

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 330/MP/2019

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 23.06.2023

In the matter of:

Petition under Section 79(1)(c) read with Section 79(1)(f) of the Electricity Act 2003 and Regulation 7(1) (aa) 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.

And in the matter of:

1. ACME Solar Holdings Limited,
Through its authorized signatory
Plot No. 152, Sector 44 Gurugram -122002, Haryana

2. ACME Chittorgarh Solar Energy Private Limited,
Through its authorized signatory
Plot No. 152, Sector 44, Gurugram 122002, Haryana, India.**Petitioner(s)**

Versus

Central Transmission Utility of India Limited,
Through its Authorized Signatory
Plot No. 2, Sector 29, Gurugram-122001, Haryana, India**Respondent(s)**



Parties Present: Shri Vishrov Mukerjee, Advocate, ASHL
Shri Girik Bhalla, Advocate, ASHL
Ms. Anamika Rana, Advocate, ASHL
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Ms. Astha Jain, Advocate, CTUIL
Shri Ajay Upadhyay, CTUIL
Shri Swapnil Verma, CTUIL
Shri Ranjeet Singh, CTUIL
Shri Yogeshwar, CTUIL
Ms. Muskan Agarwal, CTUIL

ORDER

1. ACME Solar Holdings Limited (“ACME Holdings”) & ACME Chittorgarh Solar Energy Private Limited (“ACME Chittorgarh”) (hereinafter to be referred as “the Petitioners”) have filed the present Petition under Section 79(1)(c) read with Section 79(1)(f) of the Electricity Act 2003 and Regulation 7(1) (aa) 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 (‘ 2009 Connectivity Regulations’) against the act of PGCIL by virtue of which it has insisted upon to submit a letter of credit (LC) to a tune of INR 2565.30 Lakh. The Petitioner has made following prayers:

- (a) *Quash the letter dated 02.07.2019 issued by PGCIL and hold that the same are illegal and arbitrary;*
- (b) *Hold and declare that the Petitioner is not liable to open any letter of credit as a payment security mechanism;*
- (c) *Pass any such other and further reliefs as the Commission deems just and proper in the nature and circumstances of the present case.*

2. The Petitioners have also sought the following interim reliefs:



- (a) *Issue ex-parte interim order directing the Respondent to allow the Petitioner's to connect, synchronize, test and commission its project without demanding that letter of credit be furnished; and*
- (b) *Issue ex-parte interim order directing the Respondent not to take any coercive action including termination/cancellation of LTOA and/or MTOA till disposal of the Petition.*

We observe that there is no Regulation namely Regulation 7(1)(aa) in the 2009 Connectivity Regulations. Petitioner has referred to Regulation 7(1)(aa) of CERC (Sharing of inter-State transmission charges and losses) Regulations 2010 ('2010 Sharing Regulations') at various places in its submissions, whereas it has mentioned the same as the 2009 Connectivity Regulations in the subject of the petition. Petitioner is directed to be careful while mentioning applicable regulations. We are proceeding to consider the matter under Regulation 7(1)(aa) of 2010 Sharing Regulations.

3. Petitioner while filing the petition in 2019, has made PGCIL as the sole respondent. However, vide affidavit dated 17.10.2022, petitioner has filed an amended memo of parties and has made CTUIL as the sole respondent, consequent to separation of CTUIL from PGCIL as per direction of MoP. Accordingly, submissions made by PGCIL, wherever referred to in the petition, shall be construed as that of CTUIL.

Submissions of the Petitioner(s):

4. The Petitioner(s) have made the following submissions:

- (a) Maharashtra State Electricity Distribution Company Limited ("MSEDCL") floated tender for procurement of 1000 MW power from Solar Power Projects through competitive bidding on 09.04.2018.
- (b) Acme Holdings participated in the bidding process and was declared successful bidder for selling of entire electrical energy produced from solar power project of 250 MW capacity located at Village-Badisid, Tehsil- Bap, Dist.-Jodhpur, State: Rajasthan ("Project").

- (c) ACME Holdings formed a special purpose vehicle namely; ACME Chittorgarh for development of the Project. ACME Chittorgarh and MSEDCL entered into power purchase agreement (PPA) on 27.07.2018. In terms of the PPA, ACME Chittorgarh is under an obligation to notify MSEDCL at least 30 days in advance for its availability of commercial operation date (COD). Further, Scheduled Commercial Operation Date (SCOD) as per PPA was 27.10.2019.
- (d) ACME Holdings Limited was granted Stage-2 connectivity on 14.09.2018. ACME Holdings applied for grant of Long Term Access (“LTA”) on 23.08.2018 with region for injection of power as Rajasthan/NR and drawl of power as Maharashtra WR, with following details in its application:
1. Quantum for which LTA required: 250 MW
 2. Date from which LTA required: Sep 16, 2019
 3. Date upto which LTA required: Sep 15, 2055
- (e) Due to expected non-readiness of the LTA by the date when it was required by ACME, ACME Holdings applied for MTOA on 28.11.2018. PGCIL vide its letter dated 09.01.2019 intimated the grant of MTOA against the already granted Long Term Access to ACME holdings for transfer of 250 MW power from Bhadla, Rajasthan on firm basis. MTOA was granted from 16.09.2019 to 25.09.2021.
- (f) Para 9 of the MTOA Intimation Letter records that the ACME Holdings will be liable to make payment of transmission charges in terms of prevailing CERC Regulations. Further, Note 4 of the MTOA Intimation Letter requires ACME Holdings to abide by the provisions of applicable regulations.
- (g) In terms of Regulation 7(1) (aa) of 2010 Sharing Regulations, the Petitioner is exempted from payment of transmission charges and losses for the use of ISTS network because the Project has been awarded to ACME through competitive bidding process conducted by MSEDCL for compliance of its renewable purchase obligation.

- (h) ACME and PGCIL entered into agreement for Medium Term Open Access on 28.01.2019. As per Recital (H) of the Medium-Term Agreement, generation projects based on solar and wind resources no interstate transmission charges and losses shall be levied on transmission of electricity through the inter-state transmission system for sale by such projects commissioned till 31st March, 2022.
- (i) PGCIL and ACME entered into transmission services agreement (TSA) on 28.01.2019.
- (j) Vide Letter dated 31.01.2019, PGCIL intimated grant of Long-Term Access to the ACME for the Project.
- (k) To the surprise of ACME and in complete derogation of Regulation 7(1) (aa) of the 2010 Sharing Regulations read with Para 18.4 of the CERC Connectivity Procedure and terms of Medium-Term Agreement and MTOA Intimation Letter, PGCIL insisted/thrusted upon ACME, vide letter dated 02.07.2019, to furnish confirmed irrevocable, unconditional and revolving Letter of Credit ("LC") for Rs. 2565.30 Lakh in favour of PGCIL towards payment security mechanism as per the CERC Regulations and procedures before the commencement of MTOA. PGCIL vide its letter also informed ACME that the MTOA shall become effective only on furnishing of the LC.
- (l) ACME vide its letter dated 18.07.2019 informed PGCIL that in terms of the 2010 Sharing Regulations, it is not required to furnish LC.
- (m) Conjoint reading of Regulation 12 (8) of the 2010 Sharing Regulations and Para 18.4 of the CERC Connectivity Procedure in clear terms reflects that the MTOA customer is required to open an LC for the purpose of securing the payment of transmission charges and losses which may accrue for utilizing the MTOA granted by PGCIL. In the present case, ACME is not required to make payment of any transmission charges for utilizing the said MTOA, and as such there is no requirement, whatsoever, to open any LC. Therefore, it is unjustifiable for PGCIL to insist on furnishing of LC by ACME.

- (n) PGCIL vide its email dated 09.08.2019 informed ACME that MTOA is expected to be operational by September, 2019. ACME vide its email dated 27.08.2019 requested PGCIL to inform the current status and inform the firm date for operationalization of MTOA.
- (o) PGCIL did not reply to ACME's Letter dated 18.07.2019. ACME vide its letter dated 27.09.2019 submitted the documents as per the "Advisory for submission of requisite documents for waiver of inter-state transmission charges and losses on transmission of electricity generated from solar and wind sources of energy":
- (p) In spite of making various representations submitting grounds for non-requirement of opening of LC, PGCIL has insisted/ thrusted upon ACME to submit a letter of credit to the tune of INR 2565.30 Lakhs. There is reasonable apprehension that PGCIL may cancel the MTOA granted to ACME which will lead to non-evacuation of the electrical energy from the generating station of ACME and will have a detrimental financial impact on the Project.

Interim Order dated 04.10.2019:

5. The Commission vide interim order dated 04.10.2019 admitted the petition with a direction to PGCIL to notify the Petitioner, the likely date of operationalization of MTOA so that the Petitioner may take appropriate steps for synchronization/commencement of the project. The relevant extracts from the Interim Order dated 04.10.2019 is as follows:

“

5. The Petitioners have submitted that despite making various representations to PGCIL for non-requirement of opening of LC, PGCIL has insisted upon ACME Holdings to open LC. The Petitioners have submitted that there is apprehension that PGCIL may cancel the MTOA granted to ACME Holdings which will lead to nonevacuation of the electrical energy from the generation of ACME Holdings and will have a detrimental financial impact on the project. The Petitioners have submitted that the requirement of LC is towards payment security mechanism for transmission charges. However, ACME Holdings being a renewable energy generator is not required to pay transmission charges for the useful life of the project i.e. 25 years. Aggrieved by the decision of the PGCIL dated 2.7.2019, the Petitioners have filed the present Petition with the following prayers:

.....



7. Considering the submissions of the Petitioner, we admit the Petition by circulation and direct to issue notice to the Respondent. The Respondent is directed to file its reply by 10.10.2019 with an advance copy to the Petitioners who may file their rejoinder, if any, on or before 14.10.2019.

8. The Respondent, PGCIL is directed to notify the Petitioner the likely date of operationalization of MTOA so that the Petitioner may take appropriate steps for synchronization/commencing of the project. Provided that such notified date is not less than 15 days from the date of letter. PGCIL is further directed not to take any coercive measure against the Petitioners till the next date of hearing.”

Reply of PGCIL / CTUIL:

6. PGCIL in its reply vide affidavit dated 10.10.2019 has submitted as follows:

- (a) Petitioner had applied for grant of 250MW LTA on Target Region (WR) basis on 23.08.2018 and the same was granted vide intimation dated 31.01.2019 with part of “Transmission System for Solar Energy Zones in Rajasthan (8.9GW)” under Phase-I for which Regulatory Approval has been accorded by Commission in Petition No. 23/MP/2019. The aforesaid transmission system was expected to be commissioned by December 2020. Keeping this in view, the petitioner had applied for 250MW MTOA for transfer of power from its project located at Bhadla to MSEDCL, Maharashtra.
- (b) The present Petition has been filed in reference to the operationalization of the MTOA granted to Acme Solar Holdings Limited for 250MW vide MTOA intimation dated 09.01.2019 with commencing date as 16.09.2019 subject to the commissioning of the following transmission elements:
- i. Establishment of Pooling Station at Bhadla (PG) (765/400kV; 3 X 1500 MVA & 400/220kV; 3 X 500 MVA);
 - ii. 765kV Bhadla (PG) - Bikaner (PG) D/c Line;
 - iii. 400kV Bhadla (PG) – Bhadla RVPN D/c (Quad) Line;
 - iv. Establishment of 765/400kV; 2 X 1500 MVA Bikaner Sub-Station;
 - v. Bikaner-Moga 765kV D/c line (or) Bikaner-Ajmer 765kV D/c Line.
- (c) In the 12th Joint Coordination Committee Meeting of Northern Region held on 26.09.2019, the Petitioner’s MTOA was discussed in detail and the Petitioner was duly apprised of both its commercial as well as regulatory obligations (including those pertaining to establishment of payment security mechanism)



and also the likely date of commissioning of the transmission elements required to give effect to the MTOA.

- (d) In the 12th NR JCC Meeting, it was informed to the Petitioner that in terms of the provisions of the 2010 Sharing Regulations; the requirement of establishment of payment security/LC cannot be waived unless all the conditions for waiver have been complied by the Petitioner. Further, it was also informed that if the Petitioner is not able to fulfill all the applicable requirements for claiming waiver of transmission charges, then it ought to establish a payment security mechanism/LC (as communicated vide letter dated 02.07.2019) before the effectiveness of MTOA. It was informed that if the Petitioner is able to fulfill the conditions for eligibility of waiver of transmission charges in terms of Regulation 7(1) (aa) of the Sharing Regulations, 2010 at any time before the due date for payment of its transmission charges, then it shall be eligible for discharge of its LC.
- (e) The Petitioner vide letter dated 27.09.2019 claimed that it had already fulfilled the conditions for waiver of transmission charges pertaining to 'Letter of Award' (LOA) issued by designated agency' and 'RPO obligation'
- (f) The Petitioner, vide its letter dated 28.09.2019, requested the PGCIL to extend the date of effectiveness of MTOA and LC requirement until fiber optic connectivity is completed by the PGCIL on Bhadla-Bikaner 765 kV D/c line. In this regard, it is submitted that the same is not a constraint in commissioning and operation of the generation project. The fiber optic connectivity on the Bhadla-Bikaner 765 kV D/c line will be established by the PGCIL matching with the commissioning of the transmission system.
- (g) It had been intimated to the Petitioner vide email dated 09.08.2019 that the transmission elements required to effect the MTOA are likely to be commissioned by September 2019 which was also acknowledged by the Petitioner vide email dated 27.08.2019. Accordingly, as per Regulation 12(8) of the 2010 Sharing Regulations and Para 3.6 of the BCD Procedure, the Petitioner was required to open LC at least 30 days prior to the effectiveness of MTOA. In light of the default of the Petitioner as also its aversion to open



LC (in the 12th NR JCC Meeting dated 26.09.2019), PGCIL served a Default Notice dated 01.10.2019 to the Petitioner wherein it was informed to establish the LC within a period of 15 days failing which it would be liable for the consequences emanating from MTOA Agreement/Regulations.

- (h) On 07.10.2019, the Petitioner submitted documents for waiver of transmission charges and losses only for 100 MW out of 250 MW of its project at Bhadla. For the remainder 150 MW, it shall still continue to be liable to establish payment security mechanism in terms of MTOA Agreement and Para 3.6 of BCD Procedure.
- (i) The Bhadla – Bikaner 765kV D/c line, required to give effect to the MTOA, is likely to be commissioned by 17.10.2019. PGCIL is providing a tentative date of operationalization of MTOA as 26.10.2019.

Rejoinder of the Petitioner:

7. The petitioner in their rejoinder, vide affidavit dated 14.10.2019, has submitted as follows:

- (a) PGCIL has issued advisory for submission of requisite documents for waiver of inter-state transmission charges and losses on transmission of electricity generated from solar and wind sources of energy. ACME has submitted Letter of Award and certificate from DISCOMS vide its letter dated 27.09.2019 and it has further mentioned in the said letter that it will submit requisite declaration and commissioning certificate within 10 days of the commissioning, as provided in the Advisory. In spite of submission of requisite documents, the respondent has been threatening termination of Medium Term Open Access Agreement (“MTA Agreement”) and has also issued default notice dated 01.10.2019.
- (b) PGCIL’s transmission assets have not been operationalized. Vide its email dated 09.08.2019, PGCIL informed ACME that its asset will be expected to be operational by September 2019. Further in its default notice dated 01.10.2019, PGCIL again changed its earlier position concerning



operationalization of asset and informed ACME that its asset will be operationalized in next three-four days.

- (c) To comply with its contractual obligation arising out of Power Purchase Agreement entered with MSEDCL, ACME had commissioned 100 MW. ACME had also submitted “commissioning certificate” and “declaration” to PGCIL. However, generating asset of ACME had not been put to use due to delay in commissioning of transmission asset of PGCIL and ACME runs a risk of degradation of its modules due to default of PGCIL.
- (d) PGCIL vide its letter dated 11.10.2019 again changed date of operationalization of transmission assets and informed ACME that the tentative date of operationalization of transmission asset will be 17.10.2019 and in compliance of Commission’s order to inform 15 days in advance, date of commissioning can be considered as 26.10.2019.
- (e) The transmission asset must be commissioned before the generating assets as solar panels when left idle tend to degrade, thereby reducing the life of the modules and result in losses to ACME who has invested heavily in the Project.

Hearing dated 15.10.2019 and 29.09.2022:

- 8. The matter was heard on 15.10.2019 and the Commission declined to extend interim relief granted vide interim order dated 4.10.2019.
- 9. During the hearing dated 29.09.2022 the Petitioner sought liberty to place on record certain additional submissions including the subsequent bill(s) raised by PGCIL.

Submissions of the Petitioner(s):

- 10. The petitioner(s) in their submission vide affidavit dated 17.10.2022 have submitted as follows:



- (a) On 06.10.2019, MSEDCL issued Commissioning Certificate to ACME Chittorgarh Solar Energy Private Limited after having successfully commissioned 100 MW out of the total 250 MW capacity. Further, on 25.10.2019, MSEDCL issued Commissioning Certificate to ACME Chittorgarh Solar Energy Private Limited after having successfully commissioned additional 130 MW.
- (b) On 25.10.2019, Petitioner deposited an amount of Rs. 1.9 Crore to CTU towards pro-rata estimated LC amount for the 20 MW capacity that was not commissioned prior to MTOA operationalisation.
- (c) On 01.01.2020, MSEDCL issued Commissioning Certificate to ACME Chittorgarh Solar Energy Private Limited after having successfully commissioned the entire capacity of 250 MW. Accordingly, the COD of the Project was declared as 01.01.2020.
- (d) On 27.10.2021, CTUIL informed ACME Solar Holdings Limited that LTA for 250 MW capacity as granted on 31.01.2019, would be operationalised from 29.10.2021.
- (e) Between 06.10.2019 (commissioning of 100 MW) and 29.10.2021 (operationalisation of LTA), the power from the Project was evacuated under MTOA provided by CTUIL.
- (f) On 28.09.2022, after a delay of almost three years, CTUIL raised invoice levying transmission charges of Rs. 1.38 Crores for the period from October 2019 to December 2019 in terms of the 2010 Sharing Regulations.
- (g) In the present case, LTA was operationalised on 29.10.2021, whereas the Project was commissioned on 01.01.2020 i.e. well before the operationalisation of the LTA. Prior to LTA being operationalised, power was being evacuated under MTOA. Further, the MTOA was granted only as an 'alternate arrangement' since the LTA was not likely to be operationalised. Therefore, there is no delay on part of the Petitioners in commissioning the

Project and the liability to pay transmission charges by the Petitioners does not arise.

- (h) No transmission charges are payable by the Petitioners for the period from 25.10.2019 (operationalisation of MTOA) to 01.01.2020 (COD of the Project) since MTOA was granted on existing margins and no system augmentation was undertaken for granting MTOA. CTUIL did not suffer any financial loss because of the delay in commissioning of 20 MW capacity and CTUIL did not incur any expense for operationalisation of the MTOA, therefore, the levy of transmission charges by CTUIL is unlawful. In absence of any loss being incurred by CTUIL, no charges are payable by the generating company. This has been observed by the Tribunal and this Commission in judgement dated 12.04.2022 in Appeal No. 53 of 2002 (Shapoorji Pallonji Infrastructure Capital Company Pvt. Ltd. Vs. CTUIL and order dated 07.01.2020 in Petition No. 159/MP/2019 (Toramba Renewable Energy Private Limited vs. PGCIL).
- (i) In the present case, since LTA was operationalized on 29.10.2021 and supply of power through the interim MTOA arrangement had commenced from 06.10.2019, CTUIL actually benefitted since it would have otherwise had to compensate the Petitioner for delay in operationalisation of LTA. Further, by utilizing the existing margins (under MTOA) which were otherwise stranded capacity, the Petitioners have been able to better utilize assets that were already created.
- (j) The demand for transmission charges was made by CTUIL on 28.09.2022. As on that date, the CERC Sharing Regulations 2020 were applicable. However, CTUIL has instead erroneously applied the 2010 CERC Sharing Regulation.
- (k) In terms of Regulation 26(2) of the CERC Sharing Regulations 2020 (Savings and Repeal provision), any action taken under the repealed CERC Sharing Regulations 2010 shall be deemed to have been done or taken under the CERC Sharing Regulations 2020. Therefore, transmission charges, if any, can only be levied in accordance with Regulation 13(7) CERC Sharing

Regulations 2020 i.e., at the rate of 10% of the transmission charges payable per MW.

(l) Therefore, the Commission may issue the following directions:

- i. The Transmission Charges Bill dated 28.09.2022 raised by CTUIL is misplaced and be withdrawn by CTUIL.
- ii. The Petitioners are not liable to pay any transmission charges.
- iii. CTUIL ought to be directed to return the amount of Rs. 1.83 Crores paid by the Petitioners as LC along with carrying cost at a rate of 14% i.e. return on equity as prescribed in CERC Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020, from 25.10.2019 till date of final order passed by this Commission.

Hearing dated 29.11.2022

11. The matter was heard on 29.11.2022 and the Commission reserved the order in matter. The Commission permitted the Respondent to file its reply to the additional affidavit of the Petitioner dated 12.10.2022 including on the maintainability of the prayer(s) made therein within three weeks.

12. No reply or rejoinder have been filed by the respondent or the petitioner subsequent to the hearing.

Analysis and decision:

13. We have considered the rival contentions of the parties and perused the records.

The issues that arise for our consideration are as follows:

Issue No.1: Whether the Petitioner was liable to open the Letter of Credit (LC) w.r.t. MTOA granted towards payment security mechanism? Whether PGCIL letter dated 2.7.2019 needs to be quashed.

Issue No. 2: Whether the Petitioner is liable to pay the transmission charges for the period between 26.10.2019 (operationalization of MTOA) and 01.01.2020 (COD of the balance 20 MW Project capacity)? Whether transmission charges bill dated 28.09.2022 raised by CTUIL has to be as per the 2010 Sharing regulations or the 2020 Sharing regulations?

14. We now proceed to discuss the above issues.

Issue No.1: Whether the Petitioner was liable to open the Letter of Credit (LC) w.r.t. MTOA granted? Whether PGCIL letter dated 2.7.2019 needs to be quashed?

15. The Petitioner has contended that in terms of Regulation 7(1) (aa) of the 2010 Sharing Regulations, Petitioner is exempted from payment of transmission charges and losses for the use of ISTS network. Therefore, the liability to pay transmission charges by the Petitioners does not arise and the Petitioner is also not liable to open any LC.

16. The Petitioner has further submitted that it achieved COD for 100 MW capacity on 20.10.2019, 130 MW on 26.10.2019 and 20 MW on 1.1.2020.

17. Respondent PGCIL/CTUIL has submitted that the requirement of establishment of payment security/LC cannot be waived unless all the conditions for waiver have been complied by the Petitioner. Further, if the Petitioner is able to fulfill the conditions for eligibility of waiver of transmission charges in terms of Regulation 7(1) (aa) of the Sharing Regulations, 2010 at any time before the due date for

payment of its transmission charges, then it shall be eligible for discharge of its LC.

18. We have considered the submissions of petitioner and respondent. Let us peruse various documents on record and provisions of the regulations.

19. Letter dated 2.7.2019 issued by respondent PGCIL/CTU is quoted as follows:

To
M/s ACME SOLAR HOLDINGS LIMITED
 104, Munish Plaza, 20, Ansari Road,
 Darya Ganj, New Delhi-110002

Kind Attn. Sh. Yogesh Kumar Sanklecha, DGM

Sub: Opening of Letter of Credit for operationalisation of 250 MW Medium Term Open Access (MTOA) granted to M/s ACME SOLAR HOLDINGS LIMITED for transfer of power from Bhadla Rajasthan (NR) to MSEDCL, Maharashtra(WR)

Dear Sir,

1.0 This is with reference to intimation letter no C/CTU/W/06/1784-ACME dated 09.01.2019 to **M/s ACME SOLAR HOLDINGS LIMITED (M/s ASHL)** issued by Central Transmission Utility (CTU) - POWERGRID regarding grant of Medium Term Open Access (MTOA) for transfer of 250 MW from Bhadla Rajasthan (NR) to MSEDCL, Maharashtra(WR) and subsequent MTOA Agreement signed on 28.01.2019 for the same.

2.0 In this regard, it is to communicate that as per the terms of above mentioned MTOA grant and MTOA Agreement, **ACME SOLAR HOLDINGS LIMITED** is required to furnish confirmed irrevocable, unconditional and revolving Letter of Credit for Rs. **2565.30 Lakh** (calculations as below, based on PoC rates for April'19 to June'19, as approved by CERC.); in favour of POWERGRID towards payment security mechanism as per the CERC Regulations and procedures before the commencement of MTOA.

MTOA Application	Beneficiary	MTOA Grant ed MW (A)	POC Slab rates Rs/MW/ Month (B)	Reliability support charges Rs./MW/ Month (C)	HVDC charges Rs./MW/ Month (D)	Total POC Charges Rs/MW/Month E=(B+C+D)*A	LC Requirement (E*2.1)
ASHL	Maharashtra (WR)	250	446004	31315	11309	122157000	256529700

As per the aforementioned letter, PGCIL/CTU requested the Petitioner to open LC for 250 MW pursuant to MTOA granted to the petitioner.

20. The relevant extracts of the MTOA Intimation dated 09.01.2019 is quoted as follows:

*"We write with reference to your MTOA application no. 1200001784 dated 28/11/2018 for transfer of 250 MW power from Bhadla, Rajasthan (NR) to MSEDCL, Maharashtra (WR). In this regard, MTOA for 250 MW is hereby granted and the intimation is enclosed. It may be mentioned that the MTOA of 250 MW is being granted against the LTAs already granted on target basis (with injection at Fatehgarh & Bhadla sub-stations) and **shall be subject to commissioning of identified transmission system strengthening.***

*It is to mention that the MTOA granted is subject to signing of requisite MTOA Agreements and fulfillment of other conditions as per the enclosed intimation. Accordingly, you are requested to sign Medium Term Open Access Agreement and **submit the payment security mechanism as per the provision of CERC, 2009 regulations & approved Detailed Procedure.**"*

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6 **Detail of Medium Term Open Access (MTOA)**
6a Quantum (MW) for which MTOA is granted: 250 MW
6b Date from which MTOA is granted: 16-09-2019
6c Date upto which MTOA is granted: 25-09-2021
.....

Note:

1. It may be mentioned that the MTOA of 250 MW is being granted to ACME So far Holdings Limited subject to commissioning of the following under construction transmission system:

- a) Establishment of Pooling Station at Bhadla (PG) (765/400kV: 3x1500MVA & 400/220kV: 3x500 MVA)
- b) 765kV Bhadla (PG) - Bikaner (PG) D/c line
- c) 400kV Bhadla (PG) - Bhadla (RVPN) D/c (Quad) line
- d) Establishment of 765/400KV, 2x1500MVA Bikaner Sub-station
- e) Bikaner - Moga 765kV D/c line (or) Bikaner - Ajmer 765kV D/c line"

As per the above extracted paras, the applicant was required to submit the payment security mechanism as per the provision of CERC, 2009 regulations & approved Detailed Procedure.

21. MTOA Agreement dated 28.01.2019 signed between PGCIL and the Petitioner provides as follows:

"1.0 (c) The MTC shall furnish confirmed irrevocable, unconditional and revolving Letter of Credit for requisite amount in favour of CTU towards payment security mechanism in accordance with the CRC Regulations."

22. Detailed Procedure dated 31.12.2009 issued under the 2009 Connectivity

Regulations provides as follows:

“18.4. For payment of monthly transmission charges, irrevocable revolving LC through a scheduled commercial bank in favour of “Power Grid Corporation of India Ltd.” equivalent to 105% of the average monthly transmission charges shall be opened by MTOA applicant 15 days before the commencement date of MTOA. LC should remain valid upto one month after MTOA period. Further the bank guarantee equivalent to 2 (two) months estimated average monthly billing would also be required to be furnished in favour of “Power Grid Corporation of India Ltd”, which would be in place 3 (three) months prior to the date of scheduled commencement of MTOA with validity upto 1 (one) month after the expiry of MTOA period”

As per above, MTOA applicant is required to open LC 15 days before commencement date of MTOA. The same is to secure payment towards transmission charges under MTOA.

23. Regulation 7(1) (aa) of the 2010 Sharing Regulations provides as follows:

“(aa) No transmission charges and losses for the use of ISTS network shall be payable for the generation based on solar and wind power resources for a period of 25 years from the date of commercial operation of such generation projects if they fulfill the following conditions:

- (i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government;*
- (ii) Such generation capacity has been declared under commercial operation between 13.2.2018 till 31.3.2022;*
- (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.”*

As per above Regulation, the waiver of the transmission charges and losses is applicable on generation from specified projects and applicable from the date of commercial operation of such generation projects.

24. To claim the exemption of transmission charges and losses, PGCIL/CTUIL had issued "Advisory for submission of requisite documents for waiver of inter-state transmission charges and losses on transmission of electricity generated from solar and wind sources of energy".

25. The issue of MTOA of the Petitioner was also discussed in the 12th JCC meeting of Northern Region held on 26.09.2019 wherein following is noted:

"Regarding MTOA, ACME informed that they shall be submitting the documents regarding waiver of ISTS charges immediately upon commissioning of generation project. CTU informed that in terms of the provisions of CERC Sharing Regulations, 2010; the requirement of establishment of payment security/LC cannot be waived unless all the conditions for waiver have been complied by ACME.

Further, if applicant is not able to submit applicable documents regarding waiver, then it ought to establish a payment security mechanism/LC (as communicated vide letter dated 02.07.2019) before the effectiveness of MTOA. Also, the transmission charges for the first month of operationalization shall be raised only in the subsequent month and can be paid within a period of upto 45 days and it is only thereafter that the LC is liable for invocation in case of default in payment of transmission charges. If ACME fulfills the conditions for eligibility of waiver of transmission charges in terms of Regulation 7(1) (aa) of the Sharing Regulations, 2010 at any time before the Due Date for payment of its transmission charges, then it shall be eligible for discharge of its LC. Likely date of commissioning of transmission elements for effecting the MTOA is 04.10.2019."

26. We observe that if an entity has obtained MTOA and it becomes eligible for waiver of transmission charges under the 2010 Sharing Regulations, meaning thereby that no transmission charges are required to be levied on such entity, the requirement of LC does not arise. However, in the instant case, Petitioner did not become eligible for waiver of transmission charges in terms of the 2010 Sharing Regulations for full MTOA capacity as on 15 days prior to commencement date of MTOA.

27. The Petitioner could not achieve COD for full capacity of MTOA before 15 days of commencement of date of MTOA, hence it was liable to open the LC as per the 2009 Connectivity Regulations and Detailed procedure. The date of



commencement of MTOA was 26.10.2019 and petitioner achieved COD for 100 MW capacity on 20.10.2019, 130 MW on 26.10.2019 and 20 MW on 1.1.2020. Hence as per the Regulations, petitioner was liable to open the LC for MTOA capacity for which COD of generation projects could not be achieved.

28. The Petitioner has submitted that on 25.10.2019, they deposited an amount of Rs. 1.9 Crore to CTU towards pro-rata estimated LC amount for the 20 MW capacity that was not commissioned prior to MTOA operationalization.

29. In view of above discussions, we are of the view that the petitioner was required to open the LC as per the 2009 Connectivity Regulations and the 2010 Sharing Regulations for the generation capacity which could not achieve COD as on 26.10.2019. Therefore, the prayer of the petitioner seeking quashing of PGCIL letter dated 2.7.2019 is hereby rejected. Further, in this light the prayer of the Petitioner seeking return the amount of Rs. 1.83 Crores paid by the Petitioners as LC along with carrying cost at a rate of 14% from 25.10.2019 till date of final order passed by this Commission is also to be rejected. Thus, both the questions as raised is answered.

Issue No. 2: Whether the Petitioner is liable to pay the transmission charges for the period between 26.10.2019 (operationalisation of MTOA) and 01.01.2020 (COD of the balance 20 MW Project capacity)? Whether transmission charges bill dated 28.09.2022 raised by CTUIL has to be as per the 2010 Sharing regulations or the 2020 Sharing regulations.

30. The Petitioner has submitted that MTOA was granted on existing margins and no system augmentation was undertaken for granting MTOA. CTUIL did not

suffer any financial loss because of the delay in commissioning of 20 MW capacity. No Penalty may be imposed on Petitioners for delay in commissioning of balance 20 MW when the LTA had not been operationalized. LTA was operationalized on 29.10.2021 whereas the Project was commissioned on 01.01.2020 i.e. well before the operationalization of the LTA. Prior to LTA being operationalized, power was being evacuated under MTOA. Further, the MTOA was granted only as an 'alternate arrangement' since the LTA was not likely to be operationalized. Therefore, there is no delay on part of the Petitioners in commissioning the Project and the liability to pay transmission charges by the Petitioners does not arise.

31. The Petitioner has further stated that after a delay of almost three years, CTUIL has raised invoice dated 28.09.2022, levying transmission charges of Rs. 1.38 Crores for the period from October 2019 to December 2019 in terms of the 2010 Sharing Regulations. As on that date, the applicable regulations were the CERC Sharing Regulations 2020. However, CTUIL has instead erroneously applied the 2010 CERC Sharing Regulation. In terms of Regulation 26(2) of the CERC Sharing Regulations 2020 (Savings and Repeal provision), any action taken under the repealed CERC Sharing Regulations 2010 shall be deemed to have been done or taken under the CERC Sharing Regulations 2020. Therefore, transmission charges, if any, can only be levied in accordance with Regulation 13(7) CERC Sharing Regulations 2020 i.e. at the rate of 10% of the transmission charges payable per MW.

32. We have considered the submissions of the petitioner. We observe that Petitioner had applied for LTA on 22.08.2018 and for the MTOA on 28.11.2018.



The MTOA was granted by CTUIL on 9.1.2019 and LTA was granted on 31.01.2019. We observe that LTA was granted on 31.1.2019 whereas MTOA was granted on 9.1.2019. The petitioner applied for both LTA and MTOA to protect its commercial interests. We do not agree to the petitioners' submission that MTOA was granted as an alternate arrangement by CTUIL. The applications for LTA and MTOA both were separately applied by the petitioner and hence the natural consequences for both LTA and MTOA shall follow as per the regulations.

33. The Petitioner entered into MTOA Agreement dated 28.01.2019 with the CTUIL which provides as follows:

"xxxxxx

G) AND WHEREAS 250 MW of power from the said Solar generation at Bhadla area in Rajasthan has been allocated to Maharashtra State Electricity Distribution Company Limited (MSEDCL) in Western Region on 'Firm' basis. Accordingly, ASHL is required to sign this Medium Term Open Access Agreement (MTOA) to avail Medium Term Open Access of transmission facilities for transfer of 250 MW power from the said solar Farm. The inter-state transmission system identified for evacuation of the power from the said Wind Farm is as indicated in Attachment-I

F) AND WHEREAS CERC has notified "Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010. and its amendments thereof hereinafter called "Sharing Regulations"

.....
.....

I) AND whereas if due to any amendment to the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 or any other CERC Regulation/ Government of India order; 'MTC' shall be required to pay the transmission charges for ISTS network and/or if transmission losses shall be attributable to the 'MTC', then 'MTC' shall be required to pay the applicable transmission charges etc. and share transmission losses as per prevailing CERC Regulations.

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.

.....

As per the above agreement, the 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.

34. We observe that the Petitioner applied for MTOA as per its own requirement and it also entered into MTOA Agreement knowing fully well the liabilities of transmission charges under the said Agreement. The MTOA for 250 MW was operationalized from 26.10.2019 and that Petitioner was liable to pay transmission charges in line with the CERC Regulations, unless eligible for waiver under the 2010 Sharing Regulations.

35. We observe that as on 26.10.2019, part capacity of the Petitioner had achieved COD .

36. The Regulation 7 (1) (aa) of Sharing Regulations 2010 clearly provides that waiver of transmission charges is for generation of electricity which is after COD of the generating station. Hence, the Petitioner is liable to pay transmission charges for the capacity for which COD was not declared as on commencement date of MTOA. The Petitioner has also contended that the transmission charges, if any, can only be levied in accordance with Regulation 13(7) of the CERC Sharing Regulations 2020 i.e. at the rate of 10% of the transmission charges payable per MW, as the demand for transmission charges was made by the CTUIL on 28.09.2022. In this regard, we observe that the period of mismatch/billing is 26.10.2019 to 31.12.2019 and during that period the 2010 Sharing Regulations were effective. Accordingly, the bills have to be raised on the Petitioner in terms of the 2010 Sharing Regulations.

37. In view of the above discussions, we are of the view that the Petitioner is liable to pay the applicable transmission charges for the 20 MW capacity under the MTOA for the period from 26.10.2019 to 31.12.2019 in terms of the 2010 Sharing Regulations.

38. The Petition no. 330/MP/2019 is disposed of in terms of the above.

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

**Sd/
(Arun Goyal)
Member**

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

