

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 277/MP/2019 along with IA No. 21/2022

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

Date of Order:6.12.2023

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 for adjudication of dispute arising out of the action of Power Grid Corporation of India in revoking the Long-Term Open Access granted to the Petitioner for evacuation of 300MW power from its Wind Power Project on account of delay in submission of Bank Guarantee as required under the Long Term Access Agreement dated 23.01.2019.

And in the matter of:

1. Sitac Kabini Renewables Private Limited
507-508 Ashoka Estate,
24 Barakhamba Road,
New Delhi – 110001

.....Petitioner

Versus

2. Power Grid Corporation of India Limited
Saudamini, Plot No.2,
Sector 29, Near IFFCO Chowk,
Gurgaon (Haryana) – 122001

.....Respondent

Parties Present: Ms. Mazag Andrabi, Advocate, SKRPL
Ms. Tajali, Adovcate, SKRPL
Ms. Anjana Sharma, SKRPL
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Shri Partha Sarathi Das, CTUIL
Shri Bhaskar Wag, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjit Singh Rajput, CTUIL
Ms. Priyansi Jadiya, CTUIL

ORDER

Sitac Kabini Renewables Private Limited (hereinafter to be referred as “the Petitioner”), has filed the present Petition under Section 79(1)(f) of the Electricity Act



2003 (Act) for adjudication of a dispute arising out of the action of Power Grid Corporation of India Limited in revoking the Long-Term Open Access granted to it for evacuation of 300 MW power from its Wind Power Project on account of delay in submission of Bank Guarantee as required under the Long Term Access Agreement dated 23.01.2019. The Petitioner has made following prayers in the main Petition:

- i. Declare that the revocation of the Long-Term Transmission Agreement dated 23.01.2019 is arbitrary and illegal and consequently, direct the Respondent to reinstate the Long-Term Transmission Agreement dated 23.01.2019 with immediate effect;*
- ii. Direct the Respondent to refund the Application Bank Guarantee of Rs. 30,00,000/- (Thirty Lac Only);*
- iii. Direct the Respondent to disclose the location of the Proposed Bhuj-II S/s;*
- iv. Provide the Petitioner additional time of two months post disclosure of the location of Bhuj II S/s to submit the LTAA BG of Rs. 15 Crore; and*
- v. Grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner;*

2. The Petitioner has also filled an IA to bring on record the subsequent developments and additional documents and made following prayers:

- (a) admit the instant application and take the Additional Documents being ANNEXURE P20, ANNEXURE P21, ANNEXURE P22 (COLLY.), ANNEXURE P23 and ANNEXURE P24 (COLLY.) on record; and*
- (b) pass such further order or orders as this Hon'ble Tribunal may deem just and proper in the circumstances of the case.*

Submissions of the Petitioner:

3. The Petitioner has mainly submitted as follows:

- a. Ministry of New and Renewable Energy (MNRE) issued "Guidelines for Implementation of Scheme for Setting up of 1000 MW ISTS connected Wind Power Projects" on 22.10.2016 and SECI, being nodal agency of the MNRE



scheme, issued Request for Proposal (RFP) dated 30.06.2018 inviting proposals for setting up of ISTS-connected Wind Power Projects in India, on 'Build Own Operate' basis.

- b. Petitioner undertook preliminary studies/ due diligence at the then under implementation 765/400/220 kV S/C line Bhuj GSS (Existing Bhuj GSS) and ascertained that the said substation had space for connectivity of the Petitioner's Wind Power Project. Basis thereof, the Petitioner calculated its evacuation cost taking the Existing Bhuj GSS as the Delivery Point and arrived at a viable yet competitive tariff of Rs. 2.77/ kWh.
- c. SECI issued Letter of Award dated 24.10.2018, to the Petitioner for development of 300 MW ISTS-connected Wind Power Project for generation and sale of wind power with delivery point as Existing Bhuj GSS.
- d. Petitioner, applied for Connectivity to the interstate transmission system for 300 MW capacity at the Existing Bhuj GSS in terms of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations, 2009).
- e. SECI, vide email dated 26.10.2018, informed the Petitioner that its 300 MW capacity had been mapped to BSES Yamuna Power Limited, BSES Rajdhani Power Limited and Electricity Department of Govt. of Puducherry and directed the Petitioner to apply for Long Term Open Access (LTA) accordingly.
- f. Petitioner vide Application No. 1200001763 dated 31.10.2018, applied for LTA for evacuation of 300 MW capacity from its Wind Power Project from the Existing Bhuj GSS and tendered Application Bank Guarantee bearing no. for Rs. 30,00,000/- valid till 20.07.2020.
- g. Petitioner, at the '32nd Meeting of Western Region Constituents regarding LTA and Connectivity applications in Western Region' held on 26.11.2018, was, informed that Connectivity will only be provided at the Proposed Bhuj-II S/s.



- h. Petitioner vide letter dated 03.01.2019 informed SECI of the Respondent's decision to grant Connectivity and LTA at the Proposed Bhuj-II S/s for the reasons stated therein and of the consequent issues that have arisen for the Petitioner including but not limited to the delay in the commissioning of the said substation, and requested SECI to consider the Effective Date as 01.07.2019 (18 months prior to the tentative commissioning date for the Proposed Bhuj-II S/s i.e. December 2020) instead of 90 days from the date of issuance of the LoA.
- i. PGCIL, vide intimation dated 04.01.2019, granted Stage II Connectivity to the Petitioner for 300 MW at the Proposed Bhuj-II S/s. The Connectivity Intimation provided that the details in relation to Bay would be communicated to the Petitioner upon finalization of Substation layout/ GA diagram.
- j. Petitioner vide communication dated 07.01.2019, informed the PGCIL that Grant of connectivity at the Proposed Bhuj-II S/s would affect many aspects of the Wind Power Project including but not limited to the viability of the quoted tariff. While Connectivity and LTA has been granted to the Petitioner at the Proposed Bhuj-II S/s, the Stakeholders were informed that the location of the substation would be disclosed in 7-8 months.
- k. Respondent, vide intimation dated 09.01.2019, granted LTA to the Petitioner for evacuation of 300 MW capacity from its Wind Power Project from the Proposed Bhuj-II S/s on Target Region basis (NR and SR) effective from 16/03/2020 or Availability of above Transmission System, whichever is later. Petitioner entered into a Transmission Service Agreement (TSA) for Connectivity with the Respondent on 23.01.2019. The TSA requires the Petitioner to submit a Connectivity Bank Guarantee of Rs. 5 Crores as security mechanism within a period of 30 days from the date of Connectivity Intimation.
- l. Petitioner entered into Long-Term Access Agreement (LTAA) with the Respondent on 23.01.2019. The LTAA requires the Petitioner to submit a Bank Guarantee for an amount of Rs. 15 Crores as security mechanism for the transmission system to be built, owned and operated by POWERGRID within a period of 3 months from the date of signing of the LTAA.

- m. Petitioner entered into a power purchase agreement dated 29.01.2019 with SECI for sale of 300 MW capacity from its Wind Power Project for onward sale to Buying Utilities on a back to back basis. The Petitioner, in terms of Article 3.3 of the PPA, tendered a Performance Bank Guarantee of INR 60 Crores to SECI.
- n. Petitioner vide communication dated 02.02.2019 reiterated the issues arising out of the lack of information in regard to the Proposed Bhuj-II S/s and requested the Respondent to extend the timeline for submission of the Connectivity BG to be provided under the TSA by another 3 months.
- o. Petitioner tendered the Connectivity BG on 04.02.2019 and same was duly acknowledged by the Respondent. The Respondent vide letter dated 14.02.2019 directed the Petitioner to contact the Bid Process Coordinator i.e. PFC Consulting Limited (PFCCL) for information on location of the Proposed Bhuj-II S/s.
- p. Petitioner vide communication dated 19.02.2019 and 14.03.2019 while reiterating the issues arising out of the uncertainty as regards the Proposed Bhuj-II S/s requested PFCCL to identify and disclose the location of Proposed Bhuj-II S/s.
- q. PGCIL had by way of Petition No. 37/MP/2019 sought Regulatory Approval of this Commission for execution of the Transmission System for evacuation of power from potential solar and wind energy zones in Western Region. However, on account of non-compliance with the provisions of the extant Regulations, this Commission vide Order dated 26.04.2019 disposed of the said Petition with liberty to re-approach this Commission after due compliance with the relevant provisions of the extant Regulations. This further delayed the bid process for selection of a Transmission Service Provider for establishment and consequently the date of commissioning of the Proposed Bhuj – II S/s.
- r. Respondent arbitrarily issued notice dated 07.05.2019 for submission of LTAA BG to Petitioner and directed Petitioner to tender the LTAA BG within 7 (seven) days from the date of issuance of the Notice, failing which the LTA granted in

its favor would be liable for revocation and all associated consequences in terms of applicable CERC Regulations/ Detailed Procedures.

- s. Petitioner vide letter dated 14.05.2019 responded to the Notice issued by the Respondent and reiterated its concerns as regards the proposed Bhuj-II S/s and requested the Respondent for an extension of 2 weeks for acquiring information on the location of the Proposed Bhuj-II S/s and submission of the LTAA BG.
- t. Respondent vide communication dated 03.06.2019 revoked the LTA granted to the Petitioner on the ground that it had failed to submit the LTAA BG. Further, Respondent on 27.06.2019 invoked the Application BG that had been submitted by the Petitioner.
- u. During the 2nd meeting of the National Committee on Transmission held on 04.12.2018 it was decided that Proposed Bhuj II S/s and the related corridor would be augmented on priority basis and will be completed by December 2020, however till date neither the location of the Proposed Bhuj-II S/s has not been finalized/ disclosed nor the bid has been awarded.
- v. Petitioner has been proactive in getting all approvals and executing all necessary agreements such as the PPA, LTAA, TSA, etc. required for the setting up of its Wind Power Project. In the process, the Petitioner has not shied away from making significant financial investments by way of submission of bank guarantees under the relevant agreements for a total amount of Rs. 65 Crore. In view thereof, the Respondents' revocation of LTA on account of delay in submission of LTAA BG is arbitrary, unfair and without any basis in law.
- w. The delay in submission of the LTAA BG is purely on account of the delay on the part of the Respondent in disclosing the location of the Proposed Bhuj-II S/s and the resulting uncertainty and project risk created due to such nondisclosure.
- x. Petitioner is ready and willing to submit the LTAA bank guarantee subject to disclosure of requisite details in regard to the Proposed Bhuj-II S/s and pursuant route survey by the Petitioner for the construction of the dedicated transmission line.

Hearing dated 31.10.2019:

4. The matter was heard on 31.10.2019 and the Commission admitted the Petition. The learned counsel for the Petitioner informed that the project is likely to be commissioned by July, 2020.

Reply of PGCIL:

5. PGCIL in its reply vide affidavit dated 09.01.2020 has submitted as follows:
- a. Grant of connectivity to renewable energy based projects into the STS is governed by the “Detailed Procedure” notified by this Commission on 15.5.2018. The provision under clause 7.3 has since then been overridden by the Seventh Amendment to the Connectivity Regulations, 2009 (w.e.f. 28.01.2019) which provides under Regulation 8(3A) that Stage-I connectivity should be granted by the Respondent-CTU by indicating one location. However, Petitioner’s Stage-I connectivity application has been processed under the earlier clause 7.3 and accordingly it has been granted Stage-I connectivity at primary location as “Bhuj-II PS (GIS) (New)” and alternate location as “Bhuj-III PS (New)”.
- b. As per the prescribed norms of priority in the Regulations/Detailed Procedure, a connectivity applicant cannot be granted connectivity at a sub-station just because it has conducted a “due diligence” and has “ascertained” that a given substation has space for connectivity of its project. Rather, clauses 7.4 and 7.5 specifically state that grant of Stage-I connectivity is not to create any right in favour of the grantee on ISTS infrastructure including bays or in any particular location and that bays are to be allocated at the time of grant of Stage-II connectivity based on the then availability of bays.
- c. As per clause 9 and clause 10 of the Detailed Procedure, for grant of Stage-II connectivity, in the case where connectivity is granted at a new or under construction sub-station, the Respondent is required to intimate the confirmation of bay availability and the scheduled commissioning date of the sub-station as soon as the same is finalised.

- d. After the grant of Stage-II connectivity, the connectivity grantee is required to sign a Transmission Agreement (TA) with the Respondent for connectivity and submit the Connectivity Bank Guarantee (CBG) to the Respondent within 30 days of issue of intimation (clause 10.9 of the Detailed Procedure). As per said clause, no extension of time is to be granted to the grantee for the said purpose and in case of failure to sign the Agreement and/or to furnish the requisite bank guarantee, Stage-II connectivity is to be revoked/cancelled under intimation to the grantee.
- e. Clause 10.12 of the Detailed Procedure provides that at the time of grant of connectivity and signing of the Transmission Agreement, the allocated bays at ISTS pooling station or the scheduled commissioning date of the ISTS pooling station may not be available. As such, while signing the Transmission Agreement, the connectivity grantee cannot claim any right or any equity based on non-availability of bay allocation or non-availability of scheduled commissioning date of the ISTS pooling station.
- f. Clause 10.13 of the Detailed Procedure provides the procedure for LTA application by Stage-II connectivity grantee. Said clause 10.13(i) was overridden by the Seventh Amendment to the Connectivity Regulations, 2009 (w.e.f 28.01.2019) which provides under Regulation 12(1A) that Stage-II connectivity should not be a prerequisite for applying for LTA. However, Petitioner's LTA application was made prior to the notification of 7th Amendment to the Connectivity Regulations and was administered accordingly.
- g. It was not technically prudent to connect further generation projects at the under implementation Bhuj PS and also since the available space for line bays at Bhuj PS was proposed to be utilized in future for interconnection between Bhuj PS and the proposed Bhuj-II PS in order to balance the power transfer requirement from the Bhuj (Bhuj & Bhuj-II) complex, the connectivity could only be provided at the new proposed Bhuj-II 765/400/220kV (GIS) substation.
- h. Issue of priority in the matter of connectivity as regards applicants who had been selected through the SECI route had been raised in Petition No.145/MP/2017 and this Commission had rejected the same by holding that the bidders having

quoted the bid based on their own assessment, could not expect to be granted preferential treatment.

- i. Decision for grant of Stage-II Connectivity to the Petitioner was made exactly in terms of the applicable provisions of the Connectivity Regulations, 2009 and RE Detailed Procedure, 2018. Further, there was no 'change' in location of connectivity as wrongly alleged by the Petitioner. Instead, the Petitioner was never assured or granted connectivity at Bhuj PS.
- j. Stage-I and Stage-II connectivity were granted to the Petitioner vide separate letters dated 4.01.2019 at Bhuj-II PS (GIS) (New). The said intimation of grant of Stage-II connectivity was revised on 17.10.2019 wherein a minor contradiction between 'Clause 7c' and 'Note-5' of the connectivity-intimation was removed and Note-5 was amended in accordance with Clause 7c.
- k. The Petitioner was informed that the Bhuj-II pooling station had been agreed to be implemented through TBCB route with commissioning schedule as December, 2020 or as per progress of Stage-II connectivity/LTA applications received at Bhuj-II pooling station and therefore, since the Respondent was not aware of the exact location of bays till the conclusion of the TBCB process, the Petitioner was requested to contact the BPC for seeking clarity on location of the new Bhuj-II pooling station.
- l. Acting contrary to the terms of the LTA grant and the requirement under the Connectivity regulations, the Petitioner failed to furnish the bank guarantee of Rs.15 crores. As per Connectivity Regulations, Respondent issued a notice to the Petitioner and gave an opportunity of 7 days from the date of the notice, to submit the construction phase bank guarantee, failing which the LTA granted to it was liable to be revoked.
- m. However, instead of furnishing the required CBG, the Petitioner vide its letter dated 14.05.2019 requested the Respondent for an extension of time for submission of the same. A perusal of the aforesaid letter shows that the till date, the Petitioner had not even achieved financial closure and therefore, in view of the same, even its Stage-II connectivity was liable to be revoked as per clause 9.3.3 of the Detailed Procedure.



- n. In view of the above, Respondent revoked the LTA granted to the Petitioner vide letter dated 03.06.2019 and thereafter invoked the application bank guarantee on 27.06.2019 in accordance with clause 23.8 of the Detailed Procedure notified under the Connectivity Regulations.

Rejoinder of the Petitioner:

6. The petitioner in their rejoinder dated 16.01.2020 has submitted as follows:
- a. Subsequent to the termination of the LTAA, with a view to fulfil the obligation under its PPA dated 29.01.2019 with SECI and for timely completion of the Wind Power Project, the Petitioner submitted a fresh application dated 28.12.2019 for LTA for evacuation of 300MW capacity (New LTA Application) from its Wind Power Project from the Proposed Bhuj-II S/s of the Respondent. In terms of Regulation 12(3) of the Connectivity & LTA Regulations, 2009, the Petitioner has tendered Bank Guarantee for Rs. 30,00,000/- valid till 31.12.2020 (New Application BG) along with the New LTA Application.
- b. In view of the above, the Petitioner is conceding Prayer No. (i) and (iv) sought by the Petitioner in the captioned Petition and is now only seeking a refund of the Application Bank Guarantee of Rs. 30,00,000/-.
- c. Award process for implementation of the Proposed Bhuj-II S/s (from issuing of RFQ on 17.01.2019 to regulatory approval for execution of Transmission System by this Commission vide Order dated 10.10.2019 in Petition No. 197/MP/2019 to transfer of SPV to PGCIL on 16.10.2019) which should have been concluded within 145 days, was actually completed in 272 days. As on 15.01.2020, PGCIL had not obtained possession of the identified and allotted government client.
- d. Considering the delay in award, it is likely that the Proposed Bhuj-II S/s would not be commissioned within the specific timeline which is December 2020. Further, the associated transmission system consisting of 2x1500MVA, 765/400kV Lakadia PS with 765kV (1x330MVAR) & 400kV (1x125 MVAR) bus reactor and Lakadia – Vadodra 765 kV D/c line is also significantly delayed.

- e. Petitioner has procured 50% of the land and achieved Financial Closure by executing financing agreements for an amount of 2100 crores, for the development of the Wind Power Project. Further, SECI vide letter dated 26.08.2019 extended the deadline for compliance with Financial Closure and Conditions Subsequent for the Petitioner's Wind Power Project without seeking extension charges, upto the Scheduled Commissioning Date of the Project i.e. 22.07.2020.
- f. Commission would be right in exercising its 'Power to Relax' provided under Regulation 33 (A) of the Connectivity Regulations and allow a refund of the encashed Application BG. Commission in its Order dated 30.12.2019 in Petition No. 55/MP/2019 while exercising its 'Power to Relax' in view of the difficulty faced by the Petitioner therein in achieving milestones as per Clause 9.3 of the Detailed Procedure due to absence of knowledge of termination point of dedicated transmission line and the timeframe of completion of the substation, extended the Petitioner's/ Developer's timeline for achieving milestones.

Hearing dated 15.02.2022:

7. The matter was heard and on the request of the petitioner, Commission permitted the Petitioner to file an IA to bring on record subsequent developments after listing of matter on 31.10.2019 and the additional documents. Learned counsel for the Respondent submitted that as per the Petitioner's rejoinder and in view of its subsequent application and grant of LTA, only one prayer seeking refund of Application Bank Guarantee of Rs. 30 lakh survives for consideration in the instant petition.

Submission in IA No. 21/IA/2022:

8. The Petitioner has mainly submitted as follows:
 - a. After the revocation of the LTOA on 03.06.2019 and the invocation of the Application BG by the Respondent on 27.06.2019, the Applicant on 28.12.2019 submitted a fresh application for grant of LTOA for transfer of power from its 300MW wind project on Target Region basis (NR and SR) in terms of the CERC

Connectivity Regulations, 2009. PGCIL granted LTOA to the Applicant by way of intimation dated 19.02.2020 and subsequently executed Long Term Access Agreement dated 20.03.2020 with the Applicant (2nd LTAA). In terms of the 2nd LTAA, the Applicant submitted the CBG dated 19.06.2020 for INR 15 Crore to PGCIL on 22.06.2020.

- b. The Applicant has procured land for 300MW capacity, completed the construction of the dedicated transmission line and installed 189 MW capacity out of the total capacity of 300 MW. It will achieve early commissioning of 189 MW capacity in batches in March 2022 and the entire Project capacity will be commissioned by June 2022, prior to the SCOD i.e., 05.09.2022.
- c. The 'Minutes of the 34th Joint Coordination Committee meeting held on 24.12.2021 to review the status of upcoming Generation & Transmission Projects in the Western Region' dated 31.01.2022 shows that the anticipated COD of the Transmission System at Bhuj II is 31.03.2022. However, in view of the on-ground situation it is likely that the COD of Bhuj-II Transmission System will get further delayed.

Hearing dated 10.01.2023:

9. The matter was heard and the learned counsel for the Petitioner submitted that Petitioner is only pressing for direction to Respondent to refund the ABG of Rs. 30,00,000/- to the Petitioner. Learned counsel for the Respondent submitted that Petitioner failed to submit construction BG in the stipulated timeframe, the Respondent was constrained to revoke the LTA granted to the Petitioner which consequently led to the forfeiture of its ABG. The Commission reserved the order in matter.

Analysis and decision:

10. We have considered the submissions of the Petitioner and the Respondent and perused documents on record.



11. The Petitioner has submitted that it had applied for LTA on 31.10.2018 for evacuation of 300 MW capacity from its Wind Power Project from the Existing Bhuj GSS of Respondent and tendered Application Bank Guarantee for Rs. 30,00,000/-. However, due to technical reasons, Stage II Connectivity and LTA to the Petitioner was granted at Bhuj-II PS (GIS) (New) vide intimations dated 04.01.2019 and 09.01.2019 respectively. The Petitioner has stated that, this change in Delivery Point and delay caused on account of the Respondent failing to disclose the location of the Bhuj-II PS (GIS) (New) resulted in huge financial liabilities, uncertainty and project at risk. The petitioner entered into a Long-Term Access Agreement with the Respondent on 23.01.2019. The Respondent issued a notice dated 07.05.2019 for submission of LTAA BG and further vide communication dated 03.06.2019 revoked the LTA granted to the Petitioner as it had failed to submit the LTAA BG (15 Crore) in accordance with Detailed Procedure notified under CERC Connectivity Regulations 2009. Further, Respondent on 27.06.2019 also invoked the Application BG amounting to Rs. Thirty Lacs.

12. The Petitioner has in its interlocutory application submitted that subsequent to revocation of its original LTA, it had filed a fresh application dated 28.12.2019 for LTA for evacuation of 300MW capacity from its Wind Power Project from the Proposed Bhuj-II S/s of the Respondent and tendered Bank Guarantee for Rs. 30,00,000/- valid till 31.12.2020 (New Application BG) along with the New LTA Application and accordingly the Petitioner has conceded Prayer No. (i) and (iv) in the captioned Petition and is now only has sought a refund of the Application Bank Guarantee of Rs. 30,00,000 submitted with earlier application.

13. The respondent PGCIL has submitted that after the grant of Stage-II connectivity, the connectivity grantee is required to sign a Transmission Agreement



(TA) with the Respondent for connectivity and submit the Connectivity Bank Guarantee (CBG) to the Respondent within 30 days of issue of intimation (clause 10.9 of the Detailed Procedure) and no extension of time is to be granted to the grantee for the said purpose and in case of failure to sign the Agreement and/or to furnish the requisite bank guarantee, Stage-II connectivity is to be revoked/cancelled under intimation to the grantee. The Petitioner has also failed to furnish the bank guarantee of Rs.15 crores within 3 months of the LTAA agreement. As per the Connectivity Regulations, Respondent issued a notice to the Petitioner and gave an opportunity of 7 days from the date of the notice, to submit the construction phase bank guarantee, failing which the LTA granted to it was revoked and application bank guarantee was invoked.

14. Considering the submissions made by the Petitioner and Respondent and facts of the case, the only issue that arise for our consideration is **whether the Respondent is liable to refund the amount against the encashed Application Bank Guarantee of Rs. 30,00,000 or not?**

15. We observe that the Petitioner has contended that change in delivery point from the Existing Bhuj GSS to Bhuj-II PS (GIS) (New) and the Respondent's failure to disclose the location of the Bhuj-II PS (GIS) (New) resulted in huge financial liabilities, uncertainty and project at risk. In this regard we have perused the minutes of 32nd meeting of Western Region constituents regarding LTA and connectivity in Western Region held on 26.11.2018 wherein the application of the Petitioner for grant of Stage-I & stage-II connectivity as well as LTA was discussed. We note from the minutes that the Stage-I connectivity application of the Petitioner was made with Primary location as Bhuj-II PS (GIS) (New) and alternate location as Bhuj III PS

(New). Further, the Stage-II connectivity was agreed to be granted at the Primary location i.e. Bhuj-II PS (GIS) (New). The Clause 10 of the detailed procedure for processing and grant of Stage-II connectivity and provides as under:

“10.8 The intimation for grant of Stage-II Connectivity shall indicate the following:

- (i) Name of the ISTS Sub-station where Stage-II Connectivity is granted.*
- (ii) In case of an existing sub-station, the bay number and Single Line Diagram shall be provided along with the intimation.*
- (iii) In case of a new or under construction sub-station, the confirmation of bay availability and the scheduled commissioning date of the sub-station shall be intimated as soon as the same is finalised. In such cases, the bay shall be allocated to the Connectivity grantee after finalization of the same by CTU with the implementing transmission licensee of the sub-station. CTU shall endeavor to ensure that sub-station is available in matching timeframe of the SCOD of the generation project.”*

As per above provision of the detailed procedure, in the case where connectivity is granted at a new or under construction sub-station, the CTU is required to intimate the confirmation of bay availability and the scheduled commissioning date of the sub-station as soon as the same is finalised.

The Petitioner has also entered into a Transmission Agreement of Connectivity with PGCIL on dated 23.01.2019. The relevant extract of the same is as under: -

*“2.0 The details of the allocation of bay at ISTS pooling station and scheduled commissioning date of the ISTS sub-station shall form part of this Agreement as per stipulated format (**Annexure-2**). If at the time of execution of this Agreement, the details of bays and the scheduled commissioning date of the ISTS sub-station at which connectivity has been granted cannot be confirmed, then the same shall be intimated as and when it can be confirmed, and such intimation shall also form part of this Agreement.*

3.0 The details provided by “SKRPL” pertaining to ‘Scheduled commissioning date of the wind/solar/wind-solar generator/developer pooling station’ and

'Dedicated Transmission Line' shall form part of this Agreement as per stipulated format (Annexure-3)."

As per above, if the details of the allocation of bay at ISTS pooling station and scheduled commissioning date of the ISTS sub-station is not available at the time of execution of the Transmission Agreement, the details of the same was to be confirmed as and when it can be confirmed, as such there was no fixed time line for confirmation of the same. Thus it is seen that Stage-I connectivity application of the Petitioner was made with Primary location as Bhuj-II PS (GIS) (New) and alternate location as Bhuj III PS (New). Further, the Stage-II connectivity was agreed to be granted at the Primary location i.e. Bhuj-II PS (GIS) (New). Accordingly, the Petitioner's contention regarding the change in delivery point from the Existing Bhuj GSS to Bhuj-II PS (GIS) (New) and the Respondent's failure to disclose the location of the Bhuj-II PS (GIS) (New) resulted in huge financial liabilities, uncertainty and project at risk, is rejected.

16. We note that the Petitioner also entered into an Agreement for Long Term Access (LTAA) with the Respondent on 23.1.2019 wherein, it agreed and undertook with the Respondent as under:

"

1.....

(b) The '**LTC**' shall furnish a **Bank Guarantee**, as per format given by the CTU, from a bank for an amount of Rs. 15.0 Crores (Rupees Fifteen crore only) as security mechanism for the transmission system to be built, owned and operated by POWERGRID (the same being Rs. 5.0 Lakhs per MW, currently).

(c) The Bank Guarantee would be furnished in favour of POWERGRID within **three (3) months' time as specified as per Central Electricity Regulatory commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, from the signing of this Agreement failing which the Long term access granted shall be treated as cancelled**

and fresh application would be required in case the applicant wants to apply for Long Term Access again.”

As per above, the Petitioner agreed to furnish to the Respondent, a bank guarantee of Rs.15 crores within 3 months from the date of signing of the LTAA. However, acting contrary to the terms of the LTA grant and the requirement under the Connectivity regulations, the Petitioner failed to furnish the said bank guarantee.

17. Now let us examine the provisions of the Connectivity Regulations 2009 and Detailed Procedure for “Grant of Connectivity to Projects based on Renewable Sources to Inter-State Transmission System” to see whether the statutory framework allows for refund of the the Application Bank Guarantee by the Respondent as sought by the Petitioner. The relevant provisions of the Regulation 12 of the Connectivity Regulations, 2009 which deals with application for long term access and the encashment of Bank Guarantee is extracted as under:

“12. Application for long-term access

.....

(3) The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted. The bank guarantee shall be in favour of the nodal agency, in the manner laid down under the detailed procedure.

(4) The bank guarantee of Rs. 10,000 /- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.

(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalisation of such rights when augmentation of transmission system is not required.

(6) The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure.”

.....

“15. Execution of Long-term Access Agreement

The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure. While seeking long-term access to an inter-State Transmission licensee, other than the Central Transmission Utility, the applicant shall sign a tripartite long-term access agreement with the Central Transmission Utility and the inter-State Transmission licensee. The long-term access agreement shall contain the date of commencement of long-term access, the point of injection of power into the grid and point of drawal from the grid and the details of dedicated transmission lines, if any, required. In case augmentation of transmission system is required, the long-term access agreement shall contain the timeline for construction of the facilities of the applicant and the transmission licensee, the bank guarantee required to be given by the applicant and other details in accordance with the detailed procedure.”

Thus, as per the Connectivity Regulations 2009, application for long term access needs to be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted in favour of the nodal agency and that the bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.

18. Clause 23.8 of the detailed procedure dated 5.6.2015 issued in accordance with Regulation 27 of CERC Connectivity Regulation 2009 regarding the encashment of application bank guarantee provides as under:

*“23.8 The bank guarantee may be encashed by the nodal agency,
i.if the application is withdrawn by the applicant or*



- ii. the long-term access rights are relinquished prior to the operationalisation of such long-term access when augmentation of transmission system is not required.*
- iii. If the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter.***
- iv. If the applicant fails to revalidate the earlier furnished BG at least 30 days prior to its expiry.*
- v. If the applicant fails to firm up beneficiaries in terms of clause 22.7, 3 years prior to intended date of Long Term Access. Genuine requests for extension of time shall be suitably accommodated on merit upon furnishing of documentary evidence(s)."*

Above provision of the Detailed Procedure provides that the bank guarantee may be encashed by the nodal agency, if the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter.

19. The Petitioner has also relied upon the Commission order dated 30.12.2019 in Petition No. 55/MP/2019 wherein this Commission exercising the "Power to relax" under Regulation 33 A of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 while relaxing the provision 9.3 of Detailed Procedure dated 15.5.2018 issued under the said Regulations, granted a time of 8 months to achieve milestones as per Clause 9.3 of Detailed Procedure dated 15.5.2018. The relevant extract of the order dated 30.12.2019 is as under:

"42. We observe that petitioner was granted Stage-II Connectivity on 17.7.2018. Hence, as per the detailed procedure, the timeframe to achieve milestones as per Clause 9.3 ends on 16.4.2019. As on 16.4.2019, the substation at which Connectivity was granted i.e Jam-Khambaliya Substation was not awarded for

execution and hence its scheduled commissioning date was not available. We also observe that the gestation period of wind project is less than that of transmission system. The completion schedule of Jam-Khambhaliya sub-station is March, 2021 as recorded in the Order dated 10.10.2019 in Petition No. 197/MP/2019. Keeping in view that the completion schedule of sub-station was not known, we are inclined to consider petitioner's prayer for grant of extension for achieving milestones as per detailed Procedure.

.....

46. We have observed that the Petitioner is seeking extension of time to achieve milestones as per requirements of Detailed procedure. Keeping in view the difficulty of Petitioner to achieve milestones as per Clause 9.3 of the Detailed Procedure dated 15.5.2018 in the absence of knowledge of termination point of dedicated transmission line and the timeframe of completion of the substation, we exercise our powers to invoke "Power to relax" under Regulation 33 A Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 to relax the provision 9.3 of Detailed Procedure dated 15.5.2018 issued under the said Regulations and grant time of 8 months from date of issue of this order i.e. upto 31.8.2020 to achieve milestones as per Clause 9.3 of Detailed Procedure dated 15.5.2018."

On perusal of the aforesaid order we are of the view that the issues involved in the Petition No. 55/MP/2019 and the present Petitions are different and cannot be co-related. In 55/MP/2019 the issue involved was regarding the extension of time for meeting the certain milestones after the grant of Stage-II Connectivity as mentioned in the detailed procedure. However, in the present case due to non-fulfilment of certain obligations, despite of grant of ample opportunities, the LTA was revoked and the application bank guarantee was encashed.

20. We further note that in the present case the construction phase bank guarantee (CBG) was required to be furnished within three months from the signing of LTAA (i.e. by 22.04.2019). PGCIL vide letter dated 07.05.2019 given a notice of 7 days to the Petitioner for submission of CBG. In response, the Petitioner vide letter



dated 14.05.2019 sought an extension of time of two weeks for submission of said CBG. The relevant extract of the Petitioner letter dated 14.05.2019 is as under:

“This is with reference to your letter dated 07.05.2019; we note your position. Having signed the Power Purchase Agreement (PPA) for SECI V, with the scheduled commissioning in July 2020, we signed the LTA.

We now understand that the estimated time of commissioning of the transmission system at Bhuj 2 is December 2020 but are concerned that the completion of the transmission system may be delayed even further as the regulatory approval to build these from CERC did not come through as expected, and which requires stakeholder consultations among other compliances.

Moreover, till date, we do not even know where Bhuj 2 substation and the corresponding transmission line will be located to avail the LTA and as such we cannot even complete the route survey for the EHV line not conceptualize the project in its entirety to present to financial institutions, leave alone get financial closure (FC) which is an important requirement of the conditions under our PPA with SECI.

Under these circumstances we cannot get FC, nor make any investments for the projects and even if we did, we would end up with loss of generation and or huge liabilities or interest during construction which cannot be afforded given the low tariff. This would not meet the requirements of the financial institutions, not to mention the heavy penalties, SECI would impose on us for delay in commissioning.

As such, we request for an extension of time for submission of construction phase bank guarantee for LTA for two weeks to enable us to get clarity of the timing for completion of the transmission systems and location of the substation.”

As the Petitioner failed to submit the CBG as per the extended time line as per their letter dated 14.05.2019, PGCIL vide letter dated 03.06.2019, revoked the LTA granted to the Petitioner and subsequently application BG was also to be encashed as per the relevant provisions of the Connectivity Regulations and the detailed procedure.

21. Keeping in view of above discussions we are of the view that the Connectivity Regulations and the Detailed Procedure are very clear about conditions of encashment of application BG. In the instant case, LTAA had been signed by the Petitioner and LTAA BG was not furnished to the Respondent. Since the Petitioner has failed to furnish LTAA BG under the LTA Agreement within the stipulated period, even within the extended period, the LTA of the Petitioner was liable to be revoked

and the application BG was to be encashed. Therefore, we reject the prayer of the Petitioner to refund of the Application Bank Guarantee of Rs. 30,00,000/-.

22. The Petition No. 277/MP/2019 along with I.A. No. 21/2022 is disposed of in terms of the above.

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

**Sd/
(Arun Goyal)
Member**

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

