gist of the submissions made by Petitioner No. 1 in its rejoinder, vide affidavit dated 28.9.2021, to the reply of PGCIL are as follows:

a) The contention of CTUIL that the Petitioners have deliberately delayed the projects is wrong, the delay was due to the Covid-19 situation across the world which has been recognized by the Government of India as the “*force majeure*” event because of which the LTA and SCOD were extended.

b) The Petitioners faced various hurdles in completing the projects, like supply chain, construction speed, availability and transportation of resources, but still managed to complete the DTL and PSS in April, 2021.

c) MoP vide order dated 15.1.2021 issued direction in public interest to the Commission under section 107 of the Act to amend the Sharing Regulations to deal with the situations regarding sharing of transmission charges under “*force majeure*” conditions. The Commission in discharge of its functions is guided by the directions issued by the Central Government.

d) The Petitioner does not dispute that as per the Sharing Regulations, the waiver of ISTS charges is applicable only after the commissioning of the project. However, MoP, vide its order dated 15.1.2021 directed the Commission to amend the Sharing Regulations so that in event of “*force majeure*” situations, unnecessary charges are not levied on any party.

e) The MoP vide order dated 15.1.2021 has waived the levy of ISTS charges on solar and wind power plants which are commissioned upto 30.6.2023. Accordingly, the Petitioners’ projects are eligible for waiver of ISTS charges and are, therefore, within the relief provided by the MoP in their order dated 15.1.2021 issued to the Commission.



f) There is a nexus between the project SCODs and LTA commencement date as per the LTAAAs. The global pandemic has restrained the Petitioners from developing the projects as per the envisaged timelines. MoP order dated 15.1.2021 has also acknowledged that the Sharing Regulations do not recognize events of “*force majeure*” which may delay the COD of a transmission element or a generating station and has, accordingly, recommended the Commission to amend the Sharing Regulations so as to define the “*force majeure*” and enable CTU to extend the CoD of the generating stations and the LTA start date for reasons of “*force majeure*”.

11. During the course of hearing on 13.1.2022, the learned counsel for the Petitioner submitted that the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses), Regulations, 2010 (2010 Sharing Regulations) does not deal with the eventualities faced by the Petitioner. Rule 5 of 2021 Rules provides that the Central Government may, if it is satisfied, waive ISTS charges and losses for notified sources of energy for a specified duration. Accordingly, Central Government issued orders on 23.11.2021 and 30.11.2021 providing for waiver of ISTS transmission charges and losses for solar power and wind power. The learned counsel for CTUIL submitted that the dedicated transmission system has achieved COD and only 50 MW at Bhadla Pooling Station is yet to be operationalized. After hearing the parties, the Commission directed the Petitioners to implead the transmission licensees and CTUIL as Respondent and file a revised “Memo of Parties”. Pursuant to the directions of the Commission, the



Petitioner No. 1 has filed the revised memo of parties impleading CTUIL, vide affidavit dated 27.1.2022.

12. During the course of hearing held on 12.4.2022, the learned counsel for the Petitioner submitted that the Petitioner is seeking extension of LTA under the 2021 Rules. He further submitted that as per the LTAA dated 20.11.2018 entered into between the Petitioner and CTUIL, any amendment to the 2010 Sharing Regulations or MoP order dated 13.2.2018 will be applicable to the parties to the LTAA. In response to query of the Commission regarding the linkage between the commencement of LTA and payment of transmission charges for the mismatch period, the learned counsel for the Petitioner referring to the provisions of Regulation 13(3), 13(7) and 13(9) of the 2020 Sharing Regulations submitted that there cannot be a situation where transmission charges are to be paid even though LTA granted is not operationalized. The learned counsel for CTUIL submitted the scope and application of the 2021 Rules is different from the mechanism under which the transmission charges are to be paid by a renewable energy generator as provided in the 2020 Sharing. Therefore, the reliance placed by the Petitioner on 2021 Rules is misplaced and does not apply in the instant case. The MoP order dated 23.11.2021 and 30.11.2021 is not applicable in the instant case as it is applicable prospectively. There is no nexus between the delay in SCOD of the RE project and the liability to pay the transmission charges. Therefore, the MoP orders and 2021 Rules as relied by the Petitioner is not applicable in the instant case.

Written submission by the Petitioner

13. The Petitioners have submitted the following in their written submissions:
- a) The details of the projects and the LTAs operationalized are as follows :



| Azure Project | LTA operationalization date | Project commissioning date | Extension to SCOD from SECI |
|--|--|--|--|
| Project No. 1 (Petitioner No. 2 600 MW Bikaner Sub-station) | <ul style="list-style-type: none"> • 400 MW by 25.9.2021 • 200 MW on 20.11.2021 | <ul style="list-style-type: none"> • 500 MW till 22.9.2021 (in phases) • 100 MW on 31.12.2021 | 31.12.2021 Remarks: Full commissioning achieved within extended SCODs |
| Project No. 2 (Petitioner No. 3 300 MW Badhla Sub-station) | 1.9.2021 | Full commissioning in phases between 12.10.2021 to 8.3.2022 | 31.10.2021 Remarks: SECI extended the SCOD by 60 days from the date of LTA operationalization. Further extension of SCOD already sought from SECI |
| Project No. 3 (Petitioner No. 4 Bhadla Sub-station) | <ul style="list-style-type: none"> • 250 MW on 1.09.2021 • 50 MW yet to be operationalized | <ul style="list-style-type: none"> • 53 MW commissioned on 14.2.2022 • 204 MW commissioned on 30.3.2022 • Balance capacity of 43 MW yet to be commissioned. | 8.12.2021 Remarks: Further extension of SCOD already sought from SECI |

g) The interpretation of CTUIL that the MoP orders allow waiver of transmission charges for 'electricity generated' after commissioning of the Projects only is also flawed since the MoP orders mandate an extension of 'the commencement and period of LTA' to be aligned with the Revised SCOD as granted by the competent authority. There can be no revision in SCOD of already commissioned Projects. Therefore, the interpretation adopted by CTUIL, if accepted, will render the MoP orders otiose.

h) The "*force majeure*" event has prevented the Petitioners from adhering with the SCODs of the respective projects and therefore falls under the scope of Clause 14 of the TSA, which provides as follows:

"A "Force Majeure" means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly



prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:....”

i) The purport of the MoP orders is to give relief to the renewable power producers who have been delayed for reasons beyond their control and have been granted relief by the appropriate renewable energy implementing agency. However, CTUIL by focusing only on operationalisation of LTA failed to give effect to MoP's orders that also required the commencement date of the LTA to be shifted which necessarily applies to pre-commissioning phases of the Projects. Once the MoP orders have come in force and SCOD has been extended by SECI, the operationalisation of LTA is necessarily to be aligned with the revised SCOD.

Reply of Bikaner Khatri Transmission Limited (BKTL), Respondent No. 5

14. BKTL in its reply, vide affidavit dated 25.3.2022, has submitted that the Petitioner No. 1 is also one of the LTTCs as per the TSA executed on 23.4.2019. BKTL vide letter dated 28.8.2021 to the LTTCs had declared deemed COD of “Transmission System associated with LTA applications from Rajasthan SEZ Part-D” as 4.9.2021. Thus, the BKTL's transmission project stands commissioned.

Reply of Powergrid Ajmer Phagi Transmission Ltd., (PAPTL) Respondent No.4

15. PAPTL, vide affidavit dated 11.2.2022 has submitted the following:

a) Pursuant to the directions of the Commission vide RoP dated 13.1.2022, the Petitioner has impleaded PAPTL.



- b) PAPTIL has implemented the project “Transmission system associated with LTA applications from Rajasthan SEZ Part-A” which includes some of the major elements of transmission system required for LTA of RE generators at Bhadla and Bikaner.
- c) The SCOD of the Project was December, 2020 and the same was extended/ revised to May, 2021 due to the outbreak of Covid-19 pandemic. The Project has been commissioned on 6.5.2021 and the Contract Performance Guarantee furnished by PAPTIL have been furnished by the LTTC's. Therefore, PAPTIL has implemented the transmission system assigned to it and achieved the COD of the project in terms of the provisions of TSA dated 23.4.2019 and is entitled to receive the transmission charges.

Reply of Powergrid Khetri Transmission System Ltd, (PKSTL) Respondent No.3

16. PKSTL has submitted, vide affidavit dated 11.2.2022, that it has implemented the project “Transmission system associated with LTA applications from Rajasthan SEZ Part-C” which includes some of the major elements of Transmission system required for LTA of RE generators at Bhadla & Bikaner. The SCOD of its project was May 2021- August-2021 and all the elements of the Project has been commissioned on 4.10.2021. The delay in commissioning of the instant project was due to various Force Majeure events such as 45 days of delay in handing over of the project , Covid-19 pandemic, Right of Way of 765 kV Jhatikara-Khetri Line, Forest Clearance of 765 kV Jhatikara-Khetri Line, Forest Clearance of 765 kV Jhatikara-Khetri Line, delay in acquisition of Khetri Sub-Station Land, delay due to unprecedented Rain at the fagend of the project, for which timely notices in terms of TSA were served to LTTCs. The LTTCs vide letter



dated 11.11.2021, requested for extension of SCOD and return of CPG and thereafter all the LTTCs have returned/released the CPG furnished by PKTSL against the project

Analysis and Decision

17. The Petitioner had participated in the bids for various solar projects issued by the SECI and emerged successful in the some of the projects including the Project 1, Project 2 and Project 3 of 600 MW, 300 MW and 300 MW respectively to be developed by the Petitioner No. 2, Petitioner No. 3 and Petitioner No.4 in Bikaner, Bhadla and Bhadla respectively.

18. The Petitioner No. 1 obtained the Stage II connectivity and LTAs from CTUIL for evacuation of the solar power generated by the above power projects developed by the Petitioner No. 2 to 4.

19. The details of the projects and the LTAs operationalized for Petitioner's projects are as follows :

| Azure Project | LTA operationalization date | Project commissioning date | Extension to SCOD from SECI |
|---|---|---|--|
| Project No. 1 (Petitioner No. 2 600 MW Bikaner Sub-station) | <ul style="list-style-type: none"> • 400 MW by 25.9.2021 • 200 MW on 20.11.2021 | <ul style="list-style-type: none"> • 500 MW till 22.9.2021 (in phases) • 100 MW on 31.12.2021 | 31.12.2021 Remarks: Full commissioning achieved within extended SCODs |
| Project No. 2 (Petitioner No. 3 300 MW Badhla Sub-station) | 1.9.2021 | Full commissioning in phases between 12.10.2021 to 8.3.2022 | 31.10.2021 Remarks: SECI extended the SCOD by 60 days from the date of LTA operationalization. Further extension of SCOD already sought from SECI |
| Project No. 3 (Petitioner No. 4) | <ul style="list-style-type: none"> • 250 MW on 1.09.2021 • 50 MW yet to be | <ul style="list-style-type: none"> • 53 MW commissioned on 14.2.2022 | 8.12.2021 Remarks: Further extension of SCOD |



| | | | |
|---------------------|-----------------|---|--------------------------|
| Bhadla Sub-station) | operationalized | <ul style="list-style-type: none"> • 204 MW commissioned on 30.3.2022 • Balance capacity of 43 MW yet to be commissioned. | already sought from SECI |
|---------------------|-----------------|---|--------------------------|

Petitioner is seeking to align LTA Operationalization date with extended SCOD for its projects.

20. We observe that mismatch between commissioning of Petitioner's project and LTA operationalization date is as follows:

| Azure Project | Mismatch period | Project commissioning date |
|---|---|--|
| Project No. 1 (Petitioner No. 2 600 MW Bikaner Sub-station) | • 100 MW from 20.11.2021-31.12.2021, Balance 500 MW was commissioned prior | <ul style="list-style-type: none"> • 500 MW till 22.9.2021 (in phases) • 100 MW on 31.12.2021 |
| Project No. 2 (Petitioner No. 3 300 MW Badhla Sub-station) | 1.9.2021 - 12.10.2021 to 8.3.2022 (for respective capacity) | Full commissioning in phases between 12.10.2021 to 8.3.2022 |
| Project No. 3 (Petitioner No. 4 Bhadla Sub-station) | • 1.09.2021 – 14.2.2022 to 30.3.2022 (for respective capacity out of 250 MW) | <ul style="list-style-type: none"> • 53 MW commissioned on 14.2.2022 • 204 MW commissioned on 30.3.2022 • Balance capacity of 43 MW yet to be commissioned. |

21. On the basis of the submissions made by the Petitioner and the Respondents, the following two issues arise for our consideration.

Issue No. 1: Whether the date of commencement of LTA can be aligned with revised SCOD of Projects of the Petitioners?

Issue No. 2: Whether the Petitioner is entitled to get exemption from the payment of transmission charges in terms of MoP Orders on waiver?



Issue No. 1: Whether the date of commencement of LTA can be aligned with revised SCOD of Projects of the Petitioners?

22. The Petitioners have contended that the commencement date of the LTA granted must be aligned with the revised SCOD, in terms of the various orders from the competent authorities because of the “*force majeure*” conditions like Covid-19 Pandemic. The Petitioner has submitted that because of the pandemic, MNRE vide its OM dated 13.8.2020 directed the Renewable Energy Implementing Agencies to give time extension of five months from 25.3.2020 for completion of all RE projects. The relevant portion of the OM dated 13.8.2020 is as follows:

“All RE projects under implementation as on the date of lockdown, i.e. 25th March 2020, through RE Implementing Agencies designated by the MNRE or under various schemes of the MNRE, shall be given a time extension of 5 (five) months from 25th March 2020 to 24th August 2020. This blanket extension, if invoked by the RE developers, will be given without case to case examination and no documents/evidence will be asked for such extension.”

23. The Petitioners have submitted that accordingly SECI has extended the SCOD of the projects of the Petitioners through its letters dated 21.5.2020 and 17.7.2020. The Petitioners have further submitted that concurrently MoP on 27.7.2020 had also extended the start of the LTA granted to generators by five months from 25.3.2020. The relevant portion of the MoPs directions is as follows:

“2. It has been, therefore, decided that: i) All inter-state transmission projects, which were under construction as on date of lock-down i.e., 25th March 2020, shall get an extension of five months in respect of SCOD ii) iii) Start date of Long Term Access granted to a generator by CTU based on completion of a transmission line, whose SCOD is extended by 5 months due to COVID-19 as mentioned above at point (i), shall also be extended by 5 months.”

24. On the basis of the above directions of the MoP, the Petitioners have issued letters dated 18.2.2020, 20.2.2020, 28.3.2020, 18.6.2020 and 14.8.2020 to CTUIL requesting to extend the LTA Start Date in consonance with the extended SCODs.



25. Petitioner have referred to Clause 14 of the TSA dated 20.11.2018 executed with CTUIL which defines “*force majeure*” and the list of events provided in the TSA includes "Act of God" and as directed by MNRE vide OM dated 17.4.2020 and 30.6.2020, the outbreak of Covid-19 should be considered as a “*force majeure*” event. Accordingly, the Petitioners issued letters dated 18.2.2020, 20.2.2020, 28.3.2020, 18.6.2020 and 14.8.2020 to CTUIL requesting to extend the LTA start date in consonance with the extended SCODs of the solar power projects developed by Petitioner No. 2 to 4.

26. CTUIL has contended that neither the 2009 Connectivity Regulations/ Detailed Procedure nor the LTTAs signed by the grantees provide for “extension” of the LTA commencement. The extension of SCOD of the Petitioners’ Projects has no bearing on the grant of LTA. The consideration for grant of LTA is availability of the transmission system from the start date requested by the LTA Applicant. The Petitioners’ request for deferral of LTA commencement date tantamounts to offloading its liabilities on other DICs and the same is not permissible. However CTUIL extended LTA commencement date for Petitioner for 5 months and 3 months as per specific Orders of MOP dated 27.7.2020 and 12.6.2021.

27. CTUIL has also stated that the reliance placed by the Petitioner on the “*force majeure*” clause under TSA dated 20.11.2018 is misplaced. The TSA executed under the Sharing Regulations comes into effect only when the associated transmission system is commissioned and brought into commercial operation, the provisions of the same are not applicable during the period of mismatch.



28. We have considered the submissions of the Petitioners and the CTUIL. The start date of LTA is solely based on the Petitioner's assessment, requirement and request and as agreed by the Petitioner. It is observed that as per the intimation of Grant of LTA, attached as a part of LTA Agreement, the start date of LTA was 15.10.2020 or commissioning of transmission system, whichever is later. The CTUIL's letter to Petitioner No.1 regarding grant of LTA is extracted hereunder. Further, there is no mention of SCOD/ revised SCOD of the project by the SECI in the LTA Agreement. We note that the LTA Agreement has no clause with respect to date from which supply under PPA, either anticipated or revised.



**POWER GRID CORPORATION OF INDIA LTD.
Intimation for Grant of Long-term Access (LTA)**

| | | | |
|-----------|--|---|---|
| 1 | Intimation No. | : | C/CTU/N/07/1200001562 |
| | Date : | : | 24/10/2018 |
| 2 | Ref. Application No. | : | 1200001562 |
| | Date : | : | 24/07/2018 |
| 3 | Name of the Applicant | : | Azure Power India Private Limited |
| 4 | Address for Correspondence | : | 3 rd Floor, 301-304 And 307, Worldmark 3, Aerocity, New Delhi |
| 5 | Nature of the Applicant | : | Generator (Solar) |
| | Normal Generator (other than captive) | | |
| | Captive Generator | | |
| | Bulk Consumer | | |
| | Electricity Trader | | |
| | Distribution Licensee | | |
| | Others | | |
| 6 | Details for Long Term Access (LTA) | | |
| 6a | Quantum (MW) for which LTA is granted | : | 300 MW |
| 7 | Injection of Power (more than one only in case of single Draw) | | |
| | Entity-1 | : | Azure Power India Private Limited |
| | State/Region | : | Rajasthan, NR |
| | Quantum-1 | : | 300 MW |
| | Connectivity with the Grid | : | At 220kV level through AZURE Solar PV Plant Bhadla - Bhadla 220kV S/c line (with minimum capacity of 300 MW at nominal voltage) along with terminal bays at both ends |
| 8 | Draw of Power (more than one only in case of single Injection) | | |
| | Entity-1 | : | Target |
| | State/Region | : | ER |
| | Quantum-1 | : | 300 MW |
| | Connectivity with the Grid | : | Interconnection of ISTS network with STJ network |
| 9 | Transmission System for LTA | : | As per Annexure-1 |
| 9a | Date from which LTA is granted | : | 15/10/2020 or availability of transmission system whichever is later |
| 9b | Date upto which LTA is granted | : | 15/10/2045 |
| 9c | Implementing Agency for transmission system required for LTA | : | POWERGRID/ ISTS licensee (as applicable) |
| 9d | Agencies between which agreement is to be signed for implementation of transmission system | : | Azure Power India Private Limited & POWERGRID |
| | Page 1 | | Intimation No. C/CTU/N/07/1200001562 |
| 9e | Amount (in Rupees) for which Bank Guarantee is to be provided by the applicant | : | 15 Cr |
| 10 | Transmission Charges Applicable | : | Transmission charges as per CERC Sharing of ISTS Charges & Losses Regulations, 2010 |

Note: Long Term Access is granted to the ISTS subject to the following:

1. That the LTA applicant shall enter into Long Term Access Agreement (LTAA) within 30 days of the LTA intimation in default of which the LTA shall be liable for revocation.
2. That the LTA applicant shall enter into Transmission Service Agreement (TSA) in line with the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010.
3. That the LTA applicant shall abide by all the duties and liabilities under the Electricity Act, 2003; all applicable CERC Regulations as amended from time to time, including but not limited to CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009/Detailed Procedure and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010; as also with the CEA (Technical Standards for Connectivity to the Grid) Regulations, 2007.
4. That the implementation of system strengthening works, if any, shall be taken up by POWERGRID/concerned licensees after (i) signing of LTA (ii) furnishing of applicable bank guarantee.
5. That the applicant shall keep the CTU and RLDC/NLDC indemnified at all times and shall undertake to indemnify, defend and keep the CTU, RLDC/NLDC harmless from any and all damages, losses, claims and actions including those relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and; all other obligations by or to third parties, arising out of or resulting from the long-term access transaction.

Place: Gurgaon
Date: 24/10/2018

Name: Subir Sen
Designation: COO (CTU-P/IG)



Page 2

Intimation No. C/CTU/N/07/1200001562



29. We observe that reliance placed by Petitioner on TSA is misplaced. Petitioner already got extension of LTA as per MOP Orders for 8 months on account of Covid. Neither the factor of Covid qualifies as force majeure event under TSA nor the TSA provides any exemption from payment of transmission charges by Petitioner in case it is delayed.

30. In a similar case, the Commission vide order dated 23.5.2022 in Petition No. 525/MP/2020 held as follows:

28. Thus, it is clear that the LTA has been granted on existing transmission system and the start date of LTA has been recorded as 30.11.2019. We note that LTA agreement has no clause with respect to date from which supply under PPA is anticipated or alignment of such date with LTA start date. The start date of LTA has solely been based on Petitioner's assessment, requirement and as agreed by the Petitioner. LTA agreement does not contain any stipulation in regard to commencement of LTA in phases. We also note that CTU operationalized the said LTA for 300 MW from 30.11.2019, as has been noted in CTU's letter dated 5.11.2019 and 5.12.2019.

Thus, we observe that RfS/PPA and LTA Agreement are two entirely different and distinct agreements and the liabilities and obligations contained therein are also different. The obligation of the Petitioner arising out of the PPAs is independent of its obligation to meet the timeline which the Petitioner has sought under the LTA application and LTA Agreement. There is no reference of PPA clauses in the LTA Agreement and deferment of start date of LTA is provided neither in LTA Agreement nor in any Regulation. Therefore, the Petitioner cannot contend that CTU should have matched the SCOD in the PPA and the date of operationalization of LTA. It was the sole responsibility of the Petitioner to correctly assess and inform the correct start date of LTA.

29. We observe that similar issue was dealt by the Commission in the order dated 5.2.2019 in Petition No.195/MP/2019 as under:

"24. The Petitioner has also referred to Regulation 15B of the 2009 Connectivity Regulations to argue that dates of PPAs and LTA should be aligned. The Petitioner has further submitted that under Section 28(3)(a) of the Act, Regional Load Dispatch Centre ("RLDC") has the responsibility of optimum scheduling and dispatch of electricity, strictly in accordance with the contracts entered into with the licensee or the generating companies. It has submitted that non-alignment of PPAs with operationalization of grant has led to non-optimal scheduling.

25. The PGCIL has submitted that the Petitioner has requested 31.07.2019 as the start date while submitting applications for Stage-I Connectivity, Stage II Connectivity as well as LTA. The Petitioner signed Transmission



Agreement dated 07.08.2018 and LTA Agreement dated 20.09.2018 wherein the stipulated start date of 31.07.2019 was again endorsed. In the present case, LTA has been granted to the Petitioner without any system augmentation and, therefore, the start dates of Petitioner's Connectivity/ LTA is as requested by the Petitioner in its respective applications. PGCIL has submitted that the Petitioner was at liberty to suitably apply for LTA in terms of its consequent contractual/ bidding obligations. The Petitioner was also at liberty to make separate LTA applications with different quantum and start dates. It is the LTA applicant, who comes up with the date from which it requires the Connectivity and Long-term Access. Accordingly, it is the responsibility of the LTA applicant to synchronize between the two sets of agreements i.e. PPAs and LTA agreements.

26. PGCIL has submitted that in terms of third proviso to Regulation 12(1) of the 2009 Connectivity Regulations, the relevance of PPA is limited to firming up the drawl or injection point (as the case may be) and is not at all determinative of the start date or date of effectiveness of LTA and that LTA is solely determined as per the applicable Regulations of the Commission, LTA application, LTA grant letter and LTA agreement. It has further submitted that it is only when Connectivity or LTA is granted with system augmentation that the start date of Connectivity or LTA is dependent on the commissioning of the identified transmission elements required for Connectivity/ LTA. In such cases, Connectivity/ LTA is granted with 'availability of the requirement transmission elements/ system or the start date, whichever is later'.

28. Thus, the Petitioner was fully aware of all the relevant dates and was a party to the grant of LTA. It was the Petitioner at whose behest the date of LTA was decided as 31.07.2019. In our view, the Petitioner cannot now contend that CTU should have matched the dates of SCOD in the PPAs and the operationalization of LTA. It was the responsibility of the Petitioner to assess and inform the correct dates from when it required LTA, specially, when there is no system augmentation involved and LTA is granted on existing system. The Petitioner has itself submitted that there were incentives attached for early commissioning and, therefore, it cannot be ruled out that the Petitioner wanted to commission its project earlier than SCOD and for that purpose, it sought LTA from 31.07.2019. This is also borne out from JCC meetings where the Petitioner had stated that it was expected to Commission 150 MW by 31.7.2019. Therefore, PGCIL cannot be faulted for operationalizing the LTA from the date it was sought by the Petitioner."

30. Thus, we observe that LTA is granted to the Petitioner based on its application and the start date of Petitioner's LTA is as requested by the Petitioner itself in its application. The Petitioner is at liberty to suitably apply for LTA in terms of its contractual/bidding obligations and for the same the Petitioner can make separate LTA applications with different quantum and start dates.

31. Therefore, we are of the view that it is the responsibility of the LTA applicant to synchronize and match the dates between the two sets of agreements i.e. PPA and LTA Agreement, as it is the LTA applicant which signs both the sets of the agreements."



31. Thus, the Commission has already considered the issue of extension of the LTA date up to the revised SCOD in order dated 5.2.2020 in Petition No.195/MP/2019 and order dated 23.5.2022 in Petition No. 525/MP/2020 and the same was rejected by it.

32. We observe that in the instant case, the LTA is granted to the Petitioner is based on its application and the start date of Petitioner's LTA is as requested by the Petitioner itself in its application. The Petitioner was at liberty to suitably apply for LTA in terms of its contractual/bidding obligations and for the same the Petitioner can make separate LTA applications with different quantum and start dates.

33. In view of the above discussion, Petitioner's prayer to align the LTA commencement date with the revised SCOD is rejected.

Issue No. 2: Whether the Petitioner is entitled to get exemption from the payment of transmission charges in terms of MoP Orders on waiver?

34. The Petitioners have submitted that they have not been able to commission Projects in accordance with the LTA commencement dates due to the outbreak of COVID-19, which is beyond the reasonable control of the Petitioners and a "*force majeure*" event. Hence, the Petitioners may not be made liable for payment of any transmission charges for the period of mismatch between the LTA commencement date and the SCOD/ revised SCOD of the projects.

35. The Petitioners have submitted that MoP, vide order dated 15.1.2021, has also waived off ISTS charges on solar and wind power plants which are



commissioned upto 30.6.2023. The Petitioner has submitted that the SCOD of the Projects has been extended by SECI and hence in line with the MoP order dated 15.1.2021, 23.11.2021, and 30.11.2021, the LTA operationalization date ought to be aligned with the revised SCOD. The Petitioners referring to the MoP orders dated 15.1.2021, 23.11.2021, and 30.11.2021 have sought waiver of transmission charges for the period of delay in commissioning of the Project. During the hearing, the learned counsel for the Petitioners referring to the provisions of Regulation 13(3), Regulation 13(7) and Regulation 13(9) of the 2020 Sharing Regulations submitted that there cannot be a situation where transmission charges are to be paid even though LTA granted is not operationalized.

36. The Petitioners have submitted that Rule 5(12) of the 2021 Rules provides that the Central Government may waive ISTS charges and losses for notified sources of energy for a specified duration. In the absence of any specific provisions in the 2020 Sharing Regulations, the Rules framed by the Central Government be given effect and applied in facts and circumstances of the cases.

34. In response, CTUIL has submitted that MoP orders dated 15.1.2021, 23.11.2021 and 30.11.2021, extending the LTA commencement date is not in consonance with the prevailing regulations notified by this Commission. As such, CTUIL is obligated to administer grants of Stage-II connectivity and LTA in terms of the applicable provisions of the Regulations/ Procedures notified by the Commission, unless the aforesaid MoP Order is duly recognized and incorporated in the Regulations/ Procedures notified by the Commission.



35. CTUIL has submitted that the scope and application of the 2021 Rules is different from the mechanism under which the transmission charges are to be paid by a RE generator, which is governed by the 2020 Sharing Regulations. Therefore, the reliance placed by the Petitioner on 2021 Rules is misplaced and does not apply in the instant case.

36. CTUIL has submitted that the Commission in Petition Nos. 195/MP/2019 and 303/MP/2015 has already settled the matter by holding that there is no provision for exemption of transmission charges and losses for generation based on solar or wind power resources before the COD of such generation projects. There is no nexus between the delay in SCOD of the RE project and the liability to pay the transmission charges. Therefore, the MoP orders and 2021 Rules as relied by the Petitioner is not applicable in the instant case. CTUIL has further submitted that exemption from payment of transmission charges for solar power developers triggers only when power is evacuated through transmission system to the beneficiaries. However, in the event of delay in commissioning of solar power projects, such solar power developers are liable to make the payment of transmission charges from the time the associated transmission system is ready or from the LTA start date till commissioning of their projects.

37. CTUIL has submitted that the 2020 Sharing Regulations provide for waiver of transmission charges and losses on solar or wind power resources date from which the power flow from the renewable energy project commences. Therefore, it is mandatory the power has started flowing after achieving the COD for availing these charges. Further, the MoP order dated 23.11.2021 is not applicable in the



instant case as it is applicable prospectively i.e. from the date of issue of order and the LTA in the instant case was operationalized prior to the issuance of MoP order.

38. We have examined the submissions of the Petitioners and CTUIL regarding the waiver of transmission charges for the period of mismatch between the start date of LTA commencement and the revised SCOD. The main contention of the Petitioners herein is that as per the MoP orders dated 15.1.2021, 23.11.2021 and 30.11.2021, the Petitioners projects which have been granted extension of SCOD by the competent authority are eligible for waiver off transmission charges. The MoP order dated 15.1.2021 provides as follows:

“Subject: Waiver of Inter-State Transmission charges and losses on transmission of electricity generated from solar and wind sources of energy

“Pursuant to the provisions of the Tariff Policy, Government have issued revised orders on the 5th of August 2020 providing that the inter-state transmission charges and losses will not be levied on the transmission of electricity generated from power plants using solar and wind sources of energy including solar-wind hybrid power plant with or without storage which have been commissioned on or before the 30th June 2023; provided that the sale of power is to entities having Renewable Purchase Obligations, irrespective of whether the power is within RPO or not - and provided that in case of distribution licensees, the power has been procured competitively in accordance with the guidelines issued by the Central Government.

2.0 It has been brought to the notice of the Central Government that there may be renewable power projects which are eligible for waiver of inter-state transmission charges and losses and having their scheduled commissioning date on or before the 30th June 2023 which are granted extension of the scheduled commissioning date by the Solar Energy Corporation of India/NTPC Limited or other Project Implementing Agencies on behalf of Government of India for reasons of Force Majeure or delays on the part of the transmission provider or inaction / delays on the part of Government Agency; and it had been represented that in such cases the eligible renewable power projects should not be deprived of the waiver of inter-state transmission charges and losses. It was also considered that provisions related to applicability of ISTS charges and losses waiver to all obligated entities needs a relook.

3.0 Government have examined this issue and have decided that there is merit in the contention. Government of India have therefore decided that in supersession of Ministry of Power's earlier order No 23/12/2016-R&R dated 13.2.2018, Order No. 23/12/2016-R&R dated 6th November,2019 and 5th August 2020 no inter-state



transmission charges will be levied on transmission of the electricity generated from following power plants for a period of 25 years from the date of commissioning of the power plants which meet the following criteria:

- a) Power plants using solar and wind sources of energy, including solar/wind hybrid power plants with or without storage commissioned upto 30th June, 2023 for sale to distribution licensees, irrespective of whether this power is within RPO or not, provided that the power has been procured competitively under the guidelines issued by the Central Government. Power from such solar and wind plants may also be used for charging of storage including Hydro pumped storage plants:

Provided that where any renewable power project which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30th June 2023 is granted extension of time from the commissioning on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by the power plant as if the said plant had been commissioned on or before 30th June 2023

Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LT A shall also get extended accordingly, and it will be deemed that the period of I STS waiver is extended by the said period.

- b) Solar PV power plants commissioned under "MNRE's Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) dated 5.3.2019", and
- c) Solar PV power plants commissioned under SECI Tender for manufacturing linked capacity scheme (RFS No SECI/C&P/RfS/2GW Manufacturing/P-3/R1/062019 dated 25.06.2019) for sale to entities having RPO, irrespective of whether this power is within RPO or not.

4.0 This Order shall be applied prospectively i.e. from the date of issue of Order.”

39. The MoP order dated 30.11.2021 provides as follows:

Subject: Waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy under Para 6.4 6 of the Tariff Policy, 2016- Addendum regarding.

“In continuation to the Ministry of Power Order No. 23/12/2016-R&R dated 23.11.2021 and in supersession of order dated 26.11.2021 regarding the waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy, I am directed to convey that the following para will be added after para 3.1 (vi) of the Order dated 23.11.2021:



(vii) for any solar, wind and sources mentioned in para 3.1 (ii) and (iii) of the Order dated 23.11.2021, which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30th June 2025 is granted extension of time from the commissioning by Ministry of New and Renewable Energy after careful consideration, on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by such power plant as if the said plant had been commissioned on or before 30th June 2025:

Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.”

40. We have considered the above referred orders of MoP in order dated 23.5.2022 in Petition No. 525/MP/2020, wherein the Commission held that the MoP order dated 15.1.2021 regarding waiver of transmission charges is applicable for sale of power of electricity generated from certain identified sources. As per MoP order dated 15.1.2021, a generator which has been granted extension of COD by the competent authority, LTA under waiver shall start from the date when the generator starts generating power and does not provide for waiver of transmission charges for a generator which has not declared COD. The relevant portion of the order dated 23.5.2022 is as follows:

“ 51. We observe that above quoted MOP Orders are issued under paragraph 6.4(6) of the Tariff Policy, 2016. The paragraph 6.4(6) of the Tariff Policy 2016 is extracted as under:

“In order to further encourage renewable sources of energy, no inter-State transmission charges and losses may be levied till such period as may be notified by the Central Government on transmission of the electricity generated from solar and wind sources of energy through the inter-state transmission system for sale.”



52. Thus, the above extracted provision clearly shows that no transmission charges are to be levied for the purpose of "sale". Further, the subject of all the above quoted MOP Orders is "Waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources of energy under para 6.4(6) of the revised Tariff Policy, 2016". Therefore, it is abundantly clear that waiver of transmission charges is on "electricity generated". And Batch matters.

53. Further, the MOP Orders including the Order dated 13.2.2018 have been incorporated in 2010 Sharing Regulations and 2020 Sharing Regulations including the modalities of its implementation. Regulation 13 of the 2020 Sharing Regulations provides as under:

"13. Treatment of transmission charges and losses in specific cases

- (1) *No transmission charges and losses for the use of ISTS shall be payable for:*
- (a) *generation based on solar power resource for the useful life of the projects commissioned during the period from 1.7.2011 to 30.6.2017.*
- (b) *generation based on solar or wind power resources for a period of 25 years from the date of commercial operation, fulfilling the following conditions:*
- (i) Such generation capacity has been awarded through competitive bidding; and*
- (ii) Such generation capacity has been declared under commercial operation during the period from 1.7.2017 to 12.2.2018 for solar based resources or during the period from 30.9.2016 to 12.2.2018 for wind based resources; and*
- iii) Power Purchase Agreement(s) have been executed for sale of power from such generation capacity to the Distribution Companies for compliance of their renewable purchase obligation.*
- (c) *generation based on solar or wind power resources , for a period of 25 years from the date of commercial operation, fulfilling the following conditions:*
- (i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government; and*
- (ii) Such generation capacity has been declared under commercial operation during the period from 13.2.2018 to 31.12.2022; and*
- iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to all entities including Distribution Companies for compliance of their renewable purchase obligations."*

54. The 2020 Sharing regulations clearly provide that waiver of transmission charges is for generation of electricity. The same cannot be read as providing relief from payment of transmission charges due to delay of the generation project.



55. The LTA Agreement of the Petitioner is in accordance with the Regulation 13 of the 2020 Sharing Regulations, which clearly provides that transmission charges shall be as per CERC norms.

56. The Petitioner has also referred to a provision in MOP Orders dated 15.1.2021, Order dated 30.11.2021 read with Order dated 23.11.2021 indicating that “where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period”. The relevant provision of the Order dated 15.1.2021 is quoted as under:

“a) Power plants using solar and wind sources of energy, including solar-wind hybrid power plants with or without storage commissioned upto 30th June, 2023 for sale to distribution licensees, irrespective of whether this power is within RPO or not, provided that the power has been procured competitively under the guidelines issued by the Central Government. Power from such solar and wind plants may also be used for charging of storage including Hydro pumped storage plants:

Provided that where any renewable power project which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30 th June 2023 is granted extension of time from the commissioning on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by the power plant as if the said plant had been commissioned on or before 30th June 2023:

Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.”

57. We observe that the Order dated 15.1.2021 has been issued under the Tariff Policy where waiver is for the sale of power and for the electricity generated from identified sources satisfying specified conditions. The quoted provision in the Order dated 15.1.2021 extracted in paragraph 56 provides that for an entity which is provided extension of COD by the competent authority, LTA under waiver shall start from such COD date (i. e. when the generator starts generating power) and waiver shall be applicable for the period as specified (such as 25 years). Thus, the entire provision is for waiver of transmission charges after COD of the generating station. Nowhere it is provided that a generator which has not declared COD would not be levied transmission charges as per extant regulations.”

41. Thus, as analyzed in the above order dated 23.5.2022 in Petition No. 525/MP/2020, the Commission has already held that the MoP orders apply after



the COD of the generating station and does not provide any exemption from payment of charges before COD.

42. Petitioner has submitted that it does not dispute that as per the Sharing Regulations, the waiver of ISTS charges is applicable only after the commissioning of the project. However, MoP, vide its order dated 15.1.2021 directed the Commission to amend the Sharing Regulations so that in the event of “*force majeure*” situations, unnecessary charges are not levied on any party

43. In this regard, we observe that Petitioner is bound by the Sharing Regulations as it stands during the applicable period of delay of Petitioner. The present Regulations notified by the Commission under Section 178 of the Electricity Act, 2003, do not provide for extension of the date of LTA operationalization. As such, we are not inclined to extend the date of operationalization of the LTA granted to the Petitioners.

44. In view of the above discussions, the Petitioners prayer for exemption from payment of transmission charges for the period of mismatch between the start date of LTA commencement and the revised SCOD is also rejected.

45. Regulation 13(3) and 13(7) of the 2020 Sharing Regulations, provides for the liability of generator which is delayed as follows:

“(3) Where COD of a generating station or unit(s) thereof is delayed and the Associated Transmission System has achieved COD, which is not earlier than its SCOD, the generating station shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to Long Term Access granted for the generating station or unit(s) thereof, which have not achieved COD:

Provided that Yearly Transmission Charges in respect of Associated Transmission System shall be included for determination of transmission charges of



DICs in accordance with Regulations 5 to 8 of these regulations upon the generating station or unit(s) thereof achieving COD.

....
(7) Where Long Term Access is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed, the generating station shall, corresponding to the capacity that is delayed, pay transmission charges at the rate of 10% of transmission charge per MW for the State where such generating station is located..”

46. Accordingly, the Petitioner nos. 2 to 4 are liable to bear the Yearly Transmission Charges as per Regulation 13(3) or 13(7) of the 2020 Sharing Regulations, as applicable.

49. This order disposes of Petition No. 628/MP/2020 in terms of above discussions and findings.

**Sd/
(P.K. Singh)
Member**

**Sd/
(Arun Goyal)
Member**

**Sd/
(I.S. Jha)
Member**

