

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 76/MP/2022  
along with I.A. No. 08/IA/2022**

**Coram:**

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

**Date of Order: 05.12.2022**

**In the matter of:**

Petition under Sections 79(1)(c), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 inter alia seeking directions against the Central Transmission Utility of India Limited to extend the commencement of the Petitioner's Long-Term Access under the Long-Term Access Agreement dated 20.9.2018 to coincide with the revised Scheduled Commissioning Date under the Petitioner's Power Purchase Agreement dated 4.9.2018.

**And in the matter of:**

Vivid Solaire Energy Private Limited (VSEPL)  
Office No. 203, Magarpatta City,  
Pentagon Tower-3, 2<sup>nd</sup> Floor,  
Pune, Maharashtra-411028.

**.....Petitioner**

**Versus**

1. Central Transmission Utility of India Limited (CTUIL)  
SAUDAMINI, Plot No.2,  
Sector 29, Near IFFCO Chowk,  
Gurgaon, Haryana- 122001.
2. Solar Energy Corporation of India Limited (SECI)  
1<sup>st</sup> Floor, A-Wing,  
D-3, District Centre,  
Saket, New Delhi-110017
3. Ministry of Power  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi-110001.

**.....Respondents**

**For Petitioner:**

Shri Jafar Alam, Advocate, VSEPL  
Ms. Harneet Kaur, Advocate, VSEPL  
Shri Prashant Pranjal, VSEPL



**For Respondents:** Ms. Suparna Srivastava, Advocate, CTUIL  
Shri Tushar Mathur, Advocate, CTUIL  
Ms. Soumya Singh, Advocate, CTUIL  
Shri Anil Kr Meena, CTUIL  
Shri Swapnil Verma, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Ranjeet Singh Rajput, CTUIL  
Ms. Kavya Bhardwaj, CTUIL

## ORDER

Vivid Solaire Energy Private Limited (VSEPL) has filed the present Petition under sections 79(1)(c), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 (2003 Act) inter-alia seeking directions to the CTUIL, Respondent No.1 to extend the commencement of the Petitioner's Long-Term Access ("LTA") under the Long-Term Access Agreement ("LTAA") dated 20.9.2018 to coincide with the revised scheduled commissioning date under the Petitioner's Power Purchase Agreement ("PPA") dated 4.9.2018.

2. The Petitioner has made the following prayers:

- a) Admit the Petition and list the same for urgent hearing;*
- b) Direct Respondent No. 1 to comply with the Ministry of Power's Orders bearing Reference No. 23/12/2016-R&R dated 23.11.2021 and 30.11.2021 and consequently extend the commencement of the Petitioner's Long Term Open Access under the Long-Term Access Agreement to coincide with the revised Scheduled Commercial Operations Date under its Power Purchase Agreement;*
- c) Hold and direct that Respondent No. 1 cannot levy any transmission charges from the Petitioner upto the revised Scheduled Commercial Operations Date under its Power Purchase Agreement i.e., 14.10.2021, in view of the circumstances described in the Petition and quash all the bills raised by the Respondent No. 1 seeking payment of transmission charges;*
- d) Direct Respondent No. 1 to refund Rs. 2,73,07,397 paid as transmission charges by the Petitioner for periods in respect of which an extension of the Scheduled Commissioning Date has been granted by SECI;*
- e) Without prejudice to the prayers at (a) to (d), exercise the Power to Relax the application of the 2020 Sharing Regulations to the Petitioner, in view of the circumstances described in the Petition thereby exempting the Petitioner from any liability to pay transmission charges for the period up to the revised Scheduled Commercial Operations Date;*



f) *Without prejudice to the prayers at (a) to (d), exercise the Power to Remove Difficulties in giving effect to the 2020 Sharing Regulations as against the Petitioner, in view of the circumstances described in the Petition thereby exempting the Petitioner from any liability to pay transmission charges for the period up to the revised Scheduled Commercial Operations Date;*

g) *During the pendency of this Petition, pass appropriate interim/ ad-interim/ ex parte orders in terms of the prayers above inter alia directing Respondent No. 1 to maintain status quo and restraining Respondent No. 1 from taking any coercive action against the Petitioner including under the LTA Agreement, Transmission Service Agreement or any other financial/ regulatory action; and*

h) *Pass such other orders that this Hon'ble Commission deems fit in the interest of justice."*

### **Submissions of the Petitioner**

3. The gist of the submissions made by the Petitioner are as follows:

- a) Betam Wind Energy Private Limited ("BWEPL") emerged as a successful bidder in the competitive bid process conducted by the Solar Energy Corporation of India (SECI). The Petitioner was established by BWEPL as wholly owned Special Purpose Vehicle to implement wind power projects. Accordingly, the Petitioner is developing a 200 MW wind power project in the Tuticorin District in the State of Tamil Nadu ("Project").
- b) The Petitioner was granted Stage-II Connectivity for the Project with connectivity at the Tuticorin-II GIS pooling Sub-station by CTUIL vide its letter dated 13.7.2018. Thereafter, Petitioner, through one common application in respect of two tranches of capacity, applied for LTA for both the Tranche III Project and the Project. CTUIL vide its letter dated 24.8.2018 intimated the grant of LTA on the existing transmission system for the Petitioner's 250.2 MW quantum of power with the start date of LTA being 31.7.2019.
- c) The Petitioner entered into LTA Agreement dated 20.9.2018 with CTUIL and furnished the LTA Bank Guarantee of ₹25.20 lakh ("LTA BG") to CTUIL, subsequently revised vide amendment dated 28.6.2021.



- d) The Petitioner executed the PPA dated 4.9.2018 with SECI for sale of 200 MW wind power from the Project at a competitive tariff of ₹2.51/kWh. The original SCOD of the Project as per the PPA was 29.2.2020.
- e) The Petitioner has submitted that while substantial progress was made in the development of the Project, certain unforeseen, unavoidable and uncontrollable events made it impossible to commission the Project by the SCOD of the Project i.e., 29.2.2020 (“Original SCOD”). The said events inter alia included (i) delay due to the Covid-19 pandemic, (ii) introduction of the Tamil Nadu Combined Development and Building Rules 2019 (“TNCDB Rules”) by the Government of Tamil Nadu in February 2019, which delayed the process of land acquisition for the Project, and (iii) delay in issuance/ non-issuance of location clearance approvals (“LCA”) for setting up of Wind Turbine Generators (“WTG”).
- f) SECI based on the Office Memorandums (“OM”) dated 13.8.2020, 12.5.2021 and 29.6.2021 issued by the MNRE extended the SCOD of the Project under the PPA up to the revised SCOD i.e. 14.10.2021 without imposition of any penalties/ damages as envisaged for delay under the PPA.
- g) The Petitioner also issued “*force majeure*” notices dated 16.4.2020 and 23.4.2020 to the CTUIL under Article 14 of the TSA on account of the occurrence of the Covid-19 pandemic. However, CTUIL has not extended the date of commencement as well as period of LTA.
- h) Thus, there is a mismatch between the LTA commencement/operationalization date and the date by which the Petitioner is required to commission its Project.
- i) In terms of Clause 6.4(6) of the National Tariff Policy 2016 (“2016 Tariff Policy”), the Central Government is empowered to grant waivers to



renewable energy projects from the requirement to bear transmission charges and losses for the transmission of electricity generated by such projects for sale through the ISTS system in order to promote the development of the renewable energy sector.

j) Accordingly, MoP from time to time has exempted the renewable energy projects from payment of transmission charges and losses subject to fulfilment of certain terms and conditions as mentioned in such orders. The MoP vide orders dated 30.6.2016, 14.6.2017, 13.2.2018, 6.11.2019, 5.8.2020, 15.1.2021, 23.11.2021 and 30.11.2021 (“MoP Waiver Orders”), has extended the benefit of waiver of ISTS charges and losses for all renewable energy projects that are commissioned up to 30.6.2025.

k) The MoP orders dated 23.11.2021 and 30.11.2021, issued in line with the 2016 Tariff Policy and the MoP Rules granting waiver of transmission charges, are applicable to the Petitioner.

l) The MoP orders dated 23.11.2021 and 30.11.2021 have been passed in exercise of the powers conferred under section 3(3) of the Electricity Act, 2003 read with 2016 Tariff Policy. Since the 2016 Tariff Policy is a statutory document, the tariff policy and all order issued by the MoP thereunder will be binding on CTUIL.

m) The Petitioner’s SCOD has been validly extended by a competent authority, SECI, in terms of the provisions of the PPA executed by the Petitioner with SECI. Therefore, the Petitioner is entitled to an extension in the commencement and the period of LTA in terms of the aforesaid MoP Orders. The CTUIL cannot be permitted to raise any invoices under the LTA Agreement or otherwise to claim transmission charges or losses from the Petitioner for such extended period.



n) The CTUIL has itself incorporated reference to all such Government Orders in Clause 1(d) of the LTA Agreement as the basis on which transmission charges can be levied on the Petitioner. The CTUIL cannot now resile from clear terms of its own standard form contract. If the MoP Orders do not stipulate any penalty for delays by a renewable generator who has received a valid extension from SECI, the CTUIL cannot levy such penalty, contrary to the terms of the LTA Agreement. Accordingly, no transmission charges ought to be levied on the Petitioner for periods until which a valid extension of SCD has been and may further be granted by SECI.

o) The Petitioner had earlier filed Petition No. 195/MP/2019 with respect to its Tranche III and Tranche IV Project inter-alia seek realignment of the date of operationalization of the LTA with the scheduled dates of commissioning under the respective PPAs. In the absence of a regulatory regime, the Commission vide order dated 5.2.2020 had directed the Petitioner to pay transmission charges (and not PoC charges) for the full capacity for which LTA had been granted from 31.7.2019 to 23.11.2019 (i.e. one day before the date of commercial operation of Tranche III Project), and for 200 MW, from 24.11.2019 till the date of commercial operation of the Project or part thereof, as the case may be.

p) In terms of the Commission's order dated 5.2.2020 in Petition No. 195/MP/2019, the Petitioner has already paid transmission charges to the tune of ₹2,73,07,397 from the original LTA commencement date i.e. 31.7.2019 to 30.6.2020.

q) CTUIL has raised bills for the period from July 2020 to February 2022. CTUIL vide its letter dated 7.1.2022 has asked the Petitioner to make pending payment of ₹1.83 crore.



r) Now, with the change in the regulatory framework, the Petitioner is entitled to seek an extension in the period of LTA and date of commencement of LTA and seek their alignment with the revised SCOD under the PPA in view of the relaxation granted by the MoP vide latest MoP orders dated 23.11.2021 and 30.11.2021.

4. The Petitioner during the pendency of the instant petition filed an Interlocutory Application No. 8/IA/2022 seeking directions to restrain CTUIL from taking any coercive action against the Petitioner including under the LTA Agreement, Transmission Service Agreement or any other financial/ regulatory action including invocation and/ or encashment of the LTA BG furnished by the Petitioner and/ or suspension/ termination of the LTA and/ or the TSA and to direct CTUIL to maintain status quo during the pendency of the petition.

5. The matter was listed for hearing on admissibility on 29.7.2022. After hearing the Petitioner and CTUIL, the Commission reserved the order on admissibility of the petition.

6. During the course of hearing on 29.7.2022, the learned counsel for the Petitioner reiterated the submissions made in the petition. In response to the Commission's observations that a view has already been taken by the Commission on the subject matter in its earlier orders, learned counsel for the Petitioner submitted the such order as passed by the Commission has been stayed by APTEL and referred to the APTEL's order dated 14.7.2022 in Appeal No.236 of 2022 (Sprng Renewable Energy Pvt. Ltd. v CERC and Ors.). Learned counsel, accordingly, requested that the Commission may consider issuing notice in the matter and keep the matter pending till the outcome of the said appeal. Learned counsel for the Petitioner further



submitted that in the event the Commission decides not to admit the matter, liberty may be granted to the Petitioner to approach the Commission after the outcome of the appeal pending before the APTEL and the Petitioner's filing fees may be suitably adjusted.

7. Per Contra, learned counsel for the CTUIL submitted that the Petitioner had already approached this Commission seeking similar relief of realignment of date of operationalization of LTA with scheduled commissioning under the PPAs in Petition No. 195/MP/2019, which was decided by the Commission vide order dated 5.2.2020 and pursuant to which the Petitioner had paid the transmission charges from the original commencement date of LTA. Hence, the said issue qua the Petitioner stands settled. The proceedings pending before the APTEL will not apply to the present case.

#### **Analysis and decision**

8. The Petitioner is developing a 200 MW Wind power project in the Tuticorin District in the State of Tamil Nadu. It is observed that the Petitioner was granted Stage-II Connectivity Approval along with the bay allocation at the Tuticorin-II GIS Pooling Sub-station on 13.7.2018 for 250.2 MW of the instant Project and Tranche-III. The Petitioner executed a Connectivity Agreement with CTUIL dated 7.8.2018 and submitted Conn-BG for an amount of ₹5 crore to CTUIL. The Petitioner was granted LTA on 24.8.2018 and the LTA Agreement was entered into with CTUIL on 20.9.2018 with the start date of 31.7.2019 and furnished the LTA BG of ₹25.20 lakh ("LTA BG") to CTUIL. The Petitioner also entered into a PPA dated 4.9.2018 with SECI for 200 MW @ ₹2.51 kWh and the SCOD of the Project as per the PPA was 29.2.2020. SECI based on the Office Memorandums dated 13.8.2020, 12.5.2021 and 29.6.2021 issued by MNRE revised the SCOD of the Project to 14.10.2021.





9. In view of the extension of the SCOD by SECI to 14.10.2021, the Petitioner requested the CTUIL to extend the date of LTA operationalization for the 200 MW capacity from 31.7.2019 to 14.10.2021 i.e. upto the extended SCOD in line with the MoP directive dated 15.1.2021. The CTUIL has not extended the start date of LTA operationalization as sought by the Petitioner. Accordingly, the Petitioner has filed the instant petition inter-alia praying to extend the commencement of the Long-Term Open Access to coincide with revised SCOD of the Project to 14.10.2021 in terms of MoP orders dated 23.11.2021 and 30.11.2021 and to quash the bills raised by CTUIL seeking transmission of charges and direct to refund ₹2.73 crore paid by the Petitioner for the periods in respect of which an extension of the SCOD has been granted by SECI.

10. We have considered the submissions of Petitioner made in the petition, I.A and the submissions made by the Petitioner and the CTUIL during the hearing on 29.7.2022. The Petitioner has sought (a) extension of date of operationalization of LTA for capacity of 200 MW from 23.9.2020 to 14.10.2021 (b) exemption from payment of transmission charges in terms of MoP orders dated 23.11.2021 and 30.11.2021 and (c) refund of the transmission charges paid by the Petitioner for the periods for which SECI has extended the SCOD.

11. As regards the Petitioner's prayer for aligning the date of LTA operationalization with the revised SCOD of the project, it is observed that the Petitioner filed Petition No. 195/MP/2019 seeking directions to CTUIL to not operationalize the LTA granted, as its Project was delayed due to the *force majeure* events and "change in law" events, and not to take any coercive action and not to impose any charges on the Petitioner. The Commission in its order dated 5.2.2020 rejected the Petitioner's prayer for aligning the date of LTA operationalization with the



revised SCOD of the project. The relevant portions of the Commission's order dated 5.2.2020 is extracted hereinbelow:

*“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 drawal 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'.*

*27. We have considered the submissions of Petitioner and Respondents. We observe that the Petitioner applied for Stage-II connectivity on 12.6.2018 through two separate applications for 50.2 MW and 200 MW seeking start date of Stage-II Connectivity as 31.7.2019. It applied for LTA for 250.2 MW on 25.7.2018 seeking start date of LTA as 31.7.2019. The Petitioner signed PPA-I (50.20 MW) on 13.7.2018 and PPA-II (200 MW) on 4.9.2018 with SECI wherein the SCOD was mentioned as 24.11.2019 and 29.2.2020 respectively. Petitioner signed LTA Agreement on 20.9.2018 where start date of LTA was maintained as 31.7.2019. We observe that as on 20.9.2018 when Petitioner signed LTA Agreement, it had already entered into both the PPAs and was well aware of SCOD as PPA, still it maintained schedule of 31.7.2019 as start date of LTA. We observe that as per status of Commissioning provided by Petitioner in various JCC meetings as quoted in chronology of events above, the Petitioner was expected to Commission 150 MW by 31.7.2019.*

*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. The Petitioner has prayed for shifting of date of operationalization of LTA. However, once LTA is granted from a specific date, CTU reserves the transmission capacity for such Applicant from that date subject to provisions of Regulations. In case there are new applications for the same corridor on which such an Applicant is granted LTA, CTU has to plan new corridor to accommodate request of the new Applicants. Shifting such dates as per PPA dates would put the burden of transmission charges for the period from which capacity was allocated to a certain LTA grantee to other DICs of ISTS. An LTA Applicant has to seek LTA keeping in view the commercial implications of such LTA grant. In the instant case the Petitioner, being fully aware of its SCOD, signed LTA Agreement for a date prior to its SCOD. Therefore, the Petitioner’s request for aligning date of start of LTA with SCOD of the project under provisions of “Power to relax” or “Power to remove difficulty” cannot be agreed to. Hence, the prayer of Petitioner is rejected.”

12. As regards the Petitioner’s prayer for directions to CTUIL to comply with the MoP orders dated 23.11.2021 and 30.11.202 by exempting the Petitioner from payment of transmission charges for the period up to the revised SCOD by extending the operationalization of the date of LTA, it is observed that in Petition No.103/MP/2021, ACME Deoghar Solar Power Private Limited made prayers similar to the prayers made by the Petitioner in the instant petition. The Commission examined in detail whether ACME Deoghar Solar Power Private Limited is entitled for extension in commencement and the period of the LTA and exemption from payment of transmission charges in the light of the MoP orders dated 15.1.2021, 23.11.2021 and 30.11.2021 and rejected the same. The relevant portion of the order dated 8.6.2022 is as follows:

“78. MOP Order dated 15.1.2021 is quoted below:

**“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 LTA shall also get extended accordingly, and it will be deemed that the period of ISTS 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.”

79. The MoP order dated 30.11.2021 is quoted below:

**“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.”*

80. The above quoted MOP Orders have already been dealt with by this Commission in a similar case in Petition No. 525/MP/2020. The Commission in its order dated 23.5.2022 in Petition No. 525/MP/2020 has observed 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”.*

*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 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 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.”*

*81. As analyzed in the above extracted order dated 23.5.2022 in Petition No. 525/MP/2020, it has been clearly held by the Commission that waiver of transmission charges, if any, in terms of above quoted Orders apply after COD of the generating station and does not provide any exemption from payment of charges before COD.”*

13. Thus, the Commission has already dealt with the Petitioner’s prayer for commencement and extension of the LTA date up to the revised SCOD in order dated 5.2.2020 in Petition No.195/MP/2019 filed the Petitioner and the prayer for exemption from payment of transmission charges up to the revised SCOD in order dated 8.6.2022 in Petition No. 103/MP/2021 & batch matters, in the light of the MoP orders dated 15.1.2021, 23.11.2021 and 30.11.2021 and were rejected by it. We do not find any reason to change our earlier decisions in orders dated 5.2.2020 and 8.6.2022.



14. It is further observed that the Petitioner's LTA was operationalized on 31.7.2019 and the MoP's orders are applicable prospectively. Therefore, the reliance placed by the Petitioner on the MoP orders dated 15.1.2021, 23.11.2021 and 30.11.2021 is misplaced.

15. In view of the forgoing discussions, we are of the considered view that the Petitioner's prayer to align the commencement of LTA with revised SCOD of Project and waiver of the transmission charges is not maintainable.

16. As the Petitioner's prayer for waiver of the transmission charges until the revised COD of the Project has already been held inadmissible, the request of the Petitioner to refund the transmission charges already paid has become infructuous and is rejected.

17. As regards the Petitioner's submission that the matter may be kept pending till the disposal of the Appeal No.236 of 2022 filed by Sprng Renewable Energy Pvt. Ltd. before APTEL, we are of the view that no purpose would be served by keeping the instant matter pending till the disposal of said Appeal.

18. The Petitioner's prayer for adjustment of the filing fee paid for the instant petition is disallowed.

19. We also reject the Petitioner's prayer to exercise the "Power to Relax" and the "Power to Remove Difficulties" in application of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020 (2020 Sharing Regulations) and exempt the Petitioner from payment of transmission charges, as no case has been made out by the Petitioner to relax the





provisions the 2020 Sharing Regulations and as there is no difficulty in giving effect to the provisions of the said Regulations.

20. Petition No. 76/MP/2022 along with I.A. No. 08/IA/2022 is disposed of in terms of the above discussions and findings at the stage of admission.

sd/-  
**(P. K. Singh)**  
Member

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

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

