

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 86/MP/2022

Coram:

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

Date of Order: 9th September, 2022

In the matter of:

Petition under Section 79(1)(c) read with Section 79(1)(f) of the Electricity Act, 2003 for seeking a direction against Respondent No. 1 to extend the start date of MTOA, as sought for by Petitioner No. 1 vide its letter dated 10.01.2022, and further restrain Respondent No. 1 from taking any coercive and precipitative measures, including but not limited to levying any penalty/ charges etc. for non-operationalisation of 114.25 MW out of the total 240 MW, on the premise of the start date of MTOA being taken as 01.02.2022, till the final disposal of the present proceedings.

And in the matter of:

M/s Avaada Energy Private Limited,
304, Shoppers Plaza, Opp. Municipal Market,
C.G. Road, Navarangpura,
Ahmedabad, Gujarat – 380009,

M/s Avaada RJHN Private Limited,
C-11, Sector 65, Gautam Buddha Nagar,
Noida, Uttar Pradesh – 201301.

...Petitioners

Versus

Central Transmission Utility of India Limited,
Plot No. 2, Sector-29,
Gurugram, Haryana – 122 001.

Haryana Power Purchase Centre,
2nd Floor, Shakti Bhawan, Sector – 6,
Panchkula, Haryana – 134 108.

...Respondents

Parties Present

Shri Deepak Khurana, Advocate AEPL
Shri Ashwini Kumar Tak, Advocate, AEPL
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Ms. Soumya Singh, Advocate, CTUIL

ORDER

Avaada Energy Private Limited (hereinafter to be referred as “the Petitioner No. 1”) and Avaada RJHN Private Limited (hereinafter to be referred as “the Petitioner No. 2”) have filed the present Petition under Section 79(1)(c) & (f) of the Electricity Act, 2003 with the following prayers:

- a) *Direct Respondent No. 1 to extend the start date of MTOA, as sought for by Petitioner No. 1 vide its letter dated 10.01.2022;*
- b) *Pass an interim order restraining Respondent No. 1 from taking any coercive and precipitative measures, including but not limited to levying any penalty/ charges etc. for non-operationalisation of 114.25 MW out of the total 240 MW, on the premise of the start date of MTOA being taken as 01.02.2022, during the pendency and till the final disposal of the present proceedings; and*
- c) *Pass any such other and further reliefs as this Hon’ble Commission deems just and proper in the nature and circumstances of the present case.*

Submissions of the Petitioners

2. The Petitioners have mainly submitted as under :

- a) The Petitioner No. 1 was declared successful bidder in a tender floated by the Respondent No. 2, Haryana Power Purchase Centre for procurement of 300 MW power from solar power projects through competitive bidding. The Respondent No. 2 issued a Letter of Intent dated 22.5.2020 for purchase of 240 MW solar power from the Petitioner’s proposed solar power project of 240 MW capacity.
- b) The Petitioner No. 1 has applied for Stage -I and Stage-II connectivity, which was granted by CTUIL. Further, based on application for enhancement in connectivity quantum as received from Petitioner No. 1, CTUIL vide letter

dated 13.10.2020 granted Stage-II connectivity for 240 MW w.e.f. 31.12.2021.

c) The Petitioner No.2, a Special Purpose Vehicle of Petitioner No.1, has entered into Power Purchase Agreement ('PPA') with Respondent No. 2, Haryana Power Purchase Centre dated 6.7.2020 for supply of 240 MW. As per the PPA, Scheduled Commercial Operation Date ('SCOD') of the Project was 6.1.2022.

d) For the purpose of evacuation of the power from its aforesaid Project, the Petitioner had applied for Long-Term Access ('LTA') for 240 MW w.e.f. 5.1.2022, which was granted by CTUIL vide its letter dated 28.1.2021. However, subsequently, in the 18th JCC meeting of generation projects granted Connectivity/ LTA in the Northern Region held on 25.6.2021, CTUIL intimated the Petitioner that the LTA was likely to be operationalized only on 25.9.2022. Accordingly, in the interregnum, the Petitioner No.1 applied for MTOA for evacuation of power, which was granted by CTUIL for the period from 1.2.2022 to 30.11.2026. Pertinently, the Petitioner No. 1 was required to obtain MTOA due to delay in operationalisation of LTA and the same was granted against the LTA.

e) Since the Petitioners were able to achieve the commercial operation of only 125.75 MW by the end of January 2022, the Petitioner No.1 vide its letter dated 10.1.2022 had requested CTUIL for extension of time for the part operationalisation of MTOA for the balance 114.25 MW upto 23.5.2022 on following grounds:

(i) Chinese Government's recent "Dual Control System of Total Energy Consumption and Energy Intensity" policy as mandated by the National Development and Reform Commission of China in September 2021.

(ii) Solar Power Developers in India have explored options of sourcing modules from domestic suppliers. However, they are

facing issues viz. limited capacity of Indian Module Manufacturers, size and Efficiency of Modules and frequent instances of breach of contract by domestic module manufacturers.

(iii) Other Reasons: The Price of PV modules being demanded by the suppliers are very high due to increase in input costs. The availability of shipping liners has become a major bottleneck for ocean transport. The rates have gone up more than 5 times. The non-availability of shipping lines for delivery of PV modules are also seriously impacting the schedule of construction of projects.

f) The Ministry of Power on 15.01.2021, issued directions to the Commission to amend the regulations so as to *inter-alia* include provisions for extension of the Commercial Operational Date of a generating station as also the start date of the LTA for reasons/ events being force majeure.

g) Further, the Commission issued Revised Detailed Procedure on 20.02.2021 for “Grant of Connectivity to Projects based on Renewable Sources to Inter-State Transmission System” (‘Revised Detailed Procedure’), being in accordance with Regulation 27 of CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009. In terms of Clause 11.2 of the said Revised Detailed Procedure, a Stage-II Connectivity grantee, is required to complete the dedicated transmission line and generator pooling substation ‘on or before scheduled date of commercial operation of the generating project or extended/delayed commissioning permitted by the Renewable Energy Implementing Agency or the distribution licensee or the authorized agency on behalf of distribution licensee’.

h) The MTOA of the contracted capacity being 240 MW (out of which 125.75 MW capacity has already been commissioned and operationalized), has been delayed due to outbreak of COVID-19 and resultant lockdown,

including the disruption in supply chain. The said reasons, as aforementioned, have been treated by the Government of India itself, vide various Office Memorandums, as 'Force Majeure' events. It is for such reasons that Respondent No. 2 has extended the SCOD under the PPA beyond the originally stipulated date. Therefore, extension in the commencement of the MTOA would be a logical consequence of the extension in the SCOD of the 'Solar Power Project'.

i) As per Regulation 13 (1) (c) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 ('Sharing Regulations, 2020'), 'Solar Power Projects' awarded through competitive bidding process, having commercial operation declared during period 13.02.2018 to 31.12.2022, are not liable to pay transmission charges and losses. Therefore, no liability can be imposed upon the petitioners, as per the said Sharing Regulations 2020.

Hearing dated 5.5.2022

3. The Petition was listed for hearing on admission on 5.5.2022. The Commissions reserved the order on 'maintainability' of the Petition and sought following details/information vide RoP of hearing dated 5.5.2022:

From Petitioner:

(a) Commissioning status of the instant Project;

(b) Relevant provisions of Act/ Regulation/ Contract under which the deferment/ postponement of MTOA operationalization is being sought.

From CTUIL:

(a) Whether the MTOA granted for 240 MW w.e.f. 1.2.2022 has been operationalised from the due date i.e. 1.2.2022?

(b) Whether any bilateral bill has been raised to the Petitioner w.e.f. 1.2.2022 as the Petitioner has partly commissioned 125.75 MW out of 240 MW?

4. In compliance of direction given by this Commission vide RoP of hearing dated 5.5.2022, CTUIL vide its affidavit dated 12.5.2022 has submitted as under :

a) **Whether the MTOA granted for 240 MW w.e.f. 1.2.2022 has been operationalised from the due date i.e. 1.2.2022 :**

i. The Petitioner vide its application dated 11.08.2021 applied to CTU for grant of MTOA for 240 MW for transfer of power from its Solar Generation Project in Bikaner, Rajasthan to UHBVNL and DHBVNL, Haryana. Under the application, the start date of the MTOA sought by the Petitioner was 01.02.2022.

ii. CTU vide its intimation dated 08.10.2021 granted the MTOA for 240 MW to the Petitioner with start date of the MTOA being 01.02.2022 as sought by the Petitioner.

iii. Accordingly, on 01.02.2022, the 240 MW MTOA granted to the Petitioner was operationalized by CTU, in terms of Connectivity Regulations/Detailed Procedure and MTOA agreement dated 29.10.2021.

b) Whether any bilateral bill has been raised to the Petitioner w.e.f. 1.2.2022 as the Petitioner has partly commissioned 125.75 MW out of 240 MW :

i. The Petitioner started commissioning its solar generation in phases commencing from December 2021. Upon operationalizing the MTOA, the exemption from payment of transmission charges in the billing is being provided as per the exemption documentation submitted by the generator. For the balance (non-commissioned) MTOA, the billing is being done on Haryana (beneficiary) as per Regulation 13(2) of CERC Sharing Regulations, 2020.

ii. The details of quantum billed on Haryana till date as per Regulation 13(2) of CERC Sharing Regulations,2020 is given below:

S.No.	Billing month	Billing period	Total quantum	Quantum of Generation Commissioned and exempted for transmission charges	Balance quantum & Amount billed on Haryana as beneficiary
1.	Apr' 22	Feb' 22	240MW	125.75 MW	Quantum : 114.25 MW & Amount : Rs. 3,87,17,389/-
2.	May' 22	Mar' 22	240 MW	Till 15.03.22: 125.75 MW From 16.03.2022- 144.95 MW	Quantum: Till 15.03.22: 114.25 MW Balance Mar' 22: 95.05 MW Amount : Rs 3,98,36,555/-

iii. No bilateral bills have been raised on the Petitioner.

5. In compliance of direction given by this Commission vide RoP of hearing dated 5.5.2022, Petitioners vide affidavit dated 12.5.2022 has submitted as under :

a) Commissioning status of the instant Project :

i. At the time of filing of the present Petition, the Petitioners had achieved commissioning and operationalization of 125.75 MW out of 240 MW. Thereafter, on 16.03.2022 and 06.04.2022, the Petitioners achieved part-commissioning & operationalization of 19.2 MW and 6.4 MW, respectively, making the part-commissioning & operationalization of 151.35 MW part capacity out of total capacity of 240 MW, as on 06.04.2022.

ii. Further, on 11.05.2022, the Petitioners achieved commissioning and operationalization of the remaining capacity of 88.65 MW. Therefore, as on 11.05.2022, the Petitioners have operationalized and commissioned the entire capacity of 240 MW.

b) **Relevant provisions of Act/Regulation/Contract under which the deferment/ postponement of MTOA operationalization is being sought :**

The petitioners re-iterated its earlier submissions and submitted references of some petitions wherein the Commission granted interim protection to the generators against any coercive action by CTUIL.

Hearing dated 29.7.2022

6. The present petition was heard on 5.5.2022 wherein the Commission reserved the Order on maintainability. However as the order could not be passed, prior to the then Chairperson demitting office, the petition was reheard on 29.7.2022. Considering the request of the learned counsel for the Petitioner, the Commission permitted the Petitioner to file its additional affidavit and the

Respondent, CTUIL was also allowed to file its response thereof, if any. The Commission reserved the order on 'maintainability' of the Petition.

Analysis and decision

7. We have **considered** the submissions of the Petitioners and the Respondent- CTUIL and perused the documents available on record. Petitioner had applied for Long-Term Access ('LTA') for 240 MW w.e.f. 5.1.2022, which was granted by CTUIL. However as intimated by CTUIL to the Petitioner, the LTA was likely to be operationalized only on 25.9.2022. In the interregnum, the Petitioner No.1 applied for MTOA for evacuation of power, which was granted by CTUIL for the period from 1.2.2022 to 30.11.2026. Out of the total 240 MW capacity, 114.25 MW was not commissioned as on 1.2.2022.

8. Accordingly the Petitioner has primarily sought the following reliefs :

a) Extension of the start date of MTOA for part capacity, as sought vide its letter dated 10.01.2022; and

b) Restraining Respondent No. 1 from taking any coercive and precipitative measures, including but not limited to levying any penalty/ charges etc. for non-operationalization of 114.25 MW out of the total 240 MW, on the premise of the start date of MTOA being taken as 01.02.2022, during the pendency and till the final disposal of the present proceedings.

9. The Petitioner No. 1 vide letter dated 10.1.2022 requested CTUIL as under :

"Dear Sir,

We wish to inform CTU that 112.95 MW part capacity out of 240 MW ISTS connected Solar Project in Bikaner, Rajasthan being implemented by M/s Avaada RJHN Pvt Ltd. has been declared commissioned and commercial operation (COD) has been achieved by Haryana Power Purchase Centre (HPPC) w.e.f. 22nd December 2021 and scheduling of power for injection at Bikaner, Rajasthan and drawl of power at HVPNL, Haryana STU periphery is being undertaken under Short Term Open Access (STOA) w.e.f. 25th December 2021.

We would hereby, also like to inform you that, CTU has granted MTOA for 240 MW capacity for the project scheduled for operationalization w.e.f. 01st February 2022 onwards vide MTOA Agreement signed between CTU and Avaada Energy Pvt Ltd on 29.10.2021.

We, however, at the same time also wish to highlight before you and have your accordance to the current state of affairs affecting implementation of solar projects across India.

Chinese Government's recent "Dual System of Total Energy Consumption and Energy Intensity policy as mandated by the National Development and Reform Commission of China on one of September 2021

China is a major supplier of Solar PV Module in India. China, for the last 4-5 months, has been experiencing a massive power crisis. As a result, supply hours to industries have been regulated, leading to a major reduction in production output. These rolling power cuts have impacted the entire value chain from polysilicon, glass, EVA, wafer, aluminium, and PV cell production. Consequently, all the Chinese modules suppliers have invoked Force Majeure provision and cited their inability to honour and deliver solar PV modules as per the delivery schedule of supply contracts.

Solar Power Developers in India have explored options of sourcing modules from domestic suppliers.

However, they are facing issues which are elaborated below:

- **Capacity of Indian Module Manufacturers:** As the ALMM list notified recently, the total domestic manufacturing capacity stands at around 8 GW, which current projects cannot use under execution due to design limitations. It is to be noted that various Tranches of CPSU tender and all projects that have been bid out after BCD & ALMM imposition will anyway be buying modules from domestic suppliers.
- **Size and Efficiency of Modules:** The low tariffs quoted by the SPDs have been on the back of Mono Perc & Bifacial technologies, where panels are above 500 Wp. The projects are viable with these modules only with high energy generation. Currently, no Indian manufacturer supplies modules above 400 Wp, as seen in the latest ALMM list published on September 29, 2021. It is not feasible to use these smaller Wp modules in the projects at this stage of implementation.
- **Frequent instances of breach of contract by domestic module manufacturers:** On many occasions, Indian module manufacturers have not honoured the signed contract. They do not supply the contracted capacity and increase the price after signing firm agreements.

No supply is expected from China till February 2022; however, the issues are expected to be resolved by the end of March with the Beijing winter Olympics and Suppliers are committing new shipment timelines starting from the end of March 2022/April 2022.

However, due to the reasons mentioned above, the commissioning timelines of 40-45 GW capacity are getting pushed beyond March 2022 and moreover, the price of PV modules being demanded by the suppliers are very high due to increase in input costs. The availability of shipping liners has become a major

bottleneck for ocean transport. While the rates have gone up more than 5 times, the non availability shipping lines for delivery of PV modules are also seriously impacting the schedule of construction of projects.

Under aforementioned circumstances, the entire time and cost overrun in the projects are being borne by the SPD as the financial closure for the projects are already done and any increase in project cost are required to be funded by the project proponent.

We are therefore, in serious fund crunch and financial crisis. Government has also acknowledged the crisis situation that has emerged and is trying to provide relief to the SPDS in every possible way, for instance, instructing the Dispute Resolution Committee (DRC) as formed by Ministry of New and Renewable Energy (MNRE), Govt. of India to review the applications of SPDS on case-to-case basis for grant of appropriate relief.

In the above context, we wish to inform CTU that, HPPC has already extended the SCOD for the 240MW project upto 23rd March' 2022 and we have again request HPPC to extend the timelines further for additional 2 more months i.e. upto 23rd May' 2022.

*As out of the total 240 MW contracted capacity, 112.95 MW part capacity already commissioned on 22.12.2021; we are scheduled to commission another 12.8 MW part capacity by the end of January 2022. We would, therefore, request CTU for Part Operationalization of MTOA upto 125.75 MW w.e.f. 01 February 2022 onwards and deferment / postponement of balance 114.25 MW upto **23rd May 2022 accordingly.***

.....
.....”

The Petitioner in its above letter had requested CTUIL for Part Operationalization of MTOA upto 125.75 MW w.e.f. 1.2.2022 onwards and deferment of balance 114.25 MW upto 23.5.2022.

10. The Petition was heard on 5.5.2022 wherein, the Petitioner insisted that interim protection be granted to the generating station. However, the Commission did not grant any relief and reserved the order on the maintainability. Aggrieved by the Commission's daily order dated 5.5.2022, the Petitioner approached the Appellate Tribunal which stayed the pending bills raised by the CTU. The relevant extracts of Appellate Tribunal daily order dated 13.5.2022 is as under :

“xxxxx

The appellatant had set up a power generation plant, there having been some delay in achieving the Schedule Commercial Operation Date (SCOD). Be that as it may, it

was submitted at bar that COD was duly achieved on 11.05.2022. During this period, the appellant has been availing of Medium Term Open Access (MTOA) for the reason the second respondent (CTU) had caused some delay in grant of Long Term Open Access (LTOA). The appellant had sought extension of MTOA to coincide with the extended SCOD/COD. The liability to pay transmission charges to the CTU for the period is dependent on the grant of MTOA/LTOA. The matter as to whether the MTOA was to be so extended as requested by the appellant is pending decision of the respondent Central Electricity Regulatory Commission (CERC) it having reserved its judgment on the petition on the said subject. The grievance here is that while reserving the decision, the Central Commission has glossed over the request made formally by an application for exemption from the levy of transmission charges, the order passed being silent in that regard. In the facts and circumstances, we stay the pending bills raised by the CTU against the appellant for collection of transmission charges for the period in question till next date of hearing.

Xxxxxxx”

11. The Appellate Tribunal vide its daily order dated 15.7.2022 observed that the Commission is yet to pronounce its decision on the issue of maintainability and direct that the interim protection granted by ad interim Order passed on 13.05.2022 shall continue till the Commission renders its decision on the issue of maintainability of the petition. The relevant extracts of Appellate Tribunal daily order dated 15.7.2022 is as under :

“The appeal at hand was directed against the Order dated 05.05.2022 passed by the first respondent/Central Electricity Regulatory Commission (“CERC”) on the file of Petition no. 86/MP/2022 which was filed by the appellant herein and is pending consideration of CERC. During the hearing before CERC on 05.05.2022, the appellant had pressed for an interim order in the nature of the restraint against the second respondent i.e. Central Transmission Utility of India Ltd. (“CTUIL”). Objections to the maintainability of the main petition presented by the appellant have been taken before CERC by CTUIL. The CERC had heard the parties on the said issue and reserved the order by proceedings recorded on 05.05.2022, the order being conspicuously silent on the prayer for interim stay as pressed by the appellant. It is against this backdrop that the appellant had come up before us by the appeal at hand and pressed for interim relief by application

(IA no. 697 of 2022). On 13.05.2022, we passed the following order on the said application:

The learned counsel for the appellant presses for interim protection. We have heard him. Though the learned counsel submits advance notices have duly been served to the respondents, there is no appearance on behalf of any of the respondents on their own. The appellant had set up a power generation plant, there having been some delay in achieving the Schedule Commercial Operation Date (SCOD). Be that as it may, it was submitted at bar that COD was duly achieved on 11.05.2022. During this period, the appellant has been availing of Medium Term Open Access (MTOA) for the reason the second respondent (CTU) had caused some delay in grant of Long Term Open Access (LTOA). The appellant had sought extension of MTOA to coincide with the extended SCOD/COD. The liability to pay transmission charges to the CTU for the period is dependent on the grant of MTOA/LTOA. The matter as to whether the MTOA was to be so extended as requested by the appellant is pending decision of the respondent Central Electricity Regulatory Commission (CERC) it having reserved its judgment on the petition on the said subject. The grievance here is that while reserving the decision, the Central Commission has glossed over the request made formally by an application for exemption from the levy of transmission charges, the order passed being silent in that regard. In the facts and circumstances, we stay the pending bills raised by the CTU against the appellant for collection of transmission charges for the period in question till next date of hearing. The appellant shall comply with the requirement of the Order XXXIX Rule 3 of CPC within two days.”

We are informed today that CERC is yet to pronounce its decision on the issue of maintainability. In the given facts and circumstances, we direct that the interim protection granted by us by ad interim Order passed on 13.05.2022 shall continue to inure to the benefit of the appellant herein till CERC renders its decision on the issue of maintainability of the petition and in the event of the said objection being repelled and the petition being entertained further, till an effective order is passed on the prayer pressed before the Commission for interim relief.

We are of the opinion that after putting in position the above arrangement nothing further survives in the appeal at hand for any further directions by this tribunal at this stage of proceedings pending before CERC.”

As per the above order, the Petitioner has interim protection till the order on maintainability is passed.

12. We observe that the Petitioner vide its application dated 11.8.2021 applied CTUIL for the grant of MTOA for 240 MW with effective date as 1.2.2022. CTUIL vide its letter dated 8.10.2021 intimated the grant of MTOA for 240 MW with start date of MTOA being 1.2.2022, as sought by the Petitioner. Thereafter, the Petitioner entered into MTOA Agreement dated 29.10.2021 with the CTUIL.

13. The intimation of grant of MTOA as well as MTOA Agreement specifies the date from which MTOA has been granted as 1.2.2022. The relevant extracts of MTOA Agreement dated 29.10.2021 as entered into by the Petitioner with CTUIL is as under :

“xxxxxxx

F) AND WHEREAS the transmission system required for direct injection of 240 MW of power, from Solar Generation plant in Bikaner, Rajasthan to UHBVNL and DHBVNL, Haryana is as per the arrangement indicated in the CTU's intimation dated 08.10.2021.

G) AND WHEREAS the commencement of MTOA for transfer of 240 MW of power from Solar Generation plant in Bikaner, Rajasthan to UHBVNL and DHBVNL, Haryana shall be as per intimation no. C/CTU/N/06/MTOA/1200003399 dated 08.10.2021.

H) AND WHEREAS CERC has notified "Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020. Accordingly, the determination and sharing of transmission charges and losses shall be as per the provisions of the Sharing Regulations, 2020 and Electricity Act, 2003 & relevant CERC Regulations.

I) AND WHEREAS MTC has agreed to share and pay all the applicable transmission charges of the existing transmission system from the date of Commencement of Medium Term Open Access in accordance with the sharing mechanism, as decided/ notified/ determined/ adopted by Central Electricity Regulatory Commission from time to time.

J AND WHEREAS the Central Electricity Regulatory Commission (Grant of Connectivity. Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and the Detailed Procedures

made therein shall be applicable including amendments made therein from time to time.

.....

.....

Now, therefore, in consideration of the above premises, it is hereby agreed by and between the parties as follows:-

1.0

a) the date of effectiveness of this Agreement shall be intimation letter ref No. C/CTU/N/06/MTOA/1200003399 dated 8.10.2021 enclosed at Attachment-I to this Agreement.

.....

2. This is agreed to by MTC, signing this Agreement, to share and pay all the applicable transmission charges of the existing transmission system from the date of Commencement of Medium Term Open Access in accordance with the sharing mechanism, as decided/notified/determined/adopted by Central Electricity Regulatory Commission from time to time.

.....”

Further, the details provided under aforesaid letter dated 8.10.2021 are as follows:

“.....

6	Details for Medium Term Open Access (MTOA)
6a	Quantum (MW) for which MTOA is granted 240MW
6b	Date from which MTOA is granted 01.02.2022
6c	Date up to which MTOA is granted 30.11.2026

Note:

1. It may be mentioned that the MTOA of 240 MW is being granted to M/s AEPL subject to commissioning of the following transmission system:

- Establishment of 765/400kV, 2x1500 MVA S/s at suitable location near Khetri commissioned
- Bikaner(PG)-Khetri 765kV D/c line-commissioned Khetri-Jhatikara 765kV D/c line-commissioned
- Khetri-Sikar (PG) 400kV D/c line (twin HTLS)-commissioned
- Ajmer (PG)-Phagi 765kV D/c line-commissioned
- Augmentation with 765/400kV, 1x1000MVA transformer (3rd) at Bhiwani (PG)
- Associated Reactive Power Compensation-commissioned

In addition to above, Transmission scheme for controlling high loading and high short circuit level at Moga substation shall also be a part of LTA system.-commissioned’.

xxxxxx”

As per the above following can be observed:

- (i) Petitioner specifically agreed to pay the transmission charges from the date of Commencement of Medium Term Open Access in accordance with the sharing mechanism specified by the Commission;
- (ii) date of commencement of MTOA is provided as 1.2.2022;

- (iii) the operationalization of said MTOA was dependent on the commissioning of identified transmission system;
- (iv) nothing is mentioned in MTOA Agreement with regards to SCoD or actual commissioning of the generation project.

14. We observe that Petitioner applied for MTOA as per its own requirement for access from 1.2.2022 . It entered into MTOA Agreement knowing fully well the liabilities of transmission charges under the said Agreement.

15. CTUIL vide letter dated 29.1.2022 indicated as follows:

“

Sub: Operationalization of 240MW Medium Term Open Access (MTOA) granted to M/s Avaada Energy Private Limited (AEPL) for transfer of power from its Solar Generation Project in Bikaner, Rajasthan - reg.

Ref: MTOA intimation issued by CTU vide letter ref. C/CTU/N/06/MTOA/1200003399 dated 08/10/2021 for grant of 240MW MTOA to M/s AEPL

Dear Sir,

This is with reference to 240MW MTOA granted to M/s AEPL vide CTU intimation referred above for transfer of power from its Solar Generation Project in Bikaner, Rajasthan to UHBVNL and DHBVNL, Haryana. As per MTOA intimation, start date of 240MW MTOA is 01.02.2022 subject to signing of MTOA agreement and fulfillment of requirements as per CERC Orders/ CERC Connectivity Regulations/Detailed Procedure. M/s AEPL has signed MTOA agreement with CTU on 29/10/2021 and also the under construction ISTS elements considered for above grant of MTOA is also commissioned..

In view of the above, the MTOA granted to M/s AEPL for transfer of 240 MW power from their Solar generation project in Bikaner, Rajasthan to UHBVNL and DHBVNL, Haryana (NR) is being made operationalized w.e.f 01/02/2022 in terms and conditions of the referred MTOA agreement signed on 29/10/2021 in line with the CERC Connectivity Regulations/Detailed Procedure, 2009 and amendments issued thereof..

It is also to be noted that in case of delay in generation, M/s AEPL shall be liable to bear transmission charges from 01.02.2022, as applicable, in line with CERC Sharing Regulations 2020. Further, all applicable liabilities towards operationalization of above MTOA shall be borne by the applicant.

This is for your information & necessary action please.

”

As per above it is noted that the identified transmission system has been commissioned and entire MTOA for 240 MW was operationalized from 1.2.2022 and that Petitioner was liable to pay transmission charges in line with CERC Regulations.

16. We observe that as on 1.2.2022, part capacity of the Petitioner was already commercial (125.75 MW) and was covered under waiver of ISTS charges under 2020 Sharing Regulations, hence no liability of transmission charges was due on Petitioner for such capacity. However 114.25 MW was not commercial as on 1.2.2022 for which Petitioner is liable to pay transmission charges.. Further, neither the MTOA Agreement nor the 2009 Connectivity Regulation have any provision to extend the start date of operationalization of MTOA. In a similar case in Petition No. 195/MP/2019, wherein the Petitioner therein had sought for shifting of date of operationalization of LTA. While rejecting the Petitioner's prayer vide order dated 5.2.2020, this Commission observed as under :

“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.”

It is settled position that an LTA/MTOA Applicant has to seek LTA/ MTOA keeping in view the commercial implications of such grant. Once, it has been entered and

the one party to the Agreement has fulfilled its obligation, the other party is bound for its part of the obligations. . Section 37 of the Indian Contract is very explicit in providing “ the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law.”

17. Further, Petitioner has referred to various events such as delay of supply from Chinese manufacturers, COVID etc. claiming them as force majeure, while requesting to extend the start date of MTOA. We observe that Petitioner has not placed on record any Force Majeure notice issued by it, nor does the MTOA Agreement or the 2009 Connectivity Regulations has any provision for force majeure. Needless to say, that it is well established law that such notice is sine qua non for invoking a shelter of force majeure.

18. We observe that the MTOA Agreement as well as the Connectivity Regulations do not have any provision to defer the start date of operationalization of LTA/ MTOA. The present Petition is not based on any provision of any Act/ Agreement / Regulation. The Petitioner has failed to prove any cause of action. Order 7 Rule 11 of Civil Procedure Code, 1908 deals with Rejection of Plaint, which reads as under :

“The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

19. Merriam Webster dictionary defines cause of action as the grounds (such as violation of a right) that entitle a plaintiff to bring a suit. In other words, cause of action is that fact or combination of facts that provide an individual with the right to seek judicial redress against another individual. Rule 11(a) essentially lays down that a plaint is liable to be rejected by the court if such a cause of action, upon which the whole suit is founded is not specified therein.

20. In Swamy Atmanand v. Sri Ramakrishna Tapovanam, the Hon'ble Supreme Court has defined cause of action as under :

“24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.....”

21. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. In Azhar Hussain v. Rajiv Gandhi , the Hon'ble Supreme Court has held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to occupy the time of the court and exercise the mind of the respondent. The relevant extracts of the judgment is as under:

“Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent.

22. In Dahiben Vs. Arvinbhai Kalyanji Bhansai, the Hon'ble Supreme Court has held that the remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

“12.3 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint², read in conjunction with the documents relied upon, or whether the suit is barred by any law.

xxxxxx

12.10 The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint shall be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

13. Cause of action means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

23. In view of failure on the part of the Petitioner to disclose any provision in support of its prayer, the prayer of the Petitioner seeking extension of the start date

of MTOA does not survive and hence, the Petition is rejected. We are of the view that the instant petition is not maintainable as per the Regulations and the MTOA Agreement entered into by the Petitioner.

24. We also reject the contention of the Petitioner that as per Regulation 13 (1) (c) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, 'Solar Power Projects' awarded through competitive bidding process, having commercial operation declared during period 13.02.2018 to 31.12.2022, are not liable to pay transmission charges and losses. Regulation 13 (1) (c) of the Sharing Regulations 2020 read 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:

*.....
(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."

The above regulations of the 2020 Sharing regulations clearly provide that waiver of transmission charges is for generation of electricity which is after COD of the generating station. The same cannot be read as providing relief from payment of transmission charges due to delay of the generation project. The MTOA 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. Moreover, as noted under Paragraph 13 above, the Petitioner has agreed to

share and pay all the applicable transmission charges of the existing transmission system from the date of commencement of Medium Term Open Access in accordance with the sharing mechanism, as decided/ notified/ determined/ adopted by Central Electricity Regulatory Commission from time to time.

25. Accordingly, CTUIL shall raise the bills upon the Petitioner for the period of mismatch between operationalization of MTOA and Commissioning of the project in accordance with law.

Bills raised on Haryana by CTUIL

26. CTUIL vide its affidavit dated 12.5.2022 submitted that upon operationalizing the MTOA, the exemption from payment of transmission charges in the billing is being provided as per the exemption documentation submitted by the generator and for the balance (non-commissioned) MTOA, the billing is being done on Haryana (beneficiary) as per Regulation 13(2) of the CERC Sharing Regulations, 2020. CTUIL also submitted that it has not raised any bills on Petitioner. The snapshot of details of bills raised by CTUIL is as follows:

S.No.	Billing month	Billing period	Total quantum	Quantum of Generation Commissioned and exempted for transmission charges	Balance quantum & Amount billed on Haryana as beneficiary
1.	Apr'22	Feb'22	240MW	125.75 MW	Quantum : 114.25 MW & Amount : Rs 3,87,17,389/-
2.	May'22	Mar'22	240 MW	Till 15.03.22 – 125.75 MW From 16.03.2022 - 144.95MW	Quantum: Till 15.03.22 – 114.25 MW Balance Mar'22 – 95.05 MW Amount : Rs 3,98,36,555/-

As per above, bills for the billing months April, 2022 and May, 2022 have been raised by CTUIL corresponding to the capacity that has not been commissioned by the Petitioner to Respondent No. 2, HPPC citing regulation 13(2) of the Sharing Regulations, 2020.

27. We have perused Regulation 13(2) of the Sharing Regulations, 2020 which provides as follows:

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

(1).....

(2) Where a generating station or any other seller has been granted Long Term Access or Medium Term Open Access and has entered into Power Purchase Agreement(s) for supply of power under such Long Term Access or Medium Term Open Access, the transmission charges towards such Long Term Access or Medium Term Open Access for components identified under Regulations 5 to 8 of these regulations shall be determined at the drawal nodes, and billed to the buyer(s) after COD of generating station or unit(s) thereof.”

.....”

As per the above regulation, the transmission charges towards MTOA would be billed to buyer only after COD of the generating station or unit thereof. We, therefore observe that the said bills, which are corresponding to the capacity not commissioned, raised to HPPC by CTUIL are contrary to the aforesaid provision of the Sharing Regulations, and accordingly, we direct CTUIL to revise the bills and raise the bills on the Petitioner in accordance with the law.

28. Petition No. 86/MP/2022 is disposed of in terms of the above.

sd/-

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

sd/-

**(Arun Goyal)
Member**

sd/-

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