

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 296/MP/2024, along with IA No.72/2024

Subject : Petition under Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003, read with the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, against the wrongful and untenable demand of the one-time GNA charges raised by Central Transmission Utility of India Limited (CTUIL) by the email and letter dated 25.06.2024 and 20.08.2024, respectively and seeking quashing of the same on account of being not in accordance with the applicable laws and Regulations.

Petitioner : ACME Solar Holdings Limited (ASHL)

Respondents : Central Transmission Utility of India Limited (CTUIL)

Petition No. 297/MP/2024, along with IA No.73/2024

Subject : Petition under Section 79(1)(c) and 79(1)(f) of the Electricity Act, 2003, read with the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, against the wrongful and untenable demand of the one-time GNA charges raised by Central Transmission Utility of India Limited (CTUIL) by the email and letter dated 07.05.2024 and 20.08.2024, respectively and seeking quashing of the same on account of being not in accordance with the applicable laws and regulations.

Petitioner : ACME Solar Holdings Limited (ASHL)

Respondents : Central Transmission Utility of India Limited (CTUIL)

Date of Hearing : **9.9.2024**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Parties present : Shri Aniket Prasoan, Advocate, ASHL
Shri Aman Shaikh, Advocate, ASHL
Shri Shubham Arya, Advocate, CTUIL
Ms. Pallavi Saigal, Advocate, CTUIL

Ms. Reeha Singh, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Ms. Priyansi Jadiya, CTUIL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petitions had been filed *inter alia* challenging the wrongful and untenable demands of one-time GNA charges raised by CTUIL purportedly on the basis of misinterpretation of the provisions of the GNA Regulations. Learned counsel further submitted as under:

- a) In Petition No. 296/MP/2024, the Petitioner, ASHL, was granted Stage I & II connectivity and LTA for the 1200 MW at Fatehgarh PS in Rajasthan under the provisions of the Connectivity Regulations, 2009. Similarly, in Petition No. 297/MP/2024, the Petitioner was granted the Stage I & II connectivity and LTA for the 300 MW at Bikaner II PS in Rajasthan under the provisions of the Connectivity Regulations, 2009.
- b) GNA Regulations were introduced by the Commission on 7.6.2022. As per Regulation 22.2(d) of the GNA Regulations, the entities covered under Regulation 4.1 and Regulation 17.1 (iii) of the GNA Regulations were required to furnish the one-time GNA charges of Rs. 1 Lakh per MW for the quantum of GNA one month prior to the start date of GNA. Further, Regulation 40.2 of the GNA Regulations reiterates that one-time GNA charges are payable by the entities covered under Regulation 4.1 and Regulation 17.1 (iii) of the GNA Regulations.
- c) Regulation 17.1(iii) of the GNA Regulations covers power-procuring entities and not the generating companies. Whereas, Regulation 4.1 of the GNA Regulations lays down the categories of the entities as “applicants” who are eligible to apply for connectivity or for enhancement of the quantum of connectivity. However, it, as such, does not apply to the connectivity and LTA grantees who were granted the connectivity in terms of the Connectivity Regulations, 2009.
- d) Clause 26(vii) of the GNA Detailed Operating Procedure (DoP) dated 14.10.2022 specified that one-time GNA charges shall not be payable by the specified entities for quantum for which Connectivity / Stage-II Connectivity is effective under the Connectivity Regulations, 2009. Clause 26 (ii)(a) further provides that connectivity shall be considered effective if LTA is effective.
- e) Subsequently, the first amendment to the GNA Regulations was issued on 1.4.2023 and the same was made effective from 5.4.2023. Further, by means of the GNA First Amendment, a *proviso* was added to Regulation 40.2 of the GNA Regulations, which provided that the one-time GNA charges are not payable for the capacity that has been declared under commercial operation as on the date of coming into effect of the GNA Regulations.
- f) Consequently, vide its letters dated 7.5.2024 and 25.06.2024, CTUIL raised a claim for one-time GNA charges of Rs. 3 crores for the connectivity of 300 MW at Bikaner II PS and Rs. 12 crores for the connectivity of 1200 MW at the Fatehgarh PS. While raising the aforesaid claims, CTUIL has relied upon Regulation 18.1 of the GNA

Regulations to conclude that the Petitioner is covered under Regulation 4.1. However, since the Petitioner was granted the connectivity and LTA in terms of the Connectivity Regulations, 2009, it cannot be brought within the ambit of Regulation 4.1. Also, GNA Regulations do not provide that one-time GNA charges will be applicable to entities covered under Regulation 18.1(f), which pertains to the entities eligible for deemed GNA.

g) CTUIL has also relied upon the *proviso* to Regulation 40.2, which was added by the GNA First Amendment. However, the GNA First Amendment only incorporates a *proviso* and does not amend the main/enabling provision. In terms of Regulation 4.2 of the GNA Regulations, one-time GNA charges are payable only by the entities covered under Regulation 4.1, and as indicated above, it does not apply to the entities who have been granted connectivity under the earlier regime of the Connectivity Regulations, 2009. In any case, a proviso cannot be inconsistent with the express terms of main/enabling provisions, and if the same is contradictory, then the proviso would be ultra vires of the main provision.

h) Regulation 22.2(d) also provides that all the proceeds of such one-time GNA charge shall be used for reducing the Monthly Transmission Charges under the Sharing Regulations. The Sharing Regulations define the Monthly Transmission Charges in a billing month as the transmission charges derived from Yearly Transmission Charges for the corresponding billing period or part thereof. Moreover, Regulations 4 & 5 of the Sharing Regulations further provide components and sharing of the transmission charges, which do not include one-time GNA charges therein.

i) Moreover, in terms of the Sharing Regulations First Amendment, the transmission charges for the use of ISTS are waived for a period of 25 years for Renewable Energy based Generating Stations based on wind and solar sources, which declares the commercial operation by 30.6.2025. The Petitioner's Project is squarely covered under the said waiver.

j) Section 38(2)(d) of the Electricity Act, 2003, requires CTUIL to provide non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of the transmission charges. However, as indicated above, the Petitioner is, as such, not required to pay any transmission charges due to the waiver provisions.

k) Since the CTUIL, in its communication dated 20.8.2024, has already indicated that if the Petitioner fails to pay the one-time GNA charges within 15 days thereof, it will initiate the actions in accordance with the GNA Regulations, the Petitioner is also pressing for interim reliefs as prayed for in the IAs. The Petitioner is seeking an interim direction to restrain CTUIL from taking any coercive action pursuant to non-payment of one-time GNA charges during the pendency of the main matters.

2. Learned counsel for the Respondent, CTUIL, mainly submitted as under:

a) In the present proceedings, the Petitioner cannot challenge the provisions of the GNA Regulations. If at all the Petitioner had any grievance regarding the vires of the provisions of the GNA Regulations, it ought to have filed a writ petition before the appropriate High Court.

b) One-time GNA charges are payable in terms of Regulations 40.2 and 22(d) of the GNA Regulations, 2022. Regulation 22(d) concerns the entities which are covered under Regulations 4.1 and 17.1 (iii) of the GNA Regulations.

c) Although GNA DoP provided that one-time GNA charges shall not be payable by entities for quantum for which Connectivity /Stage-II Connectivity for the specified entities is effective under the Connectivity Regulations, 2009, by way of the GNA Regulations First Amendment, a proviso to Regulation 40.2 was added stating that one-time GNA charges are not payable for the capacity which has been declared commercial operation as on date of coming into the effect the First Amendment, i.e., 5.4.2023.

d) Thus, the provisions of the GNA DoP cannot be said to govern the field after the notification of the First Amendment as and when there is a conflict between the same. Hence, in the cases, including the present cases, where even though the connectivity/LTA was made effective prior to GNA but the project has not been commissioned prior to the GNA Regulations First Amendment, one-time GNA charges would apply.

e) The contention of the Petitioner that it does not fall within Regulation 4.1 of the GNA Regulations is misconceived. The Petitioner is interpreting Regulation 4.1 in isolation without reading the same along with Regulation 18.1(f), which provides that the entities for which LTA has become effective under the Connectivity Regulations are to be considered as deemed GNA grantees.

f) In terms of Regulation 18.2, the details of such entities deemed to have been granted GNA were to be published on the website of CTUIL. Such details are available on the website of CTUIL and were communicated to all relevant stakeholders, including the Petitioner on 25.9.2023, which has not been objected to by the Petitioner.

g) In respect of the connectivity of 300 MW covered in Petition No.297/MP/2024, the LTA was made effectively only after the GNA Regulations came into effect, and hence, the Petitioner has, as such, not relied upon the provision of Regulation 18.2 to advance its case. In this case, the Petitioner is also interpreting Regulation 4.1 in isolation without reading the same along with Regulation 37.3 (e) and (g) of the GNA Regulations, the basis on which the Petitioner exercised its option to transition to the GNA.

3. Considering the submissions made by the learned counsel for the parties, the Commission ordered as under:

(a) Admit, subject to just all exceptions.

(b) The Respondent, CTUIL, to file its reply, if any, within three weeks with a copy to the Petitioner, who may file its rejoinder within three weeks thereafter.

(c) The Commission further directed the Petitioner to furnish on affidavit, within two weeks, the current status of its 1200 MW Solar Project(s) in Petition No. 296/MP/2024 and 300 MW Solar Project(s) in Petition No. 297/MP/2024.

(d) CTUIL was directed to furnish the following details/information, on affidavit, within two weeks:

(i) List of the generators to whom the one-time GNA charges have been raised, along with the following details for such generators:

a) For the generators whose Connectivity was effective prior to 5.4.2023,

Name of generators and installed capacity in MW	Connectivity /Stage-II connectivity granted	Connectivity/Stage-II Connectivity effective prior to 5.4.2023	LTA granted (in MW)	LTA was effective or not prior to 05.04.2023	Whether COD has been achieved or not prior to 05.04.2023 If achieved, the capacity of the same in MW	One Time GNA Charges raised for (in Rs) (One-time GNA Charges paid or not	Is the payment of One-time GNA Charges made under protest

b) For the generators whose connectivity was not effective prior to 5.4.2023 and generators who have opted for transition under the GNA Regulations

Sl. No.	Name of generators and installed capacity in MW	Connectivity/Stage-II Connectivity granted in MW	LTA granted (in MW)	One Time GNA Charges raised for (in Rs)	One-time GNA Charges paid or not	Is the payment of One-time GNA Charges made under protest

(ii) Date of effectiveness of the GNA for 300 MW Solar Project (in Petition No. 297/MP/2024).

(e) Insofar as the grant of interim directions as prayed for by the Petitioner in the IAs is concerned, the Commission directed CTUIL not to take any coercive measure till the next date of the hearing. Accordingly, the Commission disposes of the IAs No. 72/2024 and 73/2024.

4. The matters will be listed for hearing on **12.11.2024**.

By order of the Commission
Sd/
(T.D. Pant)
Joint Chief (Law)