

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 199/MP/2023**

**Coram:**

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

**Date of Order: 5.9.2023**

**In the matter of:**

Petition under Section 79 of the Electricity Act, 2003 read with Regulation 41 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 praying before this Hon'ble Commission to exercise its "Power to Relax" and thereby remove the hardship arising out of the operation of the said Regulations.

**And in the matter of:**

1. ACME Solar Holdings Private Limited  
104, Munish Plaza, 463 7/20,  
Ansari Road, Daryaganj, New Delhi – 110002

**.....Petitioner**

**Versus**

2. Power Grid Corporation of India Limited  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-11001 122001
3. Central Transmission Utility of India Limited  
First Floor, Saudamini, Plot No.– 2, Sector– 29  
Near IFFCO Chowk Metro Station  
Gurgaon – 122 001, Haryana
4. Maharashtra State Electricity Distribution Company Limited  
Prakashgad Plot G9, 5th Floor, Station Road,  
Bandra (E), Mumbai – 400005

**.....Respondents**

**Parties Present:** Shri Sujit Ghosh, Advocate, ASHPL,  
Ms. Ananya Goswami, Advocate, ASHPL  
Ms. Mannat Waraich, Advocate, ASHPL,  
Shri Swapnil Verma, CTUIL  
Shri Siddharth Sharma, CTUIL



Shri Ranjit Singh Rajput, CTUIL  
Ms. Ankita Singh, CTUIL  
Ms. Muskan Agarwal, CTUIL  
Shri Yatin Sharma, CTUIL

## ORDER

ACME Solar Holdings Private Limited (ASHPL) (hereinafter to be referred to as “the Petitioner”) has filed the present Petition under Section 79(1)(c) of the Electricity Act, 2003, read with Regulation 41 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022, to relax certain provisions of the GNA Regulations in order to obviate the hardship being caused to the Petitioner on account of operation of the said Regulations. The Petitioner has made the following prayers:

### **In Petition No. 199/MP/2023:**

- (a) *Admit the Petition;*
- (b) *Exercise its power under Regulation 41 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 and thereby treat the MTOA and LTA granted to the Petitioner under the Connectivity Regulations, 2009 as GNA deemed to have been granted under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 without requirement of submission of the Bank Guarantees;*
- (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;*

### **In I.A. No. 45 of 2023:**

- (a) *Refrain the Respondents from taking any coercive steps during the pendency of the petition and direct that Regulation 37.3(3)(f) of Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 is not given effect such that the Long Term Access and Medium Term Open Access granted is not considered as surrendered.*
- (b) *Pass such order(s) as this Hon'ble Commission may deem fit and proper in facts and circumstances of the present case.*

### **Submissions of the Petitioner:**

2. The Petitioner has mainly submitted as follows:

- (a) MSEDCL issued a Letter of Award dated 19.03.2019, to the Petitioner for the development of a 300 MW Solar Power Project in the State of Rajasthan, and the Petitioner incorporated M/s ACME Heergarh Powertech Pvt. Ltd. as a Project SPV, which entered into a Power Purchase Agreement (PPA) dated 21.08.2019 with MSEDCL.



- (b) PGCIL, vide its Intimation dated 22.06.2020, granted Stage-II connectivity from 21.06.2021, or the availability of ISTS, whichever is later, to the Petitioner. Petitioner entered into a Transmission Agreement for Connectivity dated 15.07.2020, with PGCIL. The Petitioner submitted the Connectivity Bank Guarantee dated 18.07.2020, for an amount of Rs. 5 Crore. This Bank Guarantee was later replaced with a BG of Rs. 3,00,00,000/- (Conn BG-2) as per CERC's revised Connectivity Procedure, along with Rs. 50 lakhs in respect of Conn BG-1. Later, both the Conn BG-1 and Conn BG-2 were returned to Petitioner upon commissioning of the project.
- (c) The Petitioner filed an application for LTA of 300 MW on 29.10.2021. CTUIL vide an Intimation dated 21.12.2021, granted long term access for a 300 MW Project in the state of Rajasthan from 14.03.2022 or the commissioning of ISTS for LTA, whichever is later. The Petitioner entered into the LTA Agreement dated 19.01.2022, with CTUIL for availing of long-term access to 300 MW solar power from its Project.
- (d) Thereafter, the Petitioner duly complying with the terms of the PPA, commissioned the entire 300 MW capacity of its Project on 22.05.2022, and started scheduling the power under STOA as LTA was not ready and operationalized by CTU. In the Commissioning Certificate, it was specifically indicated that on account of the non-operationalization of LTA, the Petitioner would supply power to MSEDCL through STOA, and accordingly MSEDCL has given approval for the scheduling of power through STOA.
- (e) The Petitioner also applied for grant of Medium-Term Open Access (MTOA), given that the STOA schedule is given last priority and revision of the schedule is not allowed under STOA. Further, as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, if any entity defaults on payment obligations, then its STOA access is regulated entirely. Therefore, the Petitioner sought MTOA so that the above challenges could be avoided. The Petitioner was granted MTOA vide an Intimation dated 09.09.2022, with a start date from 01.01.2023, which has also not been made effective to date by CTUIL.



- (f) Petitioner is scheduling power under STOA till date as neither MTOA nor LTA is operationalized as of yet by CTUIL. Due to scheduling power under STOA, the Petitioner is incurring heavy DSM penalties as revision of schedule is not allowed under STOA. Further, in two instances, due to non-payment of outstanding dues by MSEDCL, the Petitioner's power could not get scheduled as STOA of MSEDCL was regulated.
- (g) On 07.06.2022, GNA Regulations were notified, which superseded Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium-Term Open Access in inter-State Transmission and Related matters) Regulations, 2009 (hereinafter referred to as 'Connectivity Regulations,2009'). GNA Regulations envisage possible scenarios in relation to the transition from the Connectivity Regulations, 2009 for LTA and MTOA. In case an entity chooses to convert its LTA from the Regulations, 2009 to the GNA Regulations, as per Regulation 37.3(3)(d) of the GNA Regulations, the Construction Bank Guarantee already furnished shall be treated as Conn-BG1 for Rs. 50 lakhs and the balance as Conn BG-2 under these Regulations. In case no Construction Bank Guarantee has been furnished, then the entity would furnish Conn BG-1 for 50 lakhs and Conn-BG3 at Rs. 2 lakhs per MW corresponding to such LTA quantum within two months of exercising the said option. Further, any Conn BG-2 furnished under the Connectivity Regulations, 2009, would be treated as Conn-BG2 under the GNA Regulations. Further, in accordance with Regulation 37.4 of the GNA Regulations, in case an entity chooses to convert the MTOA granted under the Connectivity Regulations, 2009, to the GNA Regulations, then in that case, the entity is liable to furnish Conn-BG 3 at Rs. 2 lakh per MW corresponding to such MTOA quantum within two months of exercising such option.
- (h) In the present case, even though the LTA granted is not yet effective the project has been commissioned. Therefore, there is nothing left to be undertaken by the Petitioner, and it is only up to the Respondents to complete the transmission elements. This has led to a situation where the Petitioner was constrained to follow Regulation 37.3(3)(d) of the GNA Regulations and thereby submit the Conn BG-3 for Rs. 2 lakhs per MW. Further, in order to transition the MTOA granted under the Connectivity Regulations, 2009, into

the GNA Regulations, the Petitioner is required to submit Conn BG-3 as per Regulation 37.4 of the GNA Regulations.

- (i) Thus, the Petitioner is being asked to furnish BG separately for MTOA and LTOA for an amount of Rs. 2 lakh/MW each, for no fault of the Petitioner. It is only on account of the delay on the part of the Respondents that the Petitioner is being subjected to an additional financial liability to the tune of Rs. 12 crores.
- (j) Commercial operation of the full capacity has already been declared by the Petitioner, such that the trigger for return of Conn BG-1 and the first part of Conn BG-3 as per Regulation 16 has already taken place prior to notification of GNA regulations. It is a futile and irrelevant exercise to direct the Petitioner to follow the rigors of Regulation 37.3(3)(d) and 37.4(1)(d) of the GNA Regulations and thereby proceed to now furnish Conn BG-3 separately for MTOA and LTA.
- (k) Petitioner placed its reliance on the judgment of APTEL in its Order dated 22.01.2007 in the case of *NTPC Limited v. Madhya Pradesh Electricity Regulatory Commission & Ors.* wherein it was held that the Commissions ought to exercise their power to relax in cases where the non-exercise of such discretion is bound to cause hardship and injustice to a party or lead to an unjust result.

3. On the basis of the aforementioned, the Petitioner prayed before this Commission to exercise its just and discretionary power to relax the provisions of Regulation 37.3(3)(d) and 37.4(1)(d) of the GNA Regulations and thereby transition the Petitioner to the GNA Regulations without insisting upon the submission of the bank guarantees, particularly Conn BG-3.

**Hearing dated 17.7.2023:**

4. The matter was heard, and the representative of the CTUIL submitted that the LTA and MTOA granted to the Petitioner are yet to be operationalized as certain transmission elements, on which these grants were premised, are yet to be



commissioned. CTUIL further submitted that certain meetings are already underway with regard to the transition of the LTA and MTOA under the Connectivity Regulations, 2009 to the GNA Regulations. The representative of CTUIL also added that the requirement of furnishing the Conn BG flows from the GNA Regulations, and any action taken by CTUIL against any entity in the event of failure on its part to comply with such requirement cannot be considered coercive action but amounts to regulatory action. He submitted that the Petitioner ought to submit the Conn BG as specified in the GNA Regulations, which may be subject to the outcome of the present Petition.

5. The Commission admitted the Petition and directed CTUIL to submit the status of the Transmission System, which was required for the operationalization of the LTA & MTOA granted to the Petitioner. The Commission also directed CTUIL not to take any coercive action until the next date of hearing. Accordingly, I.A. No. 45/2023 was disposed of.

### **Submissions of CTUIL**

6. CTUIL, vide affidavit dated 24.07.2023 submitted the status of the Transmission System, which was required for the operationalization of the LTA & MTOA granted to the Petitioner as below:

#### **A. Transmission system required for operationalization of MTOA:**

<b>S. No.</b>	<b>Elements</b>	<b>Anticipated Commissioning Schedule/Status</b>
1	Establishment of 400 kV Pooling Station at Bikaner –II with suitable bus sectionalisation at 400 kV along with 420kV (2x125 MVAR) bus reactor	Commissioned on 24.07.2023
2	Bikaner-II PS – Khetri 400 kV 2xD/c line (Twin HTLS* on M/c Tower) along with 1x80MVAR switchable Line reactor on each circuit at Khetri end of Bikaner-II – Khetri 400 kV 2xD/c Line	Commissioned on 24.07.2023

3	Khetri- Bhiwadi 400 kV D/c line (Twin HTLS) * <i>*with minimum capacity of 2100 MVA on each circuit at nominal voltage</i>	Commissioned on 24.07.2023
4	Power reversal on $\pm 500$ KV, 2500MW Balia- Bhiwadi HVDC line upto 2000 MW from Bhiwadi to Balia	Completed in Feb'22
5	Removal of LILO of one circuit of Bhadla-Bikaner (RVPN) 400kV D/C line at Bikaner (PG) & Extension of this LILO section from Bikaner (PG) to Bikaner-II PS to form Bikaner-II PS- Bikaner (PG) 400kV D/c line	Commissioned on 11.07.23
6	4 <sup>th</sup> 500MVA, 400/220kV ICT at Bhadla-II (Section-1)	Commissioned on 17.05.23

## **B. Transmission system required for operationalization of LTA**

### **i. Transmission system for present applications for Bhadla-II PS**

<b>S. No.</b>	<b>Elements</b>	<b>Anticipated Commissioning Schedule/Status</b>
1	Augmentation of 2x500 MVA, 400/220kV ICT (4 <sup>th</sup> & 5 <sup>th</sup> ) at Bhadla-II Pooling station (220kV Section-I)	<ul style="list-style-type: none"> <li>4<sup>th</sup> ICT commissioned on 17.05.2023</li> <li>5<sup>th</sup> ICT commissioned on 30.05.2023</li> </ul>
2	Augmentation of 2x1500 MVA, 765/400 kV ICT (3 <sup>rd</sup> & 4 <sup>th</sup> ) at Bhadla-II Pooling station	<ul style="list-style-type: none"> <li>3<sup>rd</sup> ICT- Commissioned on 04.10.2022</li> <li>Anticipated Commissioning of 4<sup>th</sup> ICT by 31.12.2023</li> </ul>

### **ii. Common Transmission system (Part of Transmission system associated with SEZ in Rajasthan under 8.1 GW Phase-II scheme):**

<b>S. No.</b>	<b>Elements</b>	<b>Anticipated Commissioning Schedule/Status</b>
1	Establishment of 765/400kV, 2x1500 MVA S/s at suitable location near Sikar (Sikar-II Substation) with 1x125 MVA at 400kV level & 2x330 MVA bus reactors at 765kV level at Sikar - II	Taking over of land by POWERGRID is expected by Aug'23. Completion of works at Sikar-II S/s is expected by Jul'24



2	Bhadla-II PS – Sikar-II 765kV 2xD/c line	Bhadla– Sikar-II 765kV (1 <sup>st</sup> ) D/c line- July'24 (Note: As stated by POWERGRID, line shall be completed earlier however completion of scheme has been taken as July'24 matching with completion of Sikar-II S/s.) Bhadla– Sikar-II 765kV (2 <sup>nd</sup> ) D/c line-Sep'24
3	Sikar-II – Neemrana 400kV D/c line (Twin HTLS) *  *with minimum capacity of 2100 MVA on each circuit at nominal voltage	July'24 (Note: As stated by POWERGRID, line shall be completed earlier however completion of scheme has been taken as July'24 matching with completion of Sikar-II S/s.)
4	1x330 MVar Switchable line reactor for each circuit at Sikar-II end of Bhadla-II –Sikar-II 765kV D/c line	July'24 (Efforts shall be made to complete the works at Sikar-II S/s by July'24.)
5	1x240 MVar Switchable line reactor for each circuit at Bhadla-II end of Bhadla-II – Sikar-II 765kV D/c line	July'24 (Matching with line)
6	Sikar-II – Aligarh 765kV D/c line	July'24 (Note: As stated by POWERGRID, line shall be completed earlier however completion of scheme has been taken as July'24 matching with completion of Sikar-II S/s.)
7	1x330 MVar switchable line reactor for each circuit at each end of Sikar-II – Aligarh 765kV D/c line	July'24
8	Establishment of 765/400 kV, 3X1500 MVA GIS substation at Narela with 765 kV (2x330 MVar) bus reactor and 400kV (1x125 MVAR) bus reactor	March'24
9	Khetri – Narela 765 kV D/c line	March'24
10	LILO of 765 kV Meerut- Bhiwani S/c line at Narela	March'24
11	1x330 MVar Switchable line reactor for each circuit at Narela end of Khetri – Narela 765kV D/c line	March'24



12	Removal of LILO of Bawana – Mandola 400kV D/c (Quad) line at Maharani Bagh /Gopalpur S/s. Extension of above LILO section from Maharani Bagh/ Gopalpur upto Narela S/s so as to form Maharani Bagh – Narela 400kV D/c(Quad) and Maharani Bagh-Gopalpur-Narela 400 kV D/c (Quad) lines	March'24
13	2 no of line bays at Narela each for Maharani Bagh – Narela 400 kV D/c (Quad) and Maharani Bagh – Gopalpur** -Narela 400 kV D/c (Quad) lines formed after removal of LILO of Bawana – Mandola 400kV D/c(Quad) line at Maharani Bagh/Gopalpur S/s and Extension of above LILO section from Maharani Bagh/Gopalpur upto Narela S/s **Gopalpur Substation is under implementation by DTL by LILO of Bawana – Maharani Bagh 400kV D/c(Quad) at Gopalpur substation	March'24
14	STATCOM: <ul style="list-style-type: none"> <li>• Fatehgarh – II S/s: STATCOM: ± 2x300 MVAR, 4x125 MVAR MSC, 2x125 MVAR MSR</li> <li>• Bhadla – II S/s: STATCOM: ± 2x300 MVAR, 4x125 MVAR MSC, 2x125 MVAR MSR</li> </ul>	<ul style="list-style-type: none"> <li>• Fatehgarh – II S/s: Anticipated Commissioning in July'23</li> <li>• Bhadla – II S/s: Commissioned on 04.07.23</li> </ul>

**Hearing dated 3.8.2022:**

7. The matter was heard, and the Commission reserved the order in the matter. The Commission further directed that the interim protection granted to the Petitioner in terms of the Record of Proceedings for the hearing dated 12.7.2023 will continue till the issuance of the order in the matter.

**Analysis and decision:**

8. We have perused the submissions of the Petitioner and Respondent.



9. The Petitioner has submitted that PGCIL granted Stage-II connectivity for 300 MW at Bhadla-II from 21.06.2021, or availability of ISTS, whichever is later, and granted long term access for the 300 MW Project from 14.03.2022 or Commissioning of ISTS for LTA, whichever is later. The Petitioner was also granted MTOA vide Intimation dated 09.09.2022 with start date from 01.01.2023.

10. The Petitioner has further submitted that it commissioned the entire 300 MW capacity of its Project on 22.05.2022. The Petitioner has not been able to schedule power under MTOA or LTA as neither MTOA nor LTA has been operationalized by CTUIL as yet and has been compelled to schedule power under STOA only. As the LTA/MTOA is yet to become effective, to convert the LTA/MTOA granted under the 2009 regime to GNA Regulations, the Petitioner is required to submit Conn BG-3 @ Rs. 2 lakhs per MW against LTA quantum as well as against MTOA quantum in accordance with Regulation 37.3(3)(d) and Regulation 37.4 of the GNA Regulations, in total amounting to Rs. 12 crores (2 lakhs per MW x 300 MW each for MTOA and LTA). Petitioner is seeking relaxation of Regulations 37.3(3)(d) and 37.4(1)(d) of the GNA Regulations to allow transition without submission of Conn BG-3 since Petitioner declared COD before 5.4.2023.

11. We have considered the submissions of the Petitioner and Respondent. Let us peruse Regulation 37.3 and 37.4 of the GNA Regulations, which provide as follows:

*“37.3 If Connectivity and Long-Term Access have been granted in accordance with the Connectivity Regulations, 2009 but either both Connectivity and Long term Access are yet to become effective or Connectivity is effective and Long term Access is yet to become effective as on the date of coming into effect of these regulations, the same shall be treated as under:*

*.....*

*(3) Where Long term Access has been granted with system augmentation, the treatment of such Long term Access and corresponding quantum of Connectivity shall be as under:*

(a) The entity shall have the option of, either (i) to convert the Long term Access granted under the Connectivity Regulations, 2009 as GNA under these Regulations, or (ii) to surrender such Long term Access.

(b) Option under clause (a) of this Regulation shall be exercised by the entity within one month of coming into effect of these Regulations, failing which such Long term Access granted under the Connectivity Regulations, 2009 shall be considered as surrendered.

.....  
**(d) In case, the entity exercises the option (i) of clause (a) of this Regulation to convert the Long term Access granted under the Connectivity Regulations, 2009 as GNA deemed to have been granted under these regulations, the Construction Bank Guarantee already furnished shall be treated as Conn-BG1 for Rs 50 lakhs and balance as Conn-BG2 under these regulations. In case no construction bank guarantee has been furnished pursuant to signing of PPA and PSA, it shall furnish Conn-BG1 for Rs. 50 lakhs and Conn-BG3 @ Rs. 2 lakh/MW corresponding to such Long term access quantum within two (2) months of exercising the option (i) under clause (a) of this Regulation. In case any Conn-BG2 has been furnished under Connectivity Regulations, 2009, the same shall be treated as Conn-BG2 under these regulations. The Conn-BG1, Conn-BG2 and ConnBG3 shall be treated in terms of Regulations 16.1 to 16.4 of these regulations.**

**Provided that for an entity covered under subclauses (i), (ii) and (v) of Regulation 17.1 of these Regulations, Conn-BG1 and Conn-BG3 shall be returned within one month of date of effectiveness of GNA and for an entity covered under Regulation 17.1(iii), Conn-BG1 and Conn-BG3 shall be treated in terms of Regulations 16.5 of these regulations.**

(e) On conversion of Construction bank guarantee as Conn-BG1 and Conn-BG2 or furnishing of Conn-BG1 and Conn-BG3 in terms of clause (d) of this Regulation, as applicable, the Long term Access granted under the Connectivity Regulations, 2009 shall be treated as GNA deemed to have been granted under these regulations. The existing agreements between the entity and the Nodal Agency shall be aligned in line with provisions of these regulations.

(f) In case the entity fails to furnish Conn-BG1 and Conn-BG3 in terms of clause (d) of this Regulation, the Long Term Access granted to the entity under the Connectivity Regulations, 2009 shall be considered as surrendered in terms of clause (b) of this Regulation.

.....  
**37.4** If Medium Term Open Access has been granted in accordance with the Connectivity Regulations, 2009, but is yet to become effective as on the date of coming into effect of these regulations, the same shall be treated as under:

(1) Medium Term Open Access granted to an entity covered under Regulation 4.1 of these regulations shall be treated as under:

(a) The entity shall have the option of, either  
(i) to convert the MTOA granted under the Connectivity Regulations, 2009 as GNA deemed to have been granted under these regulations for the period of MTOA, or  
(ii) to surrender such MTOA

.....  
**(d) In case, the entity exercises the option (i) of clause (a) of this Regulation to convert the Medium term open Access granted under the Connectivity Regulations, 2009 as GNA under these regulations, it shall furnish Conn-BG3 @ Rs. 2 lakh/MW corresponding to such MTOA quantum within two (2) months of exercising option (i) under clause (a) of this Regulation, which shall be**

***returned after completion of the term of MTOA. In case such entity has furnished any bank guarantee for MTOA, the same shall be adjusted. Such MTOA shall be treated as GNA deemed to have been granted under these regulations till expiry of the of MTOA.***

- (d) *On furnishing of Conn-BG3 under clause (d) of this Regulation, Medium term open Access granted under the Connectivity Regulations, 2009 shall be treated as GNA deemed to have been granted under these regulations. The existing agreements between the entity and the Nodal Agency shall be aligned in line with provisions of these regulations.”*

As per the provisions of Regulations 37.3 and 37.4 of the GNA Regulations referred to above, If Connectivity and Long-Term Access or Medium- Term Open Access have been granted to an entity in accordance with the Connectivity Regulations, 2009, but Long-term Access or Medium- Term Open Access are yet to become effective as on the date of coming into effect of the GNA regulations, such entity is required to furnish Conn-BG1, Conn-BG2, and Conn-BG3, as applicable, corresponding to such LTA or MTOA.

12. We observe that the Petitioner has obtained both LTA and MTOA for the same capacity. The Conn-BG to be submitted for transitioning MTOA to GNA and LTA to GNA is the same in the Petitioner’s case. However, the timeline to return the Conn-BG for MTOA is after the term of MTOA expires and the timeline of return of Conn-BG towards LTA is as per Regulation 16 of the GNA Regulations. . Regulation 16 of GNA Regulations is quoted as under:

***“16. Treatment of Connectivity Bank Guarantee***

***16.1.*** *Conn-BG1 shall be returned within 30 days of declaration of commercial operation of full capacity by the Connectivity grantee.*

***16.2.*** *Conn-BG2 and Conn-BG3 shall be returned in five equal parts over five years corresponding to the generation capacity which has been declared under commercial operation by the Connectivity grantee:*

*Provided that in case of declaration of commercial operation of part capacity by the Connectivity grantee in a financial year, total quantum of such capacity declared under commercial operation within a financial year shall be considered while returning the Conn-BG2 and Conn-BG3 at the end of the financial year.*

***16.3.*** *In case of non-payment of transmission charges under Regulation 13 of the Sharing Regulations for more than 3 months from the due date, such transmission*

*charges shall be recovered by encashing Conn-BG1 (if subsisting), Conn-BG2 and Conn-BG3, as required. Connectivity shall be revoked from the date when Conn-BG2 and Conn-BG3, as available is not sufficient to cover transmission charges under Regulation 13 of the Sharing Regulations.*  
.....”

As per above, Conn-BG3 submitted under Regulation 37.3 of the GNA Regulations shall be returned in five equal parts over five years, corresponding to the generation capacity that has been declared under commercial operation by the Connectivity grantee.

13. The Petitioner has prayed the Commission to exercise its power under Regulation 41 of the GNA Regulations to relax the provisions of Regulation 37.3(3)(d) and 37.4(1)(d) and thereby treat the MTOA and LTA granted to the Petitioner under the Connectivity Regulations, 2009 as GNA deemed to have been granted under the GNA Regulations.

14. It is evident from Regulation 37.3(3)(d) that the requirement to furnish Conn-BGs is linked to transition of LTA to GNA with no linkage to COD of the project. Further, Regulation 16.3 clarifies the purpose of keeping the Conn-BGs alive for the period specified in Regulation 16 i.e. in case of non-payment of transmission charges under Regulation 13 of the Sharing Regulations for more than 3 months from the due date, the transmission charges shall be recovered through encashment of BGs. Thus, the Petitioner is not only seeking relaxation of Regulation 37 but also of the provisions of Regulation 16 of the GNA Regulations.

15. Regulation 41 of the GNA Regulations empowers the Commission to relax any of the provisions thereof either on its own motion or on an application made before it by any interested person. It reads as under:

*“41 Power to Relax: - The Commission, for reasons to be recorded in , may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.*

The power to relax under the regulations is in general terms and its exercise is discretionary. However, it is a settled law that exercise of a discretion must not be arbitrary, must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case.

16. Placing the reliance on the judgment of the APTEL dated 22.1.2007 in the case of, the case of *NTPC Limited v. Madhya Pradesh Electricity Regulatory Commission & Ors.* the argument made by the Petitioner in favour of relaxation is that the Petitioner will face hardship and suffer financial losses in case the relaxation is not granted. The Petitioner has submitted that due to non-readiness of certain transmission elements, it has led to a situation where the LTA granted to the Petitioner has till date not become effective. The non-readiness of certain transmission elements has resulted in a situation where the Petitioner is not being considered as a deemed grantee under the GNA Regulations and the said non-readiness is not all attributable to the Petitioner. In this context, it may be fair to refer to the judgment of the Hon'ble Supreme Court in *New India Sugar Works v. State of Uttar Pradesh & Ors.* [(1981) 3 SCR 29], wherein it was observed that:

*"It was next strongly contended that in fixation of the price of levy sugar the Government has not taken into consideration that fact that the petitioners would undergo a serious loss because the price would not be sufficient even to cover their manufacturing cost. We are, however, unable to agree with this argument. The policy of price control has for its dominant object equitable distribution and availability of the commodity at fair price so as to benefit the consumers. It is manifest that individual interest, however, precious they may be must yield to the larger interest of the community viz., in the instant case, the large body of the consumers of sugar. In fact, even if the petitioners have to bear some loss there can be no question of the restrictions imposed on the petitioners being unreasonable." (Emphasis added)*

Further, in *Shree Meenakshi Mills Ltd. v. Union of India*, the Hon'ble Supreme Court observed that the mere fact that some of those who are engaged in the business are alleging loss after the imposition of law will not render the law unreasonable.

17. When viewed in the light of the observations of the Hon'ble Supreme Court in above referred cases, the conditions specified by the Commission under the GNA Regulations cannot be categorized as unreasonable so as to justify need for resorting to exercise of general power of relaxation. The power of relaxation is exercisable in exceptional circumstances on case-to-case basis. The power of relaxation cannot be exercised in a manner so as to nullify the relevant provisions of the GNA Regulations and render them otiose or completely redundant. There cannot be any omnibus relaxation in the manner sought by the Petitioner. Thus we are of view that it is not a fit case in which power to relax may be exercised. Accordingly, the case of the Petitioner has been dealt with in accordance with the provisions of the GNA Regulations in succeeding paragraphs.

18. We note that the Petitioner has already commissioned its complete generation capacity of 300 MW as on 23.05.2022 (as per the Commission Certificate) and has prayed that it be allowed to transition its MTOA and LTA to GNA without the requirement of submission of Conn-BG3 since it has commissioned its project and it is the transmission system that has delayed the non-operationalization of LTA and MTOA.

19. We observe that the requirement of submission of Conn-BGs as per Regulations 37.3 and 37.4 of the GNA Regulations is linked to the effectiveness of LTA or MTOA and not COD of the generation project. In view of this fact, we are not inclined to consider the Petitioner's request for non-submission of Conn-BGs. We also do not agree with the Petitioner's contention that Conn-BGs are only required till COD of the project. As per the GNA regulations, Conn-BG2 and Conn-BG3 are to be returned in five equal parts over five years after COD, and subsisting Conn-BG2 or Conn-BG3 is encashed in case a generating station relinquishes its



Connectivity at any point after COD. Hence, Petitioner is also required to submit Conn-BGs as per the provisions of the GNA Regulations.

20. We observe from CTUIL's submission that GNA's transition from MTOA may be operationalised from July 2023 till 30.6.2027; however, the transition of LTA to GNA may happen from July 2024 (when GNA's transition from MTOA would be subsisting). Considering peculiar circumstance in the instant case where both LTA and MTOA have been taken for the same generation capacity, we hereby direct as follows:

- a) The Petitioner is allowed to transition Medium term open Access granted under the Connectivity Regulations, 2009, as GNA on furnishing the Conn-BG3 @ Rs. 2 lakh/MW (total amounting to Rs. 6 Crore against 300 MW quantum).
- b) The Petitioner is also allowed to transition its LTA to GNA with no additional Conn-BG3.
- c) The Conn-BG3 submitted to transition MTOA to GNA shall be considered the Conn-BG3 towards transitioning LTA to GNA since it is for the same generation capacity. Hence, Conn-BG3 shall not be returned after expiry or closure of MTOA, and the treatment of such Conn-BG3 shall be in terms of Regulation 16 of the GNA Regulations since the same Conn-BG3 shall be considered Conn-BG3 towards transitioning LTA.
- d) Since the Petitioner has already achieved COD in 2022, and as per Regulation 16, Conn-BG3 is to be returned in five equal parts in five years after COD, out of which one year has already elapsed, the Petitioner shall be required to deposit Conn-BG3 taking into account the period after COD that has already elapsed, which in the instant case is one year. For example, if one year after COD has elapsed, an entity shall furnish Conn-BG3 equivalent to  $4/5^{\text{th}}$  of the required amount, considering that  $1/5^{\text{th}}$  of such an amount of Conn-BG would have been returned after 1 year of COD, and so on.

21. CTU is directed to intimate the amount of Conn-BG3 to the Petitioner to be submitted in terms of the above directions to transition the MTOA and LTA of the



Petitioner to GNA within a week of the issuance of this Order. Petitioner is directed to deposit such Conn-BG within 15 days thereafter, failing which it shall be liable for actions in terms of GNA Regulations

22. Petition No. 199/MP/2023 is disposed of in terms of the above.

Sd/	Sd/	Sd/	Sd/
<b>(P. K. Singh)</b>	<b>(Arun Goyal)</b>	<b>(I. S. Jha)</b>	<b>(Jishnu Barua)</b>
<b>Member</b>	<b>Member</b>	<b>Member</b>	<b>Chairperson</b>

