

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 291/MP/2023 along with IA No. 75/2023 and 292/MP/2023 along with
IA No. 74/2023**

Coram:

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

Date of Order: 21.04.2024

Petition No. 291/MP/2023

In the matter of:

Petition under section 79 of the Electricity Act read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) regulations, 2022, along with regulation 111-113 of the Central Electricity Regulatory Commission (conduct of business) regulations 1999, seeking relief(s) against Central Transmission Utility of India Limited in connection with the 300MW connectivity at Gadag district in state of Karnataka, granted to the petitioner herein

And

In the matter of:

M/S Solarone Energy Private Limited.
Registered Office: 1A, Vandana Building,
Tolstoy Marg, New Delhi-110001
Corporate Office: Level-6, Building No.11,
DLF Cyber City, Phase2, Gurgaon-122002

..... Petitioner

Versus

1. Central Transmission Utility of India Limited (CTUIL)
First Floor, Saudamini, Plot No.2, Sector-29, Gurugram,
Haryana -122001
2. Solar Energy Corporation of India Limited
D-3, 1st Floor, Wing-A, rius Platinum Building,
District Center, Saket, New Delhi-1

..... Respondents



Petition No. 292/MP/2023

In the matter of:

Petition under section 79 of the Electricity Act read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) regulations, 2022 along with regulation 111-113 of the Central Electricity Regulatory Commission (conduct of business) regulations 1999, seeking relief(s) against Central Transmission Utility of India Limited in connection with the 300MW connectivity at Koppal district in state of Karnataka, granted to the petitioner herein

In the matter of:

M/S SolarOne Energy Private Limited.
Registered Office: 1A, Vandana Building,
Tolstoy Marg, New Delhi-110001
Corporate Office: Level-6, Building No.11,
DLF Cyber City, Phase2, Gurgaon-122002

..... Petitioner

Versus

3. Central Transmission Utility of India Limited (CTUIL)
First Floor, Saudamini, Plot No.2, Sector-29, Gurugram,
Haryana -122001

4. Solar Energy Corporation of India Limited
D-3, 1st Floor, Wing-A, rius Platinum Building,
District Center, Saket, New Delhi-1

..... Respondents

Parties Present:

Shri Basava Prabhu Patil, Sr. Advocate, SEPL
Shri Geet Ahuja, Advocate, SEPL
Ms. Molshree Bhatnagar, Advocate, SEPL
Shri Nipun Sharma, Advocate, SEPL
Shri Rishabh Sehgal, Advocate, SEPL
Shri M. G. Ramachandran, Sr. Advocate, CTUIL
Ms. Srishti Khindaria, Advocate, CTUIL
Shri Maulik Khurana, Advocate, CTUIL
Shri Kumarjeet Ray, Advocate, CTUIL
Shri Alok Sharma, Advocate, CTUIL
Ms. Shikha Ohri, Advocate, SECI
Shri Kartikeya Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL



ORDER

The petitioner Solar One Energy Private Limited has filed the instant Petition No. 291/MP/2023 and 292/MP/2023 under section 79 of the Electricity Act read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the Inter-State Transmission System) regulations, 2022 (hereinafter "GNA Regulations") along with Regulation 111-113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999, seeking relief(s) against Central Transmission Utility of India Limited in connection with the 300MW connectivity at Gadag and the 300MW connectivity at Koppal district in State of Karnataka, granted to the petitioner herein.

2. The Petitioner has made the following prayers in the petitions:

Prayer in Petition No.291/MP/2023

- i. Allow the present Petition*
- ii. Hold and declare that under Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, upon transition of connectivity from the previous regime i.e., Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Terms Open Access in inter-State Transmission and related matters) Regulations 2009, nowhere, links the previous applications and the conditions contained therein, to be continued under the present regime;*
- iii. Hold and declare that under Regulation 37.2 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 the connectivity granted under the Connectivity Regulations 2009 shall be converted as connectivity made under Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022;*
- iv. Issue appropriate order(s) / direction(s) allowing the Petitioner herein to continue to retain the 300 MW Connectivity at Gadag under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022;*
- v. Issue appropriate order(s) / direction(s) to Central Transmission Utility of India Limited to re-instate connectivity of 300MW at Gadag in favour of the Petitioner;*
- vi. Issue appropriate order(s) / direction(s) to Central Transmission Utility of India Limited to take necessary steps for executing a fresh Transmission / Connectivity Agreement and/or aligning the previously executed Connectivity Agreement in accordance with the provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022; and*
- vii. Pass any order or such other orders as this Hon'ble Commission may deem fit in the interest of justice.*

Prayer in IA. No. 75/2023 in Petition No. 291/MP/2023

- i. Allow the present Application;*
- ii. Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited to take any coercive and/ or precipitative step(s) against the Applicant herein, including invocation and / or encashment of Bank Guarantee(s) bearing No. IGT2200830 and IGT2200822 amounting to Rs. 50,00,000/- and 3,00,00,000/- respectively submitted by the Applicant in favour of Central Transmission Utility of India Limited, till the final disposal of the accompanying petition;*
- iii. Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited from taking any step(s) towards rendering the 300 MW connectivity granted to the Applicant at Gadag either relinquished and/or revoked, till the final disposal of the accompanying petition;*
- iv. Issue appropriate direction(s) / order(s) to the Central Transmission Utility of India Limited to keep the connectivity of 300MW at Gadag alive till the final disposal of the Petition;*
- v. Pass such other and further order(s) / direction(s) that this Hon'ble Commission may deem fit, considering the facts and circumstances of the present case and in the interest of justice and equity.*

Prayer in Petition No.292/MP/2023

- i. Allow the present Petition*
- ii. Hold and declare that under Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, upon transition of connectivity from the previous regime i.e., Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Terms Open Access in inter-State Transmission and related matters) Regulations 2009, nowhere, links the previous applications and the conditions contained therein, to be continued under the present regime;*
- iii. Hold and declare that under Regulation 37.2 of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, the connectivity granted under the Connectivity Regulations 2009 shall be converted as connectivity made under Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022;*
- iv. Issue appropriate order(s) / direction(s) allowing the Petitioner herein to continue to retain the 300 MW Connectivity at Koppal under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022;*
- v. Issue appropriate order(s) / direction(s) to Central Transmission Utility of India Limited to re-instate connectivity of 300MW at Koppal in favour of the Petitioner;*
- vi. Issue appropriate order(s) / direction(s) to Central Transmission Utility of India Limited to take necessary steps for executing a fresh Transmission / Connectivity Agreement and/or aligning the previously executed Connectivity Agreement in accordance with the provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022; and*
- vii. Pass any order or such other orders as this Hon'ble Commission may deem fit in the interest of justice.*

Prayer in IA. No. 74/2023 in Petition No. 292/MP/2023

- i. *Allow the present Application;*
 - ii. *Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited to take any coercive and/ or precipitative step(s) against the Applicant herein, including invocation and / or encashment of Bank Guarantee(s) bearing No. IGT2200857 and IGT2200861 amounting to Rs. 50,00,000/- and 3,00,00,000/- respectively submitted by the Applicant in favour of Central Transmission Utility of India Limited, till the final disposal of the accompanying petition;*
 - iii. *Issue appropriate ex-parte, ad-interim direction(s) / order(s) restraining Central Transmission Utility of India Limited from taking any step(s) towards rendering the 300 MW connectivity granted to the Applicant at Koppal either relinquished and/or revoked, till the final disposal of the accompanying petition;*
 - iv. *Issue appropriate direction(s) / order(s) to the Central Transmission Utility of India Limited to keep the connectivity of 300MW at Koppal alive till the final disposal of the Petition;*
 - v. *Pass such other and further order(s) / direction(s) that this Hon'ble Commission may deem fit, considering the facts and circumstances of the present case and in the interest of justice and equity.*
3. The pleadings of Petition No. 292/MP/2023, along with IA No. 74/2023, are similar to Petition No. 291/MP/2023, along with IA No. 75/2023. Accordingly, the pleadings of Petition No. 292/MP/2023, along with IA No. 74/2023, have not been repeated in this Order. The Analysis and Decision have been done together considering pleadings of Petition No. 292/MP/2023 along with IA No. 74/2023 also and is applicable the all the referred cases herein.

Submission of Petitioner in Petition No.291/MP/2023

4. Petitioner has mainly made the following submissions with chronological dates of events:
- a) Petitioner – M/s SolarOne Energy Private Limited is a company registered under the provisions of the Companies Act 2013 and is a Generating Company within the meaning of Section 2 (28) of the Electricity Act, 2003.
 - b) On 07.07.2009, this Commission notified the Connectivity Regulations, 2009, which came into force with effect from 01.01.2010. On 09.01.2019, this Commission notified the seventh amendment to the Connectivity Regulations 2009, wherein the Detailed Procedure for granting connectivity to projects based on renewable sources to inter-state transmission systems was also notified.
 - c) On 14.07.2021, SECI issued an RfS for the selection of Solar Power Developers for setting up 1200 MW ISTS–ISTS connected solar PV Projects in the State of

Karnataka under a TBCB (ISTS-X). Under the scheme of procurement, SECI was identified as an 'Intermediary Procurer', and the 'End Procurer' would have been different distribution companies of certain states. The power was to be procured on a back-to-back basis. The Petitioner participated in the bidding undertaken by SECI and emerged as one of the successful bidders for a total capacity of 300 MW at a tariff of INR 2.36 per kWh. On 10.03.2022, SECI issued a Letter of Award (LoA) in favour of the Petitioner for setting up Project – 300 MW at Gadag.

- d) On 11.03.2022, based on the LOA, the Petitioner simultaneously applied for Stage I and Stage II Connectivity of 300 MW at Gadag . On 06.06.2022, CTUIL granted Stage- II Connectivity of 300 MW at Gadag in favour of the Petitioner in terms of the then prevailing Connectivity Regulations,2009. On 07.06.2022, this Commission issued the GNA Regulations.
- e) On 28.06.2022, the CTUIL and the Petitioner entered into a Transmission and Connectivity Agreement for the Petitioner to avail connectivity of 300 MW at Gadag district. On 01.07.2022, the Petitioner also submitted ConnBG- I of INR 50,00,000/- (Rupees Fifty Lacs) and ConnBG- II of INR 3,00,00,000/- (Rupees Three Crores) in favour of CTUIL.
- f) The Petitioner, at the time of applying for connectivity regulations, was required to opt for either an LOA/PPA route or a Land Route. Pertinently, under the Connectivity Regulations, 2009, the regime occasioned the Stage-II Connectivity Applicant to either apply for connectivity basis LoA/ Power Purchase Agreement or provide proof of ownership/lease rights of the land on which the project shall be constructed along with proof of financial closure/release of at least 10 percent of the project cost including the land acquisition cost through equity. However, such regulatory regimes concerning Connectivity, Long-Term Access, Medium Term Open Access, and Short-Term Open Access stand repealed by the extant GNA Regulations, which have become effective from 15.10.2022.
- g) Subsequent to the notification of GNA Regulations, CTUIL, vide its letter dated 27.10.2022, informed the Petitioner that its connectivity of 300 MW has been considered at Gadag and requested to intimate its consent towards the transition of connectivity granted under Connectivity Regulations to GNA Regulations under Regulation 37.2 of the GNA Regulations. Under Regulation 37.2 of the GNA Regulations, a mechanism has been provided, following which the Connectivity granted under the Connectivity Regulations shall be treated under the GNA Regulations.

- h) On 14.11.2022, the Petitioner intimated its consent to CTUIL for the transition of connectivity granted under Connectivity Regulations to GNA Regulations in line with GNA Regulations. On 01.04.2023, this Commission, in the exercise of its quasi-legislative powers, amended the GNA Regulations. Under the amended law, a 'connectivity' shall be granted to the applicant subject to such applicant submitting the document(s)/detail(s) as detailed under Regulation 5.8 of the GNA Regulations. However, unlike the previous regime, i.e., Connectivity Regulations, 2009, the GNA Regulations provide more freedom to the applicant. The 'connectivity,' once converted to GNA Regulations, allows the connectivity grantee to provide document(s)/detail(s) as per the option(s) available under Regulation 5.8(xi) of the GNA Regulations.
- i) Petitioner, being desirous of utilising the 300 MW connectivity at Gadag, proceeded to acquire land/execute lease deed(s) for the purpose of setting up the Project at Gadag. The details of such lease deed(s) have been submitted to CTUIL. The Petitioner herein has already incurred investments to the tune of INR 5,72,33,826 towards utilisation of the said 300 MW connectivity. The Petitioner, being a sincere and dedicated project developer, has also committed to investing around INR 28,45,50,000 (approximately) towards utilisation of the said 300 MW connectivity.
- j) As per the GNA Regulations 5.8(xi), a connectivity applicant is allowed to exercise its right to choose any of the three options available while applying for connectivity. Therefore, in law, the Petitioner herein has been vested with the right to supply either of the documents/BG to retain the connectivity under GNA Regulations.
- k) Owing to reasons not attributable to the Petitioner and considering the fact that a power purchase agreement could not be executed in terms of the timelines provisioned under the LOA/RFS issued by SECI. SECI appreciated the fact that the Petitioner is at no fault for such delay. Consequently, SECI, after almost 18 months of issuance of LOA vide its letter dated 10.08.2023, allowed the Petitioner to exit the process under the LOA without any penalty. Pertinently, the PPA was neither executed within the committed period under the LOA (90 days from 10.03.2022, i.e., 08.06.2022) nor within the validity of the bid (i.e., 27.08.2022) since SECI reached out to the Petitioner after almost 1 year from the issuance of the LoA. Therefore, it was inferred by the Petitioner that the LoA stands cancelled, and the Petitioner could not proceed with the signing of the PPA since SECI

reached out to the Petitioner after almost 1 year after the issuance of the LoA. Such exit has been allowed by SECI despite the expiry of the validity of the bid. Therefore, it is clear that the LoA has not been 'terminated', but the Petitioner has been allowed to 'exit the process'. It is settled law that 'exiting the process' shall not amount to 'termination', and accordingly, there shall be no penalties whatsoever upon the party who has been allowed to 'exit,' i.e., the Petitioner in the present case.

- l) The occasion to file the present petition has arisen in relation to a discussion that has culminated in CTUIL suggesting that the Petitioner herein can no more retain its 300 MW connectivity at Gadag.
- m) CTUIL and the Petitioner had some independent and parallel discussions in relation to the usage of lease deeds submitted by the Petitioner for this 300 MW Connectivity and some overlap with the documents submitted by another group company of the Petitioner.
- n) On 29.08.2023, a meeting was held between the Petitioner and CTUIL at CTUIL's office, wherein the 300MW connectivity granted to the Petitioner under the previous regulatory regime, i.e., Connectivity Regulations, 2009 (basis submission of LOA issued by SECI in terms of the then-existing provision of Detailed Procedure to Connectivity Regulations (2021) i.e., Clause 9.2.1) was discussed. The Petitioner was asked regarding the status of the LOA/PPA. It was also suggested by CTUIL that in the facts and circumstances of the Petitioner's case, where the Petitioner has been allowed to 'exit the LOA process without any liability' shall be considered akin to termination of LOA. Accordingly, CTUIL communicated that the 300 MW connectivity (for Gadag) shall be considered as revoked and/or relinquished, and the Bank Guarantee(s) shall be encashed in terms of the provisions under GNA Regulations.
- o) On 04.09.2023, the Petitioner submitted a detailed representation outlining the legal and contractual framework concerning the issue for the consideration of CTUIL.
- p) On 07.09.2023, the Petitioner acknowledged the receipt and acceptance of SECI's letter dated 10.08.2023 regarding the exiting from the process of subject LOA and also provided the bank details for remittance of Success Charges. On 07.09.2023, SECI allowed the refund of the Success Fee Charges paid by the Petitioner at the time of issuance of LOA dated 10.03.2022.

- q) Regulation 37.2 of the GNA Regulations provides for a mechanism, following which the Connectivity granted under the Connectivity Regulations, 2009 shall be treated under the GNA Regulations. It is evident and unambiguous that once a connectivity grantee opts for the transition from the Connectivity Regulations to GNA Regulations, it shall be bound by the provisions of the GNA Regulations and must comply with the requirements under the GNA Regulations alone. The GNA Regulations nowhere link the previous applications and the conditions contained therein to be continued under the present regime. Rather, GNA Regulations explicitly and unambiguously provide that the connectivity granted under the Connectivity Regulations, 2009 shall be converted 'as' connectivity made under GNA Regulations. Under the GNA Regulations, a 'connectivity' shall be granted to the applicant subject to such applicant submitting the document(s)/detail(s) as detailed under Regulation 5.8 of the GNA Regulations. However, unlike the previous regime, i.e., Connectivity Regulations, the GNA Regulations provide more freedom to the applicant. Therefore, the 'connectivity', once converted to GNA Regulations, allows the connectivity grantee to provide document(s)/detail(s) as per the options available under Regulation 5.8(xi) of the GNA Regulations.
- r) Despite having requested the transition of connectivity, CTUIL is yet to communicate the additional amount that shall be payable by the connectivity grantee towards bank guarantee(s) as applicable under the GNA Regulations. Further, the Connectivity Agreement already executed between CTUIL and the Petitioner herein is yet to be amended/aligned in terms of the new GNA Regulations. Therefore, the Petitioner cannot be made to surrender the connectivity (already granted to it) if it has exercised the option under the extant GNA Regulations to continue/retain the said connectivity and the Petitioner is willing to exercise its rights under the said Regulations.
- s) It is a settled principle of law that when a statute enacts that something shall be deemed to have been done, which in fact was not done, the court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to its logical conclusion. Under Regulation 37.2 of the GNA Regulations, the Petitioner shall be treated as an entity 'deemed to have been given' connectivity under the GNA Regulations and must comply with provisions of the GNA Regulations. It is not open for CTUIL to now restrict the Petitioner to submit land lease documents in lieu of LOA/PPA

since the same is categorically allowed under Regulation 5.8 of the GNA Regulations.

- t) The act of the Petitioner exiting from the process does not amount to the termination under Regulation 24.6 of the GNA Regulations 2022. In this regard, reliance is placed upon Regulation 24.2 and Regulation 24.6 of the GNA Regulations. Regulation 24.2 of the GNA Regulations shall only be applicable where the connectivity grantee itself exercises the option of surrendering/relinquishing the connectivity granted to it. However, the same shall not be applicable in the present facts and circumstances since the Petitioner is neither willing nor suggesting surrender of the 300 MW connectivity. In fact, the Petitioner desires to retain such connectivity and the same has been wrongly construed by CTUIL.
- u) CTUIL is restricted in law to revoke the connectivity granted in favour of the Petitioner and/or encash the Conn BG–I and Conn BG–II submitted by the Petitioner earlier. In so far as the reference to Regulation 24.6 of the GNA Regulations is concerned, CTUIL has an option of revoking the connectivity if LOA or PPA, on the basis of which Connectivity was granted, is terminated prior to the COD of the project.
- v) Regulation 24.6 of GNA Regulations has no application to the present facts and circumstances of the Petitioner. The term ‘terminated’ used under Regulation 24.6 of the GNA Regulations, is not a term of ‘art’ but a term of ‘law’. ‘Termination’ in law is a phraseology that is associated with ‘agreement/contracts’, i.e., when there is a conclusive bundle of rights and obligations. Merely issuance of LoA does not create any rights and obligations between the parties, since the LoA is a conditional document.
- w) There cannot be any legal basis for invoking Regulation 24.6 of GNA Regulations since the LoA has not been terminated. Consequently, the Conn BG -1 and Conn BG -2 submitted by the Petitioner in favour of CTUIL cannot be forfeited/encashed in terms of Regulation 24.6 of GNA Regulations.
- x) Without prejudice to the grounds pleaded above, it is important to point out that this Commission has been vested with general regulatory powers that are pervasive in nature. This Commission ought to discharge its functions under Section 79(2)(iii) of the Electricity Act, 2003, i.e., promote investments in the electricity industry. This Commission is also vested with general regulatory powers

to salvage the investments made by the Petitioner herein by providing suitable and appropriate relief(s).

Submission of Petitioner under IA No.75/2023 in Petition No.291/MP/2023

5. Petitioner has reiterated the submission made under the main Petition No. 291/MP/2023 and has submitted as under:
- a) Despite the clear and unambiguous position in law and a representation being placed before CTUIL for its consideration covering all the legal and contractual framework, the Applicant herein is yet to receive any communication from CTUIL on the subject issue. Therefore, there is a strong apprehension that CTUIL may not consider the representation made by the Applicant herein and/ or take any step(s) against the Applicant that are coercive and prejudicial in nature and be legally and commercially detrimental to its interest.
 - b) So far as the reference to Regulation 24.6 of the GNA Regulations is concerned, it is important to point out that CTUIL has an option of revoking the connectivity if LOA or PPA on the basis of which Connectivity was granted is terminated prior to the COD of the project. However, the Applicant is entitled, in law, to retain its connectivity under the Connectivity Regulations 2009 while allowing the transition of connectivity under GNA Regulations 2022.
 - c) Since SECI, a governmental instrumentality, could not execute a PPA within the stipulated time as laid out in the LOA, it allowed SolarOne to exit the process without penalties; therefore, it is clear that the LoA has not been 'terminated,' but SolarOne has been allowed to 'exit the process.' It is settled law that 'exiting the process' shall not amount to 'termination'; accordingly, there shall be no penalties whatsoever upon the party who has been allowed to 'exit', i.e., SolarOne in the present case.
 - d) In view of the above, there cannot be any revocation of connectivity granted to Solar One, and consequently, the ConBG-1 and ConBG-2 cannot be encashed/forfeited by CTUIL. It is submitted that any such invocation would be unjust and contrary to law and would result in irretrievable injury to the Applicant. Moreover, CTUIL has suffered no losses or damages on account of the Applicant. Therefore, there is no valid ground or basis for CTUIL to retain or encash the Applicant's BG.

- e) The Applicant apprehends that CTUIL may take coercive steps against the Applicant, including by invoking and/or encashing the Bank Guarantee(s) dated 01.07.2022 for an amount of Rs. 50,00,000/- and Rs. 3,00,00,000/- furnished by the Applicant as required under Clause 10.8(a) of the RE Connectivity Procedure.
 - f) Therefore, the Applicant seeks a direction against CTUIL restraining it from taking any coercive steps against the Applicant, including by way of invoking and/or encashing the said BG, until the issues raised in the captioned Petition are adjudicated upon by this Commission.
 - g) The BGs are alive till 2024; no prejudice, irreparable loss, or injury will be caused to CTUIL if *ex-parte*, interim orders are granted. On the other hand, in case the relief sought to vide the present Application is not granted, grave injustice and prejudice shall be caused to the Applicant as they would suffer tremendous loss of goodwill and reputation, and their business prospects would also suffer. It is submitted that such a loss or prejudice suffered by the Applicant cannot be compensated in terms of money, even if it is later held that the invocation of BGs is unlawful.
6. Petitioner in Petition No. 292/MP/2023 was granted Connectivity at Koppal for 300 MW. Similar submissions have been made by Petitioner in this case.

Submission of Petitioner in Petition No. 292/MP/2023

7. Petitioner has made the following submissions:
- a) On 14.07.2021, SECI issued the RfS for the selection of Solar Power Developers for setting up 1200 MW ISTS–connected Solar PV Projects in the State of Karnataka under a tariff-based competitive bidding (ISTS-X). Under the said scheme of procurement, SECI was identified as an 'Intermediary Procurer' and the 'End Procurers' would have been different distribution companies of certain states. The power was to be procured on a back-to-back basis. The Petitioner participated in the said bidding undertaken by SECI and emerged as one of the successful bidder(s) for a total capacity of 300 MW (Koppal) at a tariff of INR 2.37 per kWh. On 10.03.2022, SECI issued a Letter of Award in favour of the Petitioner for setting up of Project – 300 MW at Koppal district in the State of Karnataka.
 - b) On 11.03.2022, based on the LOA, Stage II connectivity of 300 MW at Koppal was applied by the Petitioner. CTUIL, vide its letter dated 14.6.2022, granted Stage- II



Connectivity of 300 MW at Koppal. On 28.06.2022, the CTUIL and the Petitioner entered into a Transmission and Connectivity Agreement for the Petitioner to avail connectivity of 300 MW at Koppal district. Consequently, on 01.07.2022, the Petitioner also submitted CONBG- I of INR 50,00,000/- (Rupees Fifty Lacs) and CONBG- II of INR 3,00,00,000/- (Rupees Three Crores) in favour of CTUIL.

- c) Subsequent to the notification of GNA Regulations, CTUIL, vide its letter dated 27.10.2022 informed the Petitioner that its connectivity of 300 MW had been considered at Koppal and requested that it intimate its consent to the transition of connectivity granted under Connectivity Regulations to GNA Regulations under Regulation 37.2 of the GNA Regulations. On 14.11.2022, the Petitioner intimated its consent to CTUIL for the transition of connectivity granted under Connectivity Regulations to GNA Regulations in line with GNA Regulations.
- d) The Petitioner has already invested to the tune of INR 1,46,86,413 towards utilisation of the said 300 MW connectivity. In fact, the Petitioner, being a sincere and dedicated project developer, has also committed to investing around INR 10,62,00,000 (approximately) towards utilisation of the said 300 MW connectivity.
- e) As per the GNA Regulations 5.8(xi), a connectivity applicant is allowed to exercise its right to choose any of the three options available while applying for connectivity. Therefore, in law, the Petitioner herein has been vested with the right to supply either of the documents/BG to retain the connectivity under GNA Regulations.
- f) The occasion to file the present petition has arisen in relation to a discussion that has culminated in CTUIL suggesting that the Petitioner herein can no longer retain its 300 MW connectivity at Koppal.

Owing to reasons not attributable to the Petitioner and considering the fact that a power purchase agreement could not be executed in terms of the timelines provisioned under the LOA/RFS issued by SECI, SECI appreciated the fact that the Petitioner is at no fault for such delay. Consequently, SECI, by way of its letter dated 10.08.2023, allowed the Petitioner herein to exit from the LOA process without any liability. Pertinently, the PPA was neither executed within the committed period under the LOA (90 days from 10.03.2022, i.e., 08.06.2022) nor within the validity of the bid (i.e., 27.08.2022) since SECI reached out to the Petitioner after almost 1 year from the issuance of the LoA. Therefore, it was inferred by the Petitioner that the LoA stands cancelled and the Petitioner could not proceed with the signing of the PPA.

- g) On 07.09.2023, the Petitioner acknowledged the receipt and acceptance of SECI's letter dated 10.08.2023 regarding the exiting from the process of subject LOA and also provided the bank details for remittance of Success Charges. On 07.09.2023 itself, SECI agreed to the refund of the Success Fee Charges paid by the Petitioner at the time of issuance of LOA dated 10.03.2023.
- h) On 29.08.2023, a meeting was held between the Petitioner and CTUIL at CTUIL's office, wherein the 300MW connectivity granted to the Petitioner under the previous regulatory regime, i.e., CERC Regulations, 2009, was discussed. During such discussions, the Petitioner was asked regarding the status of the LOA/PPA. It was also suggested by CTUIL that the facts and circumstances of the Petitioner, where the Petitioner has been allowed to 'exit the LOA process without any liability' shall be considered akin to termination of LOA. Accordingly, CTUIL communicated that the 300 MW connectivity (for Gadag) shall be considered revoked and/or relinquished, and the Bank Guarantee(s) shall be encashed in terms of the provisions under GNA Regulations.
- i) On 04.09.2023, the Petitioner submitted a detailed representation outlining the legal and contractual framework concerning the issue for the consideration of CTUIL. The said representation recorded what transpired during the meeting held on 29.08.2023 and further provided legal arguments in favour of the Petitioner.
- j) As per Regulation 37.2 of the GNA Regulations, it is evident and unambiguous that once a connectivity grantee opts for transition from the Connectivity Regulations to GNA Regulations, it shall be bound by the provisions of the GNA Regulations and must comply with the requirements under the GNA Regulations alone. It is important to point out that the GNA Regulations, nowhere, links the previous applications and the conditions contained therein to be continued under the present regime. Rather, GNA Regulations explicitly and unambiguously provide that the connectivity granted under the Connectivity Regulations 2009 shall be converted 'as' connectivity made under GNA Regulations.
- k) Despite having requested the transition of connectivity, CTUIL is yet to communicate the additional amount that shall be payable by the connectivity grantee towards bank guarantee(s) as applicable under the GNA Regulations. Further, the Connectivity Agreement already executed between CTUIL and the Petitioner herein is yet to be amended/aligned in terms of the new GNA Regulations. Therefore, the Petitioner cannot be made to surrender the connectivity (already granted to it) if it has exercised the option under the extant

GNA Regulations 2022 to continue/retain the said connectivity, and the Petitioner is willing to exercise its rights under the said Regulations.

- l) It is a settled principle of law that when a statute provides for a thing to be done in a particular manner, it has to be done in that manner and not otherwise. It is evident and unambiguous that once a connectivity grantee opts for the transition from the Connectivity Regulations to GNA Regulations, it shall be bound by the provisions of the GNA Regulations and must comply with the requirements under the GNA Regulations alone. The GNA Regulations nowhere links the previous applications and the conditions contained therein to be continued under the present regime. Rather, GNA Regulations explicitly and unambiguously provide that the connectivity granted under the Connectivity Regulations 2009 shall be converted 'as' connectivity made under GNA Regulations
- m) SECI after almost 18 months of issuance of LOA vide its letter dated 10.08.2023, has allowed the Petitioner to exit the process under the LOA without any penalty. Therefore, it is clear that the LoA has not been 'terminated', but the Petitioner has been allowed to 'exit the process' It is settled law that 'exiting the process' shall not amount to 'termination'; and accordingly, there shall be no penalties whatsoever upon the party who has been allowed to 'exit,' i.e., the Petitioner in the present case.
- n) The act of the Petitioner exiting from the process does not amount to the termination under Regulation 24.6 of the GNA Regulations 2022. Regulation 24.2 of the GNA Regulations shall only be applicable where the connectivity grantee itself exercises the option of surrendering /relinquishing the connectivity granted to it. However, the same shall not be applicable in the present facts and circumstances since the Petitioner is neither willing nor suggesting the surrender of the 300 MW connectivity. In fact, the Petitioner desires to retain such connectivity and the same has been wrongly construed by CTUIL.
- o) CTUIL is restricted in law to revoke the connectivity granted in favour of the Petitioner and/or encash the CONGBG – I and CONBG – II submitted by the Petitioner earlier. In so far as the reference to Regulation 24.6 of the GNA Regulations is concerned, Regulation 24.6 of GNA Regulations has no application to the present facts and circumstances of the Petitioner. The term 'terminated' used under Regulation 24.6 of the GNA Regulations, is not a term of 'art' but a term of 'law'. 'Termination' in law is a phraseology that is associated with 'agreement/contracts', i.e. when there is a conclusive bundle of rights and

obligations. Merely issuance of LoA does not create any rights and obligations between the parties, since the LoA is a conditional document. The LoA submitted by the Petitioner herein under the Connectivity Regulations was issued by SECI pursuant to a bidding undertaken by it and successfully awarded to the Petitioner. However, its effectiveness was subject to a certain condition(s), one of which was that SECI shall in a time-bound manner, execute a PPA with the Petitioner. Since SECI, a governmental instrumentality, couldn't execute a PPA within the stipulated time as laid out in the LOA, it allowed the Petitioner to exit the process without penalties. Therefore, it is clear that the LoA has not been 'terminated,' but the Petitioner has been allowed to 'exit the process'. It is a settled law that 'exiting the process' shall not amount to 'termination,' and accordingly, there shall be no penalties whatsoever upon the party who has been allowed to 'exit', i.e., the Petitioner in the present case.

- p) There cannot be any legal basis for invoking Regulation 24.6 of GNA Regulations since the LoA has not been terminated. Consequently, the ConBG -1 and ConBG -2 submitted by the Petitioner in favour of CTUIL cannot be forfeited/ encashed in terms of Regulation 24.6 of GNA Regulations

Submission of Petitioner under IA No.74/2023 in Petition No.292/MP/2023

8. Petitioner has reiterated the submission made under the main Petition No. 292/MP/2023 and additionally submitted as under:
- h) Despite the clear and unambiguous position in law and a representation being placed before CTUIL for its consideration covering all the legal and contractual framework, the applicant herein is yet to receive any communication from CTUIL on the subject issue. Therefore, there is a strong apprehension that CTUIL may not consider the representation made by the applicant herein and/ or take any step(s) against the applicant, which are coercive and prejudicial in nature and be legally and commercially detrimental to its interest.
- i) So far as the reference to Regulation 24.6 of the GNA Regulations is concerned, it is important to point out that CTUIL has an option of revoking the connectivity if LOA or PPA on the basis of which Connectivity was granted is terminated prior to the COD of the project. However, the Applicant is entitled, in law, to retain its

connectivity under the Connectivity Regulations 2009 while allowing the transition of connectivity under GNA Regulations 2022.

- j) Since SECI, a governmental instrumentality, couldn't execute a PPA within the stipulated time as laid out in the LOA, it allowed SolarOne to exit the process without penalties; therefore, it is clear that the LoA has not been 'terminated' but SolarOne has been allowed to 'exit the process'. It is settled law that 'exiting the process' shall not amount to 'termination,' and accordingly, there shall be no penalties whatsoever upon the party who has been allowed to 'exit,' i.e., SolarOne in the present case.
- k) In view of the above, there cannot be any revocation of connectivity granted to SolarOne, and consequently, the ConBG-1 and ConBG-2 cannot be encashed/forfeited by CTUIL. It is submitted that any such invocation would be unjust and contrary to law and would result in irretrievable injury to the Applicant. Moreover, CTUIL has suffered no losses or damages on account of the Applicant. Therefore, there is no valid ground or basis for CTUIL to retain or encash the Applicant's BG.
- l) The Applicant apprehends that CTUIL may take coercive steps against the Applicant, including by invoking and/or encashing the Bank Guarantee(s) dated 01.07.2022 for an amount of Rs. 50,00,000/- and Rs. 3,00,00,000/- furnished by the applicant as required under Clause 10.8(a) of the RE Connectivity Procedure.
- m) Therefore, the applicant seeks a direction from CTUIL restraining it from taking any coercive steps against the Applicant, including by way of invoking and/or encashing the said BG, until the issues raised in the captioned Petition are adjudicated upon by this Commission.
- n) The BGs are alive till 2024; no prejudice, irreparable loss, or injury will be caused to CTUIL if ex-parte interim orders are granted. On the other hand, in case the relief sought to vide the present application is not granted, grave injustice and prejudice shall be caused to the applicant as they would suffer tremendous loss of goodwill and reputation, and their business prospects would also suffer. It is submitted that such a loss or prejudice suffered by the Applicant cannot be compensated in terms of money if it is later held that the invocation of BGs is unlawful.

Hearing on 22.09.2023



9. Petition Nos. 291/MP/2023 and Petition No. 292/MP/2023 were admitted vide hearing on 22.09.2023. The Commission vide RoP has directed CTUIL not to take any coercive action/steps against the Petitioner with regard to the invocation/encashment of BGs and to re-allocate the bays connected with the grant of the Connectivity to the Petitioner at Koppal and Gadag till the next date of the hearing.

Submission of Respondent CTUIL

10. Respondent CTUIL vide affidavit dated 23.11.2023 has submitted as under:
- a) CTUIL specifically denied the petitioner's allegation that CTUIL has not been processing the transition of connectivity as under the GNA Regulations, as the transition of connectivity is being processed by CTU strictly in terms of the prescription under the GNA Regulations notified by this Commission. The Petitioner is alleging that "the 'connectivity' once converted to GNA Regulations, allows the connectivity grantee to provide document(s)/detail(s) as per the options available under Regulation 5.8(xi) of the GNA Regulations" is also specifically denied and the same is not in consonance with the mandate of provisions of Regulation 5.8(xi) of GNA Regulations.
- b) As per the scheme for transition under Regulation 37.2(a) of the GNA Regulations, the entities that have been granted Stage-II Connectivity under the earlier Connectivity Regulations, 2009, shall have to opt for either of the following:
- i. Opt for the transition of Connectivity under GNA Regulations. The consequent result is the retention of Connectivity and furnishing of requisite additional BGs (if any), as per the scheme of GNA Regulations.
 - ii. Surrendering such Connectivity. The consequence is the cancellation/revocation of Connectivity along with the return of Conn-BGs.
- c) On 06.09.2023, SECI conveyed to CTUIL the communication dated 05.09.2023 issued by it to RE developers and their reply. In an email dated 05.09.2023, SolarOne had refused to extend the timeline for signing the PPA, and based on the refusal, a letter dated 16.08.2023 was sent by SECI to allow SolarOne to exit the process without any liability on SECI pertaining to Letter of Award. The same was accepted by SolarOne. On 11.09.2023, CTU further requested SECI to provide the present status regarding the validity of the LOAs issued by SECI. Vide

email dated 12.09.2023 SECI clearly stated that the Letters of Award issued by SECI to the Petitioners have been annulled. Therefore, since the basis of the grant of connectivity was the LOA, and the same stood annulled, the Respondent revoked the Stage-II Connectivity of 300MW granted to the Petitioner vide letter dated 19.09.2023 in terms of the provision of Regulation 24.6 of the GNA Regulations.

- d) The Petitioner has claimed the reliefs on the basis of the following two contentions:
- i. LoA issued by SECI in favour of the Petitioner was not “terminated” by SECI. Rather, SECI allowed the Petitioner to “exit the LOA process,” which is not the same as “termination.” Therefore, Regulation 24.6(1)(c) of the GNA Regulations, which mandates the connectivity to be revoked upon “termination” of LoA, is not applicable.
 - ii. Upon exercising the option of conversion of connectivity under Regulation 37.2(a) of the GNA Regulations, the Petitioner is vested with the right to retain connectivity under any of the 3 routes mentioned in Regulation 5.8(xi) of the GNA Regulations – (i) LoA / PPA; or (ii) Registered Title Deed; or (iii) Bank Guarantee.
- e) The contentions of the Petitioner are not supported by any of the provisions of the Connectivity Regulations and or the GNA Regulations. The Petitioner has adopted a pick-and-choose approach to the Regulations and is relying on a self-serving interpretation of the GNA Regulations.
- f) Clause 9.2 of the Revised Procedure for “Grant of Connectivity to Projects based on Renewable Sources to Inter-State Transmission System” (Revised Procedure) enabled an entity to apply for Stage-II Connectivity through either of the two routes -: (i) LoA/PPA Route; or (ii) Land Route. Clause 9.3.3 of the Revised Procedure allowed a connectivity grantee under the Land route to transition to the LoA Route. Therefore, even under the Connectivity Regulation and the Revised Procedure transition from LoA Route to any other basis for grant of connectivity was not contemplated.
- g) No PPA had been executed by the Petitioner with SECI for almost 18 months. It was the Petitioner who refused to extend the timeline of the PPA beyond 90 days thereby indicating its intent to exit from the LoA process. Accordingly, vide letter dated 10.08.2023, SECI allowed the Petitioner to exit the process without any

liability on SECI pertaining to the LOA issued by SECI. In effect, the LoA issued by SECI to the Petitioner stood terminated. Further, vide email dated 11.09.2023, Respondent sought clarification from SECI regarding the validity of LOAs, wherein vide email dated 12.09.2023, SECI informed the Respondent that the LoA issued in favour of the Petitioner has been annulled.

- h) The representatives from Solar One Energy Pvt. Ltd. submitted in the 39th and 40th JCC Meetings held on 23.09.2022 and 23.12.2022, respectively, that SolarOne is yet to sign PPA with SECI. Further, in Project Review Meetings (erstwhile JCC) held on 05.04.2023 and 07.07.2023, the representative from Solar One Energy Pvt. Ltd. submitted that they are yet to sign PPA with SECI and that the Land acquisition is under process. Taking into account the aforesaid, it may be pertinent to note that the Petitioner had not categorically disclosed the fact of its unwillingness to extend the timelines for execution of PPA and had also continued to participate in the JCC/PRM meetings without any categorical disclosure of its intention to exit from LOA.
- i) When the LoA, which formed the substratum of the grant of the Stage-II Connectivity of 300MW to the Petitioner, got terminated, the connectivity had to be revoked in accordance with Regulation 24.6(1)(c) of the GNA Regulations. Simply put, the superstructure cannot stand when the substratum is allowed to fall away from the Connectivity Grantee. Regulation 24.6(1)(c) uses the expression “*shall be revoked*”. Therefore, the connectivity granted to the Petitioner was bound to be revoked upon termination of the LoA. Since Stage-II Connectivity was granted to the Petitioner solely on the basis of the LoA which stood terminated, the Respondent vide letter dated 19.09.2023 revoked the connectivity granted to the Petitioner. While SECI had used the expression “exit the process” in its letter dated 10.08.2023, it effectively terminated the LoA in the instant case. The said termination was on account of the Petitioner having signified its intention to exit the process by not seeking an extension of time for signing the PPA.
- j) The Black’s Law Dictionary (11th Edition) defines the term “termination” as “the act of ending something; the end of something in time or existence; conclusion; discontinuance.” It is not relevant while terminating whether the act or fault leading to termination is attributable to the Petitioner or to SECI. It is clear that the ambit and scope of the term “termination” are very wide and are not attached to the cause behind the same. Therefore, whether the Petitioner was allowed to exit

or was made to exit is immaterial, and the consequences specified in the extant laws would have to apply.

- k) The entire claim of the Petitioner for reinstatement of the connectivity has been based on Regulation 5.8(xi) of the GNA Regulations. The aforesaid argument of the Petitioner is without acknowledgement of the fact that the said provision has been incorporated in the Regulation through the first amendment and is applicable only for the fresh applications to be made w.e.f. the date of implementation of the Regulations, i.e., 05.04.2023, and the same is not applicable for the transition process, which is to be undertaken in accordance with Regulation 37 only. Thus, it is emphatically clear that the present petition stems from ignorance of the law.
- l) Interpretation of Regulation 5.8(xi) by the Petitioner is baseless and not supported by any provisions. The clause (xi) mentions the case of the fresh applicants for the grant of Connectivity and not of those who have already been granted Connectivity.
- m) Petitioner may apply afresh under the GNA Regulations under any of the 3 routes mentioned in Regulation 5.8(xi). It cannot claim to retain its connectivity by getting it transitioned from the LoA route to the Bank Guarantee route in the absence of any provision in the GNA Regulations enabling the same.
- n) A meeting was held on 25.09.2023 for the allocation of bays at Koppal and Gadag Pooling Station. However, the Petitioner approached CERC consequent to the revocation of Connectivity, and the CERC directed CTU not to take any coercive action against the Petitioner with regard to the invocation/encashment of BGs and reallocation of bays connected with the grant of the Connectivity to the Petitioner at Koppal and Gadag till the next date of hearing. Hence, the allocation of bays each at Koppal PS and Gadag PS was put on hold as per the direction of CERC.

Submissions of Petitioner in Petition No. 291/MP/2023

- 11. Petitioner vide affidavit dated 06.12.2023 has reiterated its submission and additionally submitted as under:
 - a) Under Regulation 24.6, read with 24.2 of the GNA Regulations, it is abundantly clear that Regulation 24.2 of the GNA Regulations shall only be applicable where the connectivity grantee itself exercises the option of surrendering /relinquishing the connectivity granted to it. However, the same shall not be applicable in the present facts and circumstances since the Petitioner is neither willing nor



suggesting the surrender of the 300 MW connectivity. In fact, the Petitioner desires to retain such connectivity and the same has been wrongly construed by CTUIL. Thus, the approach adopted by CTUIL is completely against the principles enshrined under the GNA Regulations.

- b) CTUIL is simply trying to mislead this Commission by mixing and equating two words, i.e., 'exiting' and 'termination.' The term 'termination' is mostly used when a party in any contractual arrangement fails to comply with its obligation envisaged under such arrangement. Consequently, there are some penalties with respect to such failure, however, that is completely missing in the present case. SECI has allowed the Petitioner to exit the process without any liability or penalty since there was no default on the part of the Petitioner. and in fact, it was SECI who delayed in executing PPA with the Petitioner for almost 18 months. Thus, it is a settled principle of law that a person cannot be penalised for any of its own faults.
- c) It is a settled law that the vested rights of an entity cannot be taken away by way of executive action. In this regard, it is important to point out that both in equity and in law, severe prejudice shall be caused to the Petitioner in case the 300 MW Connectivity is either rendered relinquished or revoked by CTUIL and the Bank Guarantee(s) are encashed, consequently. The Petitioner herein has already incurred investments to the tune of INR 1,46,86,413 towards the utilisation of the said 300 MW connectivity. In fact, the Petitioner being a sincere and dedicated project developer, has also committed to invest around INR 10,62,00,000 (approximately) towards utilisation of the said 300 MW connectivity. Therefore, any action taken by CTUIL contrary to the law shall gravely prejudice the rights and interests of the Petitioner herein.

Hearing on 18.12.2023

12. The Commission vide RoP of the hearing dated 18.12.2023 directed the Petitioner to implead SECI as a party to the Petitions and directed SECI to file its reply to the Petitions on the aspect of non-execution of the PPAs and 'annulment' of LoA. The Commission also directed the Petitioner to indicate the steps already taken by the Petitioner towards implementation of the Project(s), including the land having been procured, and expenditure already incurred.
13. Further, the Commission directed that the interim direction issued vide Record of Proceedings for the hearing dated 22.9.2023 will continue until the next date of hearing.

Submissions of Petitioner in Petition No. 291/MP/2023

14. Petitioner, vide reply dated 19.12.2023, has filed “Amended Memo of Parties” by impleading Solar Energy Corporation of India Limited (SECI) as a party to the Present Petition.
15. Petitioner vide affidavit dated 30.12.2023 has submitted as under:
 - a) Petitioner has already incurred investment to the tune of INR 6,46,32,178 towards utilization of the said 300 MW connectivity. The Petitioner being a sincere and dedicated project developer, has also committed to investing around INR 10,64,28,78,452 towards utilization of the said 300 MW connectivity. Petitioner has submitted a Certification of Cost incurred for the Project at the Gadag Site by the Petitioner from MRKS and Associates (Chartered Accountants). As evidenced by the CA Certificate, huge investments and commitments have already been made by the Petitioner towards the Project, demonstrating its willingness and sincerity to commission its Project and utilise the 300 MW connectivity granted in its favour at Gadag.
 - b) The Petitioner has finalised a power procurement arrangement with PTC India Limited for an offtake of 300 MW RE power from the Project, which is awaiting approval from the PTC Board. The scheduled Commercial Operation Date under the said agreement is stipulated to be on or before June 30th, 2025. Therefore, in view of the above, the Petitioner has taken steps not only to implement the Project at the Gadag site but also to secure a firm PPA for the purpose of effective utilisation of the 300 MW connectivity granted to the Petitioner at the Gadag site.

Submission of Petitioner in Petition No. 292/MP/2023

16. The Petitioner vide reply dated 19.12.2023, has filled the “Amended Memo of Parties” by impleading Solar Energy Corporation of India Limited (SECI) as a party to the Present Petition.
 - a) Petitioner, vide affidavit dated 30.12.2023, has submitted that the Petitioner has already incurred investment to the tune of INR 1,55,98,467/- towards utilization of the said 300 MW connectivity. The Petitioner being a sincere and dedicated project developer, has also committed to investing around INR 10,62,00,000/- towards utilization of the said 300 MW connectivity. Petitioner has submitted a

Certification of Cost incurred for the Project at the Koppal Site by the Petitioner from MRKS and Associates (Chartered Accountants). As evidenced by the CA Certificate, huge investments and commitments have already been made by the Petitioner towards the Project, demonstrating its willingness and sincerity to commission its Project and utilise the 300 MW connectivity granted in its favour at Koppal.

Hearing on 03.01.2024

17. The Commission directed Petitioner to provide the following information:
- a) The land required vis a vis land acquired for the project, with actual land acquired through a registered title deed or on lease or on a land use rights basis.
 - b) What is the significance of details of the commitment cost submitted by the Petitioner? Does it provide proof of land acquired for the project?
 - c) Whether the details of expenditure incurred as per the CA certificate, audited certificate or unaudited?

Submissions of Respondent SECI

18. Respondent Solar Energy Corporation of India Limited (SECI) vide affidavit dated 16.01.2024 has submitted as under:
- a) The present reply is only limited to the aspects of non-execution of PPA and annulment of PPA, and SECI in no way comments on the reliefs sought by the Petitioner in the instant petition.
 - b) On 10.03.2022, SECI issued a Letter of Award (“LoA”) in favor of the Petitioner for setting up Project – 300 MW at Gadag District in the State of Karnataka. Pursuant to the issuance of the aforesaid LoA, SECI initiated efforts to execute power supply agreements.
 - c) SECI, vide its email dated 26.04.2023, informed the Petitioner that SECI had already executed a Power Supply Agreement (“PSA”) of 100 MW under the Solar ISTS-X and was in the advanced stage of discussion for the signing of PSA of 600 MW. SECI informed the Petitioner about the changes in the Power Purchase Agreement (“PPA”) provisions proposed by the Buying Entities. Petitioner, vide its

email dated 27.04.2023, informed SECI that the bid submitted in response to the RfS was valid only until 27.08.2022 and that as the same had expired, any request for execution of PPA could not be made.

SECI, vide its email dated 30.04.2023, informed the Petitioner that SECI's email dated 26.04.2023 was for seeking confirmation for changes made in the PPA in line with the changes to be done in the PSA, as requested by the buying entity. Further, SECI informed that the validity of the bid was of no concern to the abovementioned changes as SECI had already accepted the Petitioner's bid prior to completion of bid validity (i.e., 27.08.2022). Petitioner, vide its email dated 02.05.2023 stated that the bid submitted by SolarOne on 30.11.2021 stands expired due to efflux of time. Further, no coercive actions can be taken against SolarOne under the law and in terms of the RfS read with LOA.

- d) SECI, vide its email dated 05.05.2023, informed the Petitioner that the Letter of Award (LOA) had already been issued by SECI before the expiry of the validity of the Petitioner's bid. Additionally, SECI informed the Petitioner that with regard to the condition of signing the PPA, i.e., 90 days from LOA, Clause 14.3 states that, "Irrespective of the date of signing of PPA, the Effective Date of the PPA shall be the date as on the 90th day from the date of issuance of LOA. However, in extraordinary cases of unavoidable delays in signing the PPAs or PSA for any reason attributable to SECI, the effective date of the PPA shall be dated as 7 days from the signing date of the PSA for the total capacity of the respective project (i.e. date of issuance of LOA is 01.04.2020 and signing date of PSA is 10.07.2020, then in such case Effective Date of PPA shall be 17.07.2020)." SECI, therefore, as a final request to the Petitioner, asked the Petitioner to provide their inputs by 06.05.2023 about the changes in PPA condition which have been done corresponding to the conditions of PSA, which was supposed to be signed with the buying entities.
- e) Petitioner, vide their email dated 08.05.2023, replied to the aforesaid email and contended that it cannot be forced to sign the PPA in the present circumstances and stated that LoA provided that PPA in terms of the RfS is required to be signed within a period of 90 days from the date of issuance of LoA, i.e., by 08.06.2022, if not extended by SECI after mutual discussions. Before the issuance of an email dated 30.04.2023, SECI asked SolarOne to approve the amendments proposed by DISCOMs in the PPA, but SECI never reached out to SolarOne after the issuance of LOA on 10.03.2022 for a mutual decision on the extension of timelines beyond a period of 90 days. Till the issuance of the said email, SolarOne was not made aware by SECI that it intends to extend the timeline for signing the PPA in violation of principles of natural justice.

- f) SECI, vide its email dated 25.05.2023 and followed by two other emails from SECI dated 31.05.2023 and 07.06.2023, informed the Petitioner SECI is ready to tie up the complete capacity of a total of 1200 MW under Tranche - X with different buying entities for the signing of PSA for which LoA for 02 Projects of 300 MW each were issued by SECI. Therefore, the Petitioner was to confirm the changes for the signing of the PPA corresponding to changes recommended by respective buying entities.
- g) SECI, thereafter, vide a letter dated 10.08.2023, permitted the Petitioner to exit the process, as the successful bidder does not want to extend the timeline of the signing of PPA beyond 90 days of the issuance of the Letter of Award. Petitioner, vide an email dated 07.09.2023, accepted SECI's letter dated 10.08.2023.
- h) Petitioner, vide a letter dated 16.08.2023, requested SECI to annul the LOA awarded under the RfS without any liability and return the Success Charges along with GST. The Petitioner further requested SECI to direct the CTU to allow SolarOne Energy or its group or affiliate companies to use the already granted connectivity in other projects through a "land/BG Route basis." SECI, vide an email dated 07.09.2023, informed the Petitioner that the refund of its success charges is under process and should be processed at the earliest. SECI further informed the Petitioner that since it has exited from the signing of the PPA of awarded projects under Tranche X, therefore, the Petitioner's request with respect to the connectivity of these projects will have to be resolved directly with CTUIL. Subsequently, vide an email dated 22.09.2023, SECI informed the Petitioner that the refund of the success charges was processed on 19.09.2023. Accordingly, the Petitioner was permitted by SECI to exit the signing of the PPA of awarded projects under Tranche X.

Submissions of Petitioner in Petition No. 291/MP/2023

19. Petitioner vide affidavit dated 07.02.2024 has submitted as below:
- a) Certification of Cost incurred for Project at Gadag Site by the Petitioner from MRKS and Associates (Chartered Accountants) is proof of the fact that the Petitioner herein has already incurred investments to the tune of INR 6,46,32,178 (as on 30.12.2023) towards the utilisation of the 300 MW connectivity. The Petitioner also disclosed that it has also committed to investing around INR

10,64,28,78,452 towards utilisation of the 300 MW connectivity. The Petitioner has finalised a power procurement arrangement with PTC India Limited for the offtake of 300 MW RE power comprising 200 MW solar and 100 MW wind from the Project, which has already been approved by the PTC Board.

- b) The total land requirement for establishing a 300MW RE Project (Wind/Solar) is 625 acres (approximately). However, under the GNA Regulations, for the purpose of obtaining Connectivity through Land Route, the requirement is a “Registered Title Deed as a proof of Ownership or lease rights or land use rights for 50% of the land required for the capacity”, i.e., approximately 312 acres. Out of 312 acres, the Petitioner has already secured registered lease rights of 205 acres of land. In addition, the Petitioner has also signed an agreement to lease around 300 acres with the landowners for further formalizing the registered lease rights agreements. In the absence of a balance of the registered lease rights, the Petitioner is ready and willing to submit a Bank Guarantee in lieu of land, which is permissible under the GNA Regulations. The Petitioner has already entered into land agreements dated 28.03.2023 and 14.08.2023 with the land aggregators for the purpose of securing the balance of land. The Petitioner is required to pay INR 28,45,50,000/- for acquiring the balance of land of 420 acres.
- c) The commitment costs (as provided by the CA Certificate) are mainly arising out of three agreements entered towards the implementation of the Project, namely:
- i. Engagement with Suzlon Energy for delivery and supply of Wind Turbine Generators with a 100 MW capacity and a value of INR 598,83,64,000/-.
 - ii. Engagement with PV module manufacturer for delivery and supply of 200 MW AC solar modules of value INR 433,45,76,064/-
 - iii. Engagement with Ipower Renewable Energy Private Limited and Energy Systems Private Limited for procurement of land on lease vide agreements dated 14.08.2023 and 28.03.2023, respectively.
- d) The CA Certificate was issued in terms of the expenditure incurred by the Petitioner along with the committed cost for the Project and is unaudited.

Submission of Petitioner in Petition No. 292/MP/2023

20. Petitioner, vide affidavit dated 07.02.2024, has submitted as under:



- a) Certification of the Cost incurred for the Project at the Koppal Site by the Petitioner from MRKS and Associates (Chartered Accountants) is proof of the fact that the Petitioner has already incurred investments to the tune of INR 1,55,98,467/-(as on 30.12.2023) towards the utilisation of the 300 MW connectivity. Petitioner also disclosed that it has also committed to investing around INR 10,62,00,000/- towards utilisation of the 300 MW connectivity.
- b) For the proposed 300 MW Wind-Solar hybrid project, the petitioner necessitates a total land area of 625 acres. However, under the GNA Regulations, for the purpose of obtaining Connectivity through Land Route, the requirement is a *“Registered Title Deed as a proof of Ownership or lease rights or land use rights for 50% of the land required for the capacity,”* i.e., approximately 312 acres.
- c) Petitioner has already identified the requisite land parcels. The Petitioner has already entered into a land agreement with the land aggregators for the purpose of securing the land. The Petitioner has also signed an agreement to lease for around 300 acres with the landowners for further formalizing the registered land lease rights. :The petitioner is ready and willing to submit a Bank Guarantee in lieu of land, which is permissible under the GNA Regulations.
- d) The Petitioner has received certain interests regarding the tying of power from this 300 MW Project and is expecting to garner more such interests from C&I customers. More importantly, the expected timelines for utilizing the Connectivity would be by the year 2025. Therefore, the cost commitments made by the Petitioner in its additional affidavit dated 30.12.2023 are significant for implementing the project in a time-bound manner.
- e) The CA Certificate was issued in terms of the expenditures incurred by the Petitioner along with the committed cost for the Project and is unaudited.
- f) The Petitioner is in discussion with prospective off-takers for finalizing the power procurement arrangement of 300 MW wind-solar hybrid power from the Project. This process is contingent upon the approval post-grant of connectivity, after which the offtake agreements will be finalized. It may be noted that the scheduled Commercial Operation Date under the said agreement is stipulated to be within the year 2025. Therefore, in view of the above, the Petitioner has taken steps not only to implement the Project at the Koppal site but also to secure a firm PPA for the purpose of effective utilisation of the 300 MW connectivity granted to the Petitioner at the Koppal site.

Hearing on 12.02.2024

21. The Commission directed the Petitioner to provide the status of the total land required for the Project (including the basis for arriving at such figure) vis-à-vis land acquired by the Petitioner, as on date along with the valid supporting documents such as registered title deed as a proof of ownership or lease right or land use rights. Further, the Commission also directed that the interim directions issued vide Record of Proceedings for the hearing dated 22.9.2023 will continue till the final outcome of the Petitions.
22. Subject to the submission of the above data, the order in the matters was reserved, and parties were directed to file their written submissions.

Submission of Respondent CTUIL in Petition No. 291/MP/2023

23. Respondent CTUIL, vide written submission dated 07.03.2024. submitted as below:
 - a) Petitioner did not disclose any of the communications with SECI to CTUIL. CTUIL became privy to the communications with SECI to CTUIL while reviewing another application for a grant of Connectivity by a group company of the Petitioner. As a result, on 11.09.2023, CTUIL wrote to SECI to understand the status of the validity of the LOAs issued by SECI to the Petitioner. SECI, vide an email dated 12.09.2023, stated that the SECI LOA had been annulled. Since the basis of the grant of connectivity was the SECI LOA, and the same stood annulled, the Respondent revoked the Stage-II Connectivity of 300MW granted to the Petitioner vide letter dated 19.09.2023 in terms of Regulation 24.6 of the GNA Regulations, 2022. It is clear that Petitioner since the very beginning, had made no attempts to sign a PPA with SECI in pursuance of the SECI LOA. It never had the intention to sign PPA, and the SECI LOA was only used as a basis for obtaining and then squatting on the connectivity granted to it. There is no dispute that the Petitioner had requested annulment for the SECI LOA in terms of the letter dated 16.08.2023. As a result of the SECI Letter dated 16.08.2023, the SECI LOA stands terminated, and thus, consequences in law (GNA Regulations) with respect to termination of the SECI LOA would follow.
 - b) From the Petitioner's letter dated 16.08.2023, it is clear that the Petitioner requested SECI to 'annul' the SECI LoA. Further, the same has been confirmed

vide the SECI reply. The Petitioner is merely trying to adopt a self-serving interpretation of the GNA Regulations to avoid the consequences of terminating the LoA specified in the GNA Regulations.

- c) It is undisputed that no PPA had been executed by the Petitioner with SECI. It was the Petitioner who refused to extend the timeline of the PPA thereby indicating its intent to exit from the LOA process. The Petitioner's refusal to execute the PPA led to SECI terminating the LOA. During the course of CTUIL's due diligence, vide email dated 12.09.2023, SECI informed the Respondent that the LOA issued in favour of the Petitioner had been annulled.
- d) Regardless of the fact that SECI used the expression 'exit the process' in its letter dated 10.08.2023, it effectively terminated the SECI LOA. The said termination was on account of the Petitioner having signified its intention to exit the process by not seeking an extension of time for signing the PPA.
- e) Petitioner cannot be permitted to avoid the natural consequence of annulment of the SECI LOA by trying to creatively carve a difference between 'termination' and 'exiting the process', when, in effect, none exists in the context of Regulation 24.6 of the GNA Regulations and object and purpose behind the provision. It is not open to read any qualification to the word termination used in Regulations 24.6 (c), and it should be given a natural meaning.
- f) Applications for the grant of connectivity are processed on a first-come, first-serve basis. The Petitioner was granted Connectivity on the basis of the SECI LOA. A grant of connectivity is linked to the LOA/ PPA on the basis of which the connectivity application was made. By virtue of the SECI LOA, the Petitioner was granted the Stage II connectivity without the need for him to satisfy the conditions then applicable for the grant of such connectivity under the Land route, which involves significant financial investment. Thus, the Petitioner was granted priority on the basis of the application as per the LOA route, which is similar to the priority for an Applicant applying under the Land route (which is based on financial investments then made). In terms of the above, a number of other persons applied for a grant of connectivity under the Land route by making investments and acquiring priority for stage II connectivity in comparison to others applying for stage II connectivity subsequent to them. It cannot be that the Petitioner can seek transition or migration from the LOA route to any other route, overriding the priority of such other applicants under any possible route. The option available to the Petitioner is to make a fresh application for a grant of connectivity under the Land

route or the Bank Guarantee route now provided in the GNA Regulations, 2022, and be entitled to the priority as on the date of the fresh application.

- g) In the event the Petitioner's prayer is accepted, the same would amount to disturbing the inter-se priority amongst the applicants, which is one of the basic principles in processing applications for grant of connectivity both under the Connectivity Regulations, 2009 and the GNA Regulations. The Petitioner would be enjoying priority as per the date of LOA but would be required to develop the project as per more relaxed timelines leading to non-utilisation of the bays identified for grant of connectivity. The Petitioner is entitled to make a fresh application under any route in terms of the GNA Regulations, and the application shall be processed in accordance with applicable laws. There is absolutely no basis under the GNA Regulation to change the basis of connectivity and be allowed to retain the connectivity if the original basis of the grant of connectivity does not survive, as the same will be in variance with the regulatory position under Regulation 24.6 of GNA Regulations, 2022.
- h) Clause 9.3.3 of the Revised Procedure under the Connectivity Regulations, 2009 as well as Regulation 11A (4) of the GNA Regulations, which allows the transition or migration of the connectivity granted under the Land route to LOA route. and there is no provision for vice versus situation. The Petitioner herein is praying for a transition from the LOA route to the BG route, which is not permitted either under the Connectivity Regulations, 2009, or the GNA Regulations. This becomes relevant as the application, grant, and priority of connectivity given to the Petitioner flows from the Connectivity Regulations, 2009.
- i) The maxim of '*expressio unius est exclusio alterius*' is well recognized in India while interpreting any statute. It literally means, express reference to one matter is implied exclusion of other matter. This principle has been upheld and consistently applied by the Supreme Court *inter alia* in the cases of Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Limited ((2013) 9 SCC 32) and Union of India v. Shiv Dayal Soin & Sons Pvt. Ltd. and Ors ((2003) 4 SCC 695).
- j) Regulation 5 of the GNA Regulations is titled 'Applications for Grant of Connectivity.' It obviously relates to fresh applications made under the Regulations. Regulation 5.8 provides the list of documents to be submitted along with the application for a grant of connectivity. Under the new regime of the GNA Regulations, an additional route to apply for a grant of connectivity on the basis of a bank guarantee in lieu of the 50% of the total land requirement for the project

capacity, which was not available under the old regime (Connectivity Regulations). However, there is no provision for migration of basis from the LOA route to any other route for the connectivity already granted. Thus, the Petitioner is within its right to apply afresh under the GNA Regulations under any of the three routes in terms of Regulation 5.8(xi). However, it cannot claim to retain its connectivity by getting transitioned from the LOA route to the Bank Guarantee route in the absence of any provision in the Connectivity Regulations or GNA Regulations enabling the same.

- k) The law with respect to the power to remove difficulty has been well settled by the Supreme Court and the APTEL. The power to remove difficulty can be only exercised to give effect to the regulations or statutes. Such powers cannot be used to go beyond the express provisions of a regulation and grant a relief not contemplated within the scheme of the regulations. In the subject petition, the reliefs claimed are also expressly in contravention of the said scheme of the regulations. The APTEL has time and again used the judgement of the Supreme Court in M.U. Sinha Vs Union of India (1975) 3 SCC 765 and has held that the Power to remove difficulty must be exercised in exceptional circumstances where the Regulation could not be implemented. Therefore, it is clear that the Ld. Commission has the power to relax when there is a difficulty in giving effect to the regulations and not a difficulty arising to a person as a result of the operation of the regulations. In terms of the settled law, the difficulty must arise in giving effect to the provisions of the Act, and not any extraneous difficulty which would justify the exercise of power to remove the difficulty. Further, the power of removal of difficulty cannot be exercised to change the scheme and essential provisions of law.

Submissions of Petitioner in Petition No. 291/MP/2023

24. Petitioner vide written submission dated 14.03.2024 has submitted as under:

- a) The Petitioner is entitled to be treated as an entity 'deemed to have been given' connectivity under the GNA Regulations and must comply with provisions of the GNA Regulations. Accordingly, the Petitioner here has an option either to provide *Registered Title Deed as proof of Ownership or lease rights or land use rights for 50% of the land required for the capacity for which Connectivity is sought or Bank Guarantee of Rs. 10 lakh/ MW in lieu of ownership or lease rights or land use*

rights of land for 50% of the land required for the capacity for which Connectivity is sought.

- b) In case the Petitioner exercises an option of submitting a Bank Guarantee in lieu of 50% of the land required, the Petitioner, after 180 days, is required to supplant the proof of 50% of the land, failing which the connectivity granted to the Petitioner can be revoked. Therefore, there are suitable checks and balances that have been incorporated under the GNA Regulations to avoid squatting of the connectivity. The Petitioner is willing to retain the connectivity by submitting upfront the required Bank Guarantee, and can be put to terms to demonstrate its seriousness in the implementation of the Project by providing land ownership/lease proof within 180 days of submission of the Bank Guarantee.
- c) Petitioner herein has not only identified the land but also has entered into agreements to sale with land aggregators. The Petitioner has acquired 205 acres of land. However, the balance is yet to be acquired and is awaiting orders in the present petition to continue with formal acquisition. Moreover, it may be noted that under the PPAs, usually 9-12 months are provided to the project developer to obtain land (as part of financial closure). Therefore, if SECI had proceeded to execute PSA and PPA, the Petitioner would have had 9-12 months to acquire the required project land. There was no occasion for the Petitioner to proceed to acquire land despite no clarity from the procurer. Even then, the Petitioner has proceeded to acquire 205 acres of land for project implementation.
- d) Having made an application for transition as early as on 14.11.2022, CTUIL kept the application under consideration despite a statutory mandate of 30 days. The transition under Regulation 37.2 of the GNA Regulations contemplates clearly that if the connectivity grantee exercises the option of transition, CTUIL is required to provide details of enhanced Conn BGs and align the agreements per the GNA Regulations. CTUIL failed to provide such details, allowing the Petitioner herein to proceed and make investments towards the implementation of the Project. To such extent, CTUIL is estopped from taking any action that may cause prejudice to the rights and interests of the Petitioner.
- e) Under any power purchase agreements, usually the time period of establishing a project (for solar / wind or hybrid) is anytime between 18 months to 24 months. The first few tasks that are undertaken during any project development are to:
 - i. Identify project land
 - ii. Secure financial closure

- iii. Obtain connectivity / open access and other governmental consents and clearances, etc.

- f) Petitioner has already identified the land and, in fact, has acquired lease rights for the same. The total land requirement for establishing a 300 MW RE Wind-Solar Hybrid Project (Wind/Solar) is 625 acres (approximately) derived from the CEA guidelines, which mandate 3 acres/MW for Solar PV and 0.25 acres/MW for WTG. In this case, the land required for 200 MW solar is 600 acres, and for 100 MW Wind is 25 acres. Hence, for the entire 300 MW Wind-Solar Hybrid capacity, the total land required is 625 acres. under the GNA Regulations, for the purpose of obtaining Connectivity through Land Route, the requirement is “Registered Title Deed as a proof of Ownership or lease rights or land use rights for 50% of the land required for the capacity,” i.e., approximately 312 acres.

- g) Out of 312 acres, the Petitioner has already secured registered lease rights of 205 acres of land for a period of 29 years and 11 months by expending and with continued liability to pay approximately INR 18 Crores in favour of various landowners. The Petitioner has already paid lease rental advances to landowners for the next 3-5 years. In addition, the Petitioner has also signed an agreement to lease around 300 acres with the landowners for further formalizing the registered lease rights agreements. The Petitioner has been waiting for some assurance on the validity of connectivity to proceed further and obtain the balance of land. It is submitted that once such assurance is made, the Petitioner will release the balance payments payable under the Agreement to Sale/Lease Agreements to have an effective lease of the entire project land. The Petitioner endeavours to undertake this within 180 days from the date on which Bank Guarantee is submitted with CTUIL.

- h) The commitment costs, as provided by the CA Certificate annexed to the additional affidavit dated 30.12.2023, mainly arise out of three agreements entered towards the implementation of the Project, namely:
 - i. Engagement with Suzlon Energy for delivery and supply of Wind Turbine Generators with a 100 MW capacity and a value of INR 598,83,64,000/-. The Petitioner has expended INR 50 Lacs towards this commercial arrangement.

- ii. Engagement with PV module manufacturer for delivery and supply of 200 MW AC solar modules valued at INR 433,45,76,064/- The Petitioner has already set up an LC payment method for this commercial arrangement.
 - iii. Engagement with Ipower Renewable Energy Private Limited and Energy Systems Private Limited for procurement of land on lease vide agreements dated 14.08.2023 and 28.03.2023, respectively. The Petitioner has expended INR 10,62,00,000 towards this commercial arrangement.
- i) The Petitioner has also agreed on techno-commercial terms and conditions with PTC India Limited to enter into an offtake arrangement from the Gadag Project site for the entire 300 MW Wind-Solar Hybrid (200 MW Solar+100 MW Wind) project capacity. With this approval, the Project is likely to commence the supply of power by 2025. Petitioner has also engaged manpower at the project site / temporary offices, and a total amount of INR 31 Lacs has been expended so far.
- j)
- k) CTUIL, having accepted to allow a change in route (land or bank guarantee route) at the time of transition of connectivity, despite the LOA/PPA being terminated, is estopped in law to take any different legal position in instant case vis a vis in Petition No. 283/MP/2023. The only difference in the case of the Petitioner with that of the other Renewable Generator in Petition No. 283/MP/2023 is that the Petitioner is ready to submit Bank Guarantee in lieu of 50% land requirement with an undertaking to submit the documents demonstrating ownership/lease of 50% land within 180 days from the submission of Bank Guarantee, whereas, the other Renewable Generator already has such 50% land. Simply put, if CTUIL is allowing similarly placed project developers to transition from the LOA/PPA route to the Land Route, it cannot restrict the transition from the LOA/PPA route to the Bank Guarantee route.

Submission of Petitioner in Petition No. 292/MP/2023

25. Petitioner vide written submission dated 14.03.2024, has submitted as below:

- a) Petitioner has already identified the land and, in fact, has acquired lease rights for the same. The total land requirement for establishing a 300MW RE Project (Wind/Solar) is 625 acres (approximately) derived from the CEA guidelines with mandates of 3 acres/MW for Solar PV and 0.25 acres/MW for WTG. In this case, the land required for 200 MW solar is 600 acres, and for 100 MW Wind is 25

acres. Hence, for the entire 300 MW Wind-Solar Hybrid capacity of the total land required is 625 acres.

- b) Petitioner has already executed Agreement to Lease deeds of more than 312 acres, i.e., of about 346 acres of land, by expending INR 70,80,000 in favour of various landowners and land aggregators. The Petitioner has been waiting for some assurance on the validity of connectivity to proceed further and obtain the balance land. It is submitted that once such assurance is made, the Petitioner will release the balance payments payable under the Agreement to Sale / Lease Agreements to have an effective lease of the entire project land. The Petitioner endeavours to undertake this within 180 days from the date on which Bank Guarantee is submitted with CTUIL.
- c) The Petitioner has received certain interests from PTC India Limited and other prospective offtakes regarding the tying of power from this 300 MW Project. More importantly, the expected timelines for utilization of the Connectivity would be by the year 2025. Therefore, the cost commitments made by the Petitioner in its additional affidavit dated 30.12.2023 are significant for the implementation of the project in a time-bound manner. Petitioner has also engaged manpower at the project site / temporary offices and a total amount of INR 14 Lacs has been expended so far.
- d) CTUIL has been taking different positions regarding the transition applications in the case of different developers. During the course of the hearing before this Commission on 12.02.2024, CTUIL submitted that it is considering a similar issue for a similarly placed developer (Petition No. 283/MP/2023). While CTUIL has been contesting tooth and nail with the Petitioner and was ready to allot the connectivity capacity to other developers two days after the purported revocation of connectivity, it has shown a sympathetic view in favour of other similarly placed developers i.e., the connectivity was granted basis LOA/PPA which stands terminated, however, upon transition is now seeking to substitute LOA/PPA with land route connectivity. The renewable generator, it is understood, has 50% of the land required under Regulation 5.8(xi) of the GNA Regulations.
- e) The only difference in the case of the Petitioner with that of the other Renewable Generator in Petition No. 283/MP/2023 is that the Petitioner is ready to submit a Bank Guarantee in lieu of a 50% land requirement with an undertaking to submit the documents demonstrating ownership/lease of 50% land within 180 days from the submission of Bank Guarantee, whereas, the other Renewable Generator

already has such 50% land. Simply put, if CTUIL is allowing similarly placed project developers to transition from the LOA/PPA route to the Land Route, it cannot restrict the transition from the LOA/PPA route to the Bank Guarantee route.

Analysis and Decision

26. We have considered the submission of the Petitioner and the Respondents.
27. Petitioner in Petition No. 291/MP/2023 has submitted that he has been granted Stage-II Connectivity for 300 MW under the 2009 Connectivity Regulations at Gadag based on the LoA dated 10.03.2022 issued by SECI. Petitioner in Petition No. 292/MP/2023 has submitted that he has been granted Stage-II Connectivity for 300 MW under Connectivity Regulations, 2009 at Koppal based on the LoA dated 10.03.2022 issued by SECI. Petitioners in both the Petitions have submitted that the power purchase agreement could not be executed in terms of the timelines provisioned under the LOA/RfS, and SECI, after almost 18 months of issuance of LOA vide its letter dated 10.08.2023, has allowed the Petitioner to exit the process under the LOA without any penalty. CTUIL communicated to Petitioners that the 300 MW connectivity under each Petition shall be considered as revoked and/or relinquished, and the Bank Guarantee(s) shall be encashed in terms of the provisions under GNA Regulations due to annulment of LOA. Petitioners have submitted that the act of the Petitioner exiting from the process does not amount to the termination under Regulation 24.6 of the GNA Regulations 2022, and further, Regulation 24.2 of the GNA Regulations shall only be applicable where the connectivity grantee itself exercises the option of surrendering/relinquishing the connectivity granted to it. Petitioners have stated that Regulation 37.2 of the GNA Regulations, provides for a mechanism, following which the Connectivity granted under the 2009 Connectivity Regulations shall be treated under the GNA Regulations and as per Regulation 5.8(xi) of the GNA Regulations, a connectivity applicant is allowed to exercise its right to choose any of the three options available while applying for connectivity.
28. Petitioner under Petition No. 291/MP/2023 has submitted that Petitioner has already incurred investment to the tune of INR 6,46,32,178 and has committed to invest around INR 10,64,28,78,452 towards utilization of the said 300 MW connectivity. The Petitioner, under Petition No. 291/MP/2023, has submitted that it has already secured registered lease rights of 205 acres of land for a period of 29 years and 11 months by expending and with continued liability to pay

approximately INR 18 Crores in favour of various landowners. The Petitioner has already paid lease rental advances to landowners for the next 3-5 years. In addition, the Petitioner has also signed an agreement to lease around 300 acres with the landowners for further formalizing the registered lease rights agreements. The Petitioner has been waiting for some assurance on the validity of connectivity to proceed further and obtain the balance of land. It has been submitted that once such assurance is made, the Petitioner will release the balance payments payable under the Agreement to Sale / Lease Agreements to have an effective lease of the entire project land. The Petitioner endeavours to undertake this within 180 days from the date on which Bank Guarantee are submitted with CTUIL.

29. Petitioner, under Petition No. 292/MP/2023, has submitted that Petitioner has already incurred investment to the tune of INR 1,55,98,467/- and, as a dedicated project developer, has also committed to invest around INR 10,62,00,000/- towards utilization of the said 300 MW connectivity. The Petitioner under Petition No. 292/MP/2023 has further submitted that it has already executed the Agreement to Lease deeds of more than 312 acres, i.e., of about 346 acres of land by expending INR 70,80,000 in favour of various landowners and land aggregators. The Petitioner has been waiting for some assurance on the validity of connectivity to proceed further and obtain the balance of land. It has been submitted that once such assurance is made, the Petitioner will release the balance payments payable under the Agreement to Sale/Lease Agreements to have an effective lease of the entire project land. The Petitioner endavours to undertake this within 180 days from the date on which the Bank Guarantee is submitted with CTUIL.
30. Respondent CTUIL has submitted that since the basis of the grant of connectivity was the LOA, which stood annulled, the Respondent revoked the Stage-II Connectivity of 300MW granted to the Petitioner vide letter dated 19.09.2023 in terms of the provision of Regulation 24.6 of the GNA Regulations. CTUIL has stated that Regulation 5.8(xi) of the GNA Regulations is applicable only for the fresh applications made with effect from the date of implementation of the Regulations, i.e., 05.04.2023, and the same is not applicable for the transition process. CTUIL also submitted that in the event the Petitioner's prayer is accepted, the same would amount to disturbing the inter-se priority amongst the applicants; the Petitioner would be enjoying priority as per the date of LOA but

would be required to develop the project as per more relaxed timelines leading to non-utilisation of the bays identified for grant of connectivity.

31. SECI has submitted that as the successful bidder did not want to extend the timeline for signing the PPA beyond 90 days of the issuance of the Letter of Award, SECI vide letter dated 10.08.2023 permitted the Petitioner to exit the process, without any liability.
32. In light of the submissions of Petitioner and Respondent, the following issues arise for our consideration:

Issue No. 1: Whether transition of Connectivity granted under Connectivity Regulations, 2009 into GNA Regulations allow the generator to choose the routes under 5.8 of the GNA Regulations?

Issue No. 2: Whether the LOA was annulled due to reasons attributable to the Petitioners or to the SECI?

Issue No. 3: Whether petitioners are entitled to any relief with respect to connectivity granted at Gadag and Koppal?

The above issues are dealt with in the succeeding paragraphs.

Issue No. 1: Whether transition of Connectivity granted under Connectivity Regulations, 2009 into GNA Regulations allow the generator to choose the routes under 5.8 of the GNA Regulations?

33. Petitioner has submitted that Regulation 37.2 of the GNA Regulations provides that the Connectivity granted under the Connectivity Regulations shall be treated under the GNA Regulations, and as per Regulation 5.8(xi) of the GNA Regulations, a connectivity applicant is allowed to exercise its right to choose any of the three options available while applying for connectivity and therefore, in law, the Petitioner has been vested with the right to supply either of the documents/BG to retain the connectivity under GNA Regulations.
34. Respondent CTUIL has refuted the Petitioner's claim stating that Regulation 5.8(xi) of the GNA Regulations is applicable only for fresh applications made with effect from the date of implementation of the Regulations, i.e., 05.04.2023 and the same is not applicable to the transition process which is to be undertaken in accordance with Regulation 37 only.

35. We have considered the submission of the Petitioners and the Respondents. The relevant extracts of Regulation 37.2 of the GNA Regulations are as under:

“37.2. If Connectivity has been granted but Long Term Access has not been granted in accordance with the Connectivity Regulations, 2009 and Connectivity is yet to become effective as on the date of coming into effect of these regulations, the same shall be treated as under:

(a) The entity shall have the option of, either (i) to convert the Connectivity granted under the Connectivity Regulations, 2009 as Connectivity made under these Regulations complying with the requirements under these regulations, or (ii) to surrender such Connectivity.

(b) Such option under clause (a) of this Regulation shall be exercised by the applicant within one month of coming into effect of these Regulations, failing which the Connectivity granted under the Connectivity Regulations, 2009 shall be considered as surrendered.

(c) In case the Connectivity is surrendered in terms of option (ii) of clause (a) of this regulation or clause (b) of this regulation, Conn-BG1 and Conn-BG2, if any, furnished under the Connectivity Regulations, 2009 shall be returned.

Provided that in case the construction of terminal bay has been awarded for implementation under ISTS through CTU, Conn-BG2 furnished under the Connectivity Regulations, 2009 shall be encashed.

(d) In case, the entity exercises the option to convert the Connectivity granted under the Connectivity Regulations, 2009 as Connectivity under these Regulations in terms of option (i) of clause (a) of this regulation, the Nodal Agency shall, within next 30 days, intimate the amount of Conn-BG1, Conn-BG2 and Conn-BG3, to be paid by such entity in terms of Regulation 8 of these regulations, after adjusting bank guarantee, if any, paid by such entity under the Connectivity Regulations, 2009.

(e) Conn-BG1, Conn-BG2 and Conn-BG3 shall be furnished by the entity within two (2) months of intimation under clause (d) of this Regulation.

(f) On furnishing of Conn-BG1, Conn-BG2 and Conn-BG3 under clause (e) of this Regulation, existing agreements between the entity and the Nodal Agency shall be aligned with provisions of Regulation 10.3 of these regulations.

(g) On alignment of existing agreements under clause (f) of this Regulation, the entity shall become Connectivity grantee for all purposes under these regulations.

.....”

As per the above, after the implementation of the GNA Regulations, an Applicant, who has been granted Connectivity under Connectivity Regulations, 2009 but the same is not effective at the time of implementation of the GNA Regulations, was to exercise the option either to convert such Connectivity under GNA Regulations by complying with the requirements under the GNA Regulations or to surrender such Connectivity. Further, in case of conversion, the applicant has to furnish Conn-BG1, Conn-BG2, and Conn-BG3, and after alignment of the existing agreements between the entity and the Nodal Agency in terms of Regulation 10.3 of the GNA Regulations, the entity shall become Connectivity grantee for all purposes under these regulations.

36. Petitioners were granted Connectivity under Clause 9.2 of the Revised Procedure for “Grant of Connectivity to Projects based on Renewable sources to Inter-State Transmission System” under Connectivity Regulations, 2009, quoted as under:

“9.2 Eligibility for Stage-II Connectivity

Following shall be eligible for grant of Stage-II Connectivity:

9.2.1 An entity which (i) has been issued the Letter of Award (LOA) by, or (ii) has entered into a Power Purchase Agreement (PPA) with, a Renewable Energy Implementing Agency or a distribution licensee or an authorized agency on behalf of distribution licensee consequent to tariff based competitive bidding, on submission of such Letter of Award or PPA, as the case may be:

Provided that:

.....

9.2.2 An entity who is a grantee of Stage-I Connectivity or has applied for Stage-I Connectivity or has applied for Stage-I Connectivity and Stage-II Connectivity simultaneously, and is not covered under Clause 9.2.1, and has achieved the following milestones:

(i) Ownership or lease rights or land use rights for 50% of the land required for the capacity of Stage-II Connectivity; and

(ii) Financial closure of the project (with copy of sanction letter) or release of at least 10% of the project cost including the land acquisition cost through equity, duly supported by Auditor’s certificate.

.....

The Petitioner was granted Connectivity under Clause 9.2.1 based on the LOA issued by SECI. Further, it is observed that there are only two routes to make an application i.e (a) LOA/PPA route and (b) Land route.

37. Clause (xi) of Regulation 5.8 of the GNA Regulations provides as under:

“5.8. The application for grant of Connectivity shall contain, inter alia, the following details, as applicable, duly supported with relevant affidavit, as stipulated in the Detailed Procedure for Connectivity and GNA issued in accordance with Regulation 39.1:

.....

(xi) In case of Applicants which are REGS (other than Hydro generating station) or ESS (excluding Pumped Storage Plant (PSP)) the following documents shall be submitted:

a) Letter of Award (LOA) by, or Power Purchase Agreement (PPA) entered into with, a Renewable Energy Implementing Agency or a distribution licensee or an authorized agency on behalf of distribution licensee consequent to tariff based competitive bidding, as the case may be:

Provided that in case of Applicants being multi-located REGS, the details of locations and capacity at each location, duly certified by the Renewable Energy Implementing Agency or the distribution licensee, as the case may be, shall be submitted.

Or

(b) Registered Title Deed as a proof of Ownership or lease rights or land use rights for 50% of the land required for the capacity for which Connectivity is sought;

Or

(c) Bank Guarantee of Rs. 10 lakh/ MW in lieu of ownership or lease rights or land use rights of land for 50% of the land required for the capacity for which Connectivity is sought subject to provisions of Regulations 11A and 11B of these regulations.”

As per the above, under GNA Regulations, a new Applicant can seek Connectivity to ISTS through three routes: (i) through LoA or PPA route, (ii) Land route, or (iii) Land BG route.

38. We observe that Regulation 37.2 of the GNA Regulations, as quoted above, allows the transition of the Connectivity granted under Connectivity Regulations, 2009 to GNA Regulations on submission of required Conn-BGs. Further, once an entity has been granted Connectivity based on the LOA route, there is no provision for conversion of such Connectivity to the Land route under the Connectivity Regulations, 2009, or to the Land route /Land BG route under the GNA Regulations. The Petitioner’s contention that it can change routes under Regulation 37.2 is not correct since Regulation 37.2 does not seek any conversion documents from such an entity and seeks only Conn-BGs, considering that it continues under the route it has been granted connectivity. Clause (xi) of Regulation 5.8 of the GNA Regulations is applicable for a fresh applicant under the GNA Regulations and not the transition cases.
39. The issue is answered accordingly.

Issue No. 2: Whether the LOA was annulled due to reasons attributable to the Petitioners or to the SECI?

40. Petitioners have submitted that PPA was neither executed within the committed period under the LOA (90 days from 10.03.2022, i.e., 08.06.2022) nor within the validity of the bid (i.e., 27.08.2022) since SECI reached out to the Petitioner after almost 1 year from the issuance of the LoA. Owing to reasons not attributable to the Petitioners and considering the fact that a power purchase agreement could not be executed in terms of the timelines provisioned under the LOA/RfS issued by SECI, SECI appreciated the fact that the Petitioners are at no fault for such delay. SECI, after almost 18 months of issuance of LOA vide letter dated 10.08.2023, has allowed the Petitioners to exit the process under the LOA without any penalty.
41. CTUIL submitted that on 06.09.2023, SECI conveyed to CTUIL that SolarOne, vide its email dated 05.09.2023, had refused to extend the timeline for signing the

PPA, and based on the refusal, SECI vide letter dated 16.08.2023 allowed SolarOne to exit the process without any liability on SECI pertaining to LoA. Further, SECI vide email dated 12.09.2023 to CTUIL clarified that the LoA issued by SECI to the Petitioners was annulled. CTUIL further submitted that it was the Petitioners who refused to extend the timeline of the PPA beyond 90 days, thereby indicating its intent to exit from the LoA process.

42. SECI has submitted that SECI wished to enter into PPA with the Petitioners when it arranged PSA and vide its email dated 26.04.2023 and 30.4.2023 sought confirmation from the Petitioner for changes made in the PPA in line with the changes sought to be done in the PSA by the buyers. In response, the Petitioner informed SECI that the bid submitted in response to the RfS was valid only until 27.08.2022, and the same had expired; therefore, any request for execution of PPA cannot be made. The Petitioner, vide its email dated 02.05.2023, stated the following:

“.....

The brief timelines and events as per the RfS and LOA are as under:

<i>Timelines as Per RfS/LOA</i>	<i>Events</i>
<i>14.07.2021</i>	<i>RfS issued by SECI.</i>
<i>30.11.2021</i>	<i>Bid submitted by SolarOne to SECI Note: It was specifically stated that the bid submitted was valid up to 270 days from the last date of submission of bid i.e. till up to 27.08.2022</i>
<i>10.03.2022</i>	<i>LOA was issued by SECI in favour of Solar One. Note 1: All requirements under the LOA were fulfilled by SolarOne within the timelines prescribed under the PPA. Note 2: LOA specifically provided that PPA in terms of the RfS was required to be signed within a period of 90 days from the date of issuance of LOA.</i>
<i>08.06.2022</i>	<i>As per the RfS, the PPA was to be signed within a period of 90 days from the date of issuance of LOA I .e., by 08.06.2022</i>

3. Therefore, in view of the above, the bid submitted by SolarOne submitted on 30.11.2021 stands expired due to efflux of time. Further, no coercive actions can be taken against SolarOne under law and in terms of the RfS read with LOA.

4. This communication is being issued without prejudice to our legal rights as available under law.”

43. SECI, vide its email dated 05.05.2023, informed the Petitioner that with regard to the condition of signing the PPA, i.e., 90 days from LOA, Clause 14.3 states that “Irrespective of the date of signing of PPA, the Effective Date of the PPA shall be the date as on the 90th day from the date of issuance of LOA. However, in extraordinary cases of unavoidable delays in signing the PPAs or PSA for any reason attributable to SECI, the effective date of the PPA shall be dated as on 7

days from the signing date of the PSA for the total capacity of the respective project (i.e. date of issuance of LOA is 01.04.2020 and signing date of PSA is 10.07.2020, then in such case Effective Date of PPA shall be 17.07.2020).”

44. Petitioner vide their email dated 08.05.2023 replied to the aforesaid email and contended that it could not be forced to sign the PPA in the present circumstances and stated as follows:

“a) The Clause 20 of the RfS dated 14.07.2021 issued by SECI for setting up of 1200 MW ISTS-Connected Solar PV Projects in the State of Karnataka categorically provided that the Power Purchase Agreement ('PPA') shall be signed within 90 days from the date of issuance of Letter of Award ('LoA') and any extension in the said timeline were to be mutually agreed between SECI and SolarOne Energy Pvt. Ltd. ('SolarOne');

b) On 10.03.2022, a LoA was issued by SECI in favour of SolarOne, which also provided that PPA in terms of the RfS is required to be signed within a period of 90 days from the date of issuance of LoA i.e. by 08.06.2022, if not extended by SECI after mutual discussions. Before issuance of email dated 30.04.2023, SECI asked SolarOne to approve the amendments proposed by DISCOMs in the PPA, but SECI never reached out to SolarOne after issuance of LOA on 10.03.2022 for a mutual decision on extension of timelines beyond a period of 90 days. Till issuance of the said email, SolarOne was not made aware by SECI that it intends to extend the timeline for signing of the PPA in violation of principles of natural justice;

c) A perusal of your email dated 05.05.2023, wherein you have extracted the alleged Clause 14.3 to impress that effective date is dependent upon signing of PSA, does not exist in RfS document/or the LoA issued to SolarOne. In any case, mere issuance of LoA and complete silence by SECI until one (1) year after the issuance of the same shall not mean extension of the bid validity, especially when RfS specifically provided that any extension for signing of the PPA beyond 90 days have to be mutually agreed between the Parties. Pertinently, LoA has been issued in furtherance of the RfS document and shall not supersede said RfS. It is worth mentioning that SolarOne submitted its bid based on the said RfS document and mere issuance of LOA cannot be a ground for assuming extension of validity of the bid, especially in view of the fact that even after issuance of LoA on 10.03.2022, more than one (1) year has expired without signing of a binding contract between the Parties i.e. the PPA.;

d) A bare perusal of various clauses of RfS i.e. Clause 16, 17, 20, 27 and 30 read along with LoA clearly provides that SECI has time and again represented to SolarOne that the PPA in furtherance of the bid / LoA will be signed within 90 days of the issuance of the LoA and the said time period can only be extended by SECI after mutual discussion/agreement with SolarOne. However, SECI did not approach SolarOne for more than 1 year after issuance of LoA on 10.03.2022. In this regard, SolarOne vide its communication dated 14.07.2021 has specifically stated that its bid will be valid for 270 days. Even assuming without admitting the contentions of SECI in the trailing email, the validity of bid cannot be assumed to be extended for all times to come by mere issuance of LoA. Any suggestion to the contrary may not be legally correct, as being wrongly contended by SECI. Importantly, more than 270 days has elapsed even after issuance of the said LoA by SECI on 10.03.2022.

...

f) SECI's reliance on clauses of RfS / LoA relating to the effective date of the PPA cannot be read and interpreted to mean that a bidder can be compelled to sign the PPA after more than 1.5 years of submission of the bid and more than 1 year from issuance of LoA when the RfS and LoA specifically provided that a PPA will be signed within a period of 90 days after issuance of LoA and , which can be extended by SECI after mutual discussions

with SolarOne. Admittedly, there has not been any mutual discussions / agreement between SECI and SolarOne extending the timelines for signing the PPA in terms of the RfS read along with LoA.

3) Therefore, any coercive and/or precipitative action as threatened by SECI will be illegal, arbitrary, and contrary to the terms and conditions of RfS read with LoA. At the cost of repetition, it is stated that the bid submitted by SolarOne on 30.11.2021 stands expired due to efflux/lapse of time.

4) Therefore, SolarOne cannot be compelled to sign the PPA and any precipitative action in this regard by SECI without giving a fair opportunity to respond and a personal hearing to SolarOne will be contrary to settled principles of natural justice, equity and fair play.

5) This communication is being issued without prejudice to our legal rights as available under law.”

As per the above, Petitioner, vide email dated 08.05.2023 to SECI, stated that as the PPA has not been signed within a period of 90 days after issuance of LoA and also there has not been any mutual discussions/agreement between SECI and SolarOne for extending the timelines for signing the PPA in terms of the RfS. Therefore, SolarOne cannot be compelled to sign the PPA and any precipitative action in this regard by SECI without giving a fair opportunity to respond, and a personal hearing to SolarOne will be contrary to settled principles of natural justice, equity, and fair play.

45. SECI further submitted that SECI vide letter dated 10.08.2023 permitted the Petitioner to exit the process, as the petitioner did not want to extend the timeline of the signing of PPA beyond 90 days of the issuance of the LoA. The Petitioner vide letter dated 16.08.2023 requested SECI to annul the LOA awarded under the RfS without any liability, return the Success Charges along with GST. Vide email dated 22.09.2023, SECI informed the Petitioners that the refund of the success charges was processed on 19.09.2023.
46. We have considered the submission of Petitioners, Respondents, and the facts on record. The relevant provisions under RfS dated 14.07.2021 and LoA dated 10.03.2022 are as under:

Extract of the RfS dated 14.07.2021

“20 Power Purchase Agreement (PPA)

20.1 Pursuant to Clause 22.3, SECI shall enter into Power Purchase Agreement (PPA) with Bidders selected based on this RfS. A copy of standard PPA to be executed between SECI and the selected SPD will be made available on ISN-ETS Portal and also on SECI’s website. The PPA shall be signed within 90 days from the date of issue of Letter of Award (LoA), if not extended by SECI. (for e.g. If the LoA is dated 07-08-2021, then the last date of signing of PPA shall be 05-11-2021). Subsequent extension in this timeline shall be finalized as mutually agreed by SECI and the SPD. PPA will be executed between SECI and selected bidder or its SPV separately for each Project. The PPA shall be valid for a period of 25 years as per provisions of PPA.”

Extract of LoA dated 10.03.2022

“1.10 SECI shall have the right to verify original documents of the SPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 90 days from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 90th day from the issuance of LOA, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.”

As per the above, the PPA was to be signed within 90 days from the date of issue of LoA, if not extended by SECI, and any subsequent extension in this timeline was to be finalized as per mutual agreement between SECI and the Petitioners.

47. From the submissions of parties, we observe that SECI failed to sign PPA within 90 days of the issuance of the LOA in terms of clause 20.1 of the RfS dated 14.07.2021. SECI approached the Petitioner after 1.5 years of issuance of LOA to sign PPA, which the Petitioner refused to sign. Considering the contention of the Petitioners, SECI vide letter dated 10.08.2023 permitted the Petition to exit from the LoA process without any penalty and annulled the LoA. The letter dated 10.8.2023 issued by SECI in Petition No. 291/MP/2023 is as follows:

Ref. No.: SECI/SD/ISTS - X/Gadag/P1/300MW/57640

Date: 10.08.2023

**M/s SolarOne Energy Private Limited,
Level-6, Building No. 11,
DLF Cyber City, Phase 2,
Gurugram, Haryana - 122002**

Subject: 300 MW RE Project awarded under Tranche - X tender (LoA No.: SECI/C&P/SPD/ISTS - X/LOA/Gadag/SOEPL/P1/48029 dated 10.03.2022) - reg.

Ref.:

- i. RfS No.: SECI/C&P/SPD/ISTS-X/RfS/1200MW/072021 dated 14.07.2021 including subsequent amendments/clarification/revisions.
- ii. Letter of Award for Project of 300 MW (Project ID: SPD-ISTS-T10-GADAG-SOEPL-P1-300 MW) issued vide ref. no. SECI/C&P/SPD/ISTS - X/LOA/Gadag/SOEPL/P1/48029 dated 10.03.2022.
- iii. Our email dated 26.04.2023, 01.05.2023, 05.05.2023, 25.05.2023, 31.05.2023 & 07.06.2023
- iv. Your response emails dated 01.05.2023, 08.05.2023 & 08.06.2023.

Dear Sir,

This is in response to your email dated 08.05.2023 and 08.06.2023, wherein it is understood that you do not want to extend the timeline of the signing of PPA beyond 90 days of the issuance of the Letter of Award and you have intended to exit from the process.

In view of the above, you are allowed to exit the process without any liability on SECI pertaining to LoA issued by SECI vide no. SECI/C&P/SPD/ISTS-X/LOA/Gadag/SOEPL/P1/48029 dated 10.03.2022.

For any discrepancy in the understanding of this letter the provisions mentioned under Guidelines, Letter of Award & RfS Documents shall prevail. This letter is issued without prejudice to our rights under Guidelines, RfS & LoA.

This issues with the approval of the Competent Authority.

You are requested to kindly acknowledge the receipt and acceptance of this letter.

As per the above, SECI noted that the Petitioner, in Petition No. 291/MP/2023, did not wish to extend the timeline of signing the PPA beyond 90 days of issuance of LOA and that the Petitioner wished to exit the process. Accordingly, SECI allowed the Petitioner to exit the process without any liability. A similar letter was issued by SECI in Petition No. 292/MP/2023.

48. Considering the above discussions, we are of the considered view that the reason for the annulment of the LoAs is not default on the part of the Petitioners.

49. The issue is answered accordingly.

Issue No. 3: Whether petitioners are entitled to any relief with respect to connectivity granted at Gadag and Koppal?

50. Petitioners have submitted that on 14.11.2022, they intimated their consent to CTUIL for the transition of connectivity granted under Connectivity Regulations,

2009 to the GNA Regulations. However, CTUIL is yet to communicate the additional amount towards bank guarantee(s) as applicable under the GNA Regulations, and the Connectivity Agreement already executed between CTUIL and the Petitioners is yet to be amended/aligned in terms of the GNA Regulations.

51. The Petitioners have submitted that the act of the Petitioner exiting from the process does not amount to termination under Regulation 24.6 of the GNA Regulations and Regulation 24.2 of the GNA Regulations shall not be applicable in the present facts and circumstances since Petitioner is neither willing nor suggesting surrender of the 300 MW connectivity.
52. CTUIL has submitted that SECI, vide email dated 12.09.2023, clearly stated that the LoAs issued by SECI to the Petitioners were annulled, and since the LoAs, which were the basis of the grant of connectivity, have been annulled, CTUIL revoked the Stage-II Connectivity of 300MW granted to the Petitioner in terms of the provision of Regulation 24.6 of the GNA Regulations. CTUIL submitted that the Black's Law Dictionary (11th Edition) defines the term "termination" as "the act of ending something; the end of something in time or existence; conclusion; discontinuance." CTUIL further submitted that it is clear that the ambit and scope of the term "termination" is very wide and is not attached to the cause behind the same, and therefore, whether the Petitioner was allowed to exit or was made to exit is immaterial and the consequences specified in the extant laws would have to apply.
53. The Petitioners have submitted that the term 'termination' is mostly used when a party in any contractual arrangement fails to comply with its obligation envisaged under such arrangement, and consequently, there are some penalties with respect to such failure; however, that is completely missing in the present case, as SECI has allowed the Petitioners to exit the process without any liability and penalty since there was no default on the part of the Petitioner.
54. Petitioners submitted that they are willing to retain the connectivity by submitting upfront the required Bank Guarantee and can be put to terms to demonstrate their seriousness and commitment in the implementation of the Project by providing land ownership/lease proof within 180 days of submission of Bank Guarantee. ,,
55. We have considered the submission of Petitioner and Respondents. The relevant extracts of Regulation 24.6 of the GNA Regulationsthe , are as under:

"24.6 Revocation of Connectivity



(1)

.....

- iv. *Connectivity granted to an REGS (other than Hydro generating station) or ESS (excluding PSP) shall be revoked, if LOA or PPA on basis of which Connectivity was granted, is terminated prior to the COD of the project.*

.....

(2) In case of revocation of Connectivity under subclauses (a) to (d) of Clause (1) of this regulation, Conn-BG-1, Conn-BG2 and Conn-BG3 shall be dealt with in terms of regulation 24.2 or regulation 24.3 of these regulations, as applicable.”

As per the above, in the case of termination of LOA or PPA, based on which Connectivity has been granted prior to the project's COD, such Connectivity shall be revoked.

56. We observe that the Petitioners under Petition No. 291/MP/2023 and under Petition No. 292/MP/2023 have been granted Connectivity for 300 MW at Gadag and Koppal, respectively, under the Connectivity Regulations, 2009 based on the LoA dated 10.03.2022 issued by SECI for setting the RE Power Plant.
57. We observe that though the Connectivity Regulations, 2009 and the GNA Regulations have provisions for the conversion of Connectivity from the Land route to the LoA/PPA route, neither of the Regulations allows conversion of Connectivity granted on the LOA/PPA route to any other route. Further, the GNA Regulations provide under Regulation 24.6 that the Connectivity granted to an applicant based on the LoA or PPA shall be revoked in case of termination of such LoA or PPA.
58. We have already concluded in Issue No.2 that the annulment of the LoAs is not due to default on the part of the Petitioners. Further, we observe that Petitioners have made progress in the implementation of the project as noted below:

(a) Petitioner, in petition No. 291/MP/2023, has submitted that Petitioner has already incurred investment to the tune of INR 6,46,32,178 and has committed to investing around INR 10,64,28,78,452 Further, it has already secured registered lease rights of 205 acres of land for a period of 29 years and 11 months. The Petitioner has also signed an agreement to lease around 300 acres with the landowners for further formalizing the registered lease rights agreements. The Petitioner has engaged with Suzlon Energy for delivery and supply of Wind Turbine Generators for a 100 MW capacity of value INR 598,83,64,000/-, engaged with PV module manufacturer for delivery and supply of 200

MW AC solar modules of value INR 433,45,76,064/-, and engaged with Ipower Renewable Energy Private Limited and Energy Systems Private Limited for procurement of land on lease, vide agreements dated 14.08.2023 and 28.03.2023 respectively.

(b) Petitioner, under Petition No. 292/MP/2023, has submitted that it has already incurred investment to the tune of INR 1,55,98,467/- and, has also committed to investing around INR 10,62,00,000/-. Further, it has already executed Agreement to Lease deeds of about 346 acres of land by expending INR 70,80,000 in favour of various landowners and land aggregators.

59. We observe that Petitioners have made progress in the implementation of the project and have submitted that they are serious about and committed to developing the project and, hence seek to retain the Connectivity. Further, we have already concluded that the annulment of the LoAs was not due to default on the part of the Petitioners. We observe that since the GNA Regulations do not have the provision to allow such conversion, we find merits in the submission of the Petitioners that they may be allowed to retain the Connectivity, keeping in view the progress made by the Petitioners on the ground as noted in paragraph 58 above and the seriousness and sincerity with which the Petitioners wish to develop the project. We are of the considered view that different routes of Connectivity were introduced in the first amendment to the GNA Regulations to ensure the full commitment of the applicants so that the projects are implemented in the the committed timeline. Considering these facts, we find the case of Petitioner(s), a fit case to be considered under our powers to relax and powers to remove difficulty and further invoke our regulatory power in order to safeguard the interests of the sector Regulation 41 of the GNA Regulations vests the Commission with the power to relax any of the provisions of the GNA Regulations to remove the hardship in operation of the GNA Regulations. Regulation 41 of the GNA Regulations is extracted as under:

“41. Power to Relax

The Central Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an affected party to remove the hardship arising out of the operation of these regulations.”

60. Further, Regulation 42 of the GNA Regulations vests the Commission with the power to remove difficulty under certain circumstances. Regulation 42 of the GNA Regulations is extracted as under:

“42. Power to Remove Difficulty

If any difficulty arises in giving effect to the provisions of these regulations, the Central Commission may, on its own motion or on an application made before it by affected party by order, make such provision not inconsistent with the provisions of the Act or provisions of other regulations specified by the Central Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these regulations.”

61. We note that the Petitioner(s) have been holding on to the Connectivity since June 2022, which is approximately two years. We are also aware that Connectivity is a crucial resource that should be optimally utilized. Keeping in view that the annulment of the LoAs was not due to default on the part of the Petitioners and the seriousness and commitment shown by the Petitioners by way of progress made to bring on the projects, we, in the exercise of our powers under Regulation 41 and Regulation 42 of the GNA Regulations, hereby relax the provisions of Regulation 24.6 and allow the Petitioners under Petition No. 291/MP/2023 and in Petition No. 292/MP/2023 to convert each of their Connectivity granted under LOA route to any other route as provided for in Regulation 5.8(xi) of the GNA Regulations, subject to the following conditions as listed below:

(a) Petitioner(s), within two weeks of the issuance of this order, may either submit the Land documents or Land BG in terms of Regulation 5.8(xi) of the GNA Regulations for full 300 MW Connectivity each (under Petition No. 291/MP/2023 and in Petition No. 292/MP/2023). Failing which, CTUIL shall revoke the Connectivity granted to the Petitioner(s). Further, the Petitioner(s) shall not be allowed to submit part land documents and part Land BG.

(b) In case the Petitioner(s) submit Land BG under sub-clause (a) of this Paragraph, the Petitioner(s) shall submit requisite land documents within three months of the issuance of this order, failing which CTUIL shall revoke the Connectivity granted to the Petitioners.

(c) After the annulment of the LoAs, the SCODs of the projects mentioned under LoA do not hold under both the Petitions. Considering that nearly two years have elapsed since the granting of connectivity and the Petitioners have shown that considerable progress has already been made in the projects, we are of the considered view that nine (9) months from the issuance of this order shall be sufficient time to commission the project. We accordingly direct that the project developer shall commission its project within nine (9) months of the issuance of this order. Further, the milestones for achieving Financial closure and the release of 10% of the project cost under equity as required under Regulations 11(A) and 11(B) of the GNA Regulations shall have to be achieved within six months of the issue of this Order. In case Petitioner(s) fail to achieve financial closure or the release of 10% of the project cost under equity, the connectivity shall be revoked.

(d) The time to achieve various milestones has been relaxed for the Petitioners under Regulations 41 and 42 of the GNA Regulations. This relaxed timeline to achieve various milestones shall have no bearing on the liabilities under the Sharing Regulation 2020. The Petitioner shall ensure that the project is implemented in the timeframe mentioned above.

(e) The treatment of the Bank Guarantee submitted by the Petitioner shall be as per the applicable provisions of the GNA Regulations.

62. We observe that the Petitioner(s) have been granted Connectivity for 300 MW each based on the LOA of SECI for the development of a Solar power project. However, the petitioners, while calculating the land requirement, have considered the project as a hybrid of solar plus wind.

63. The “Detailed Procedure for Connectivity and General Network Access (GNA) to the ISTS” dated 14.10.2022 under the GNA Regulations provides as under:

“5. Application for Grant of Connectivity

.....

xiii. The Applicants who have been granted Connectivity to ISTS for the generation projects based on particular renewable energy source(s) (with or without ESS) may, for the same granted connectivity, change to another renewable energy source(s) (with or without ESS) in part or full, subject to approval by CTU, keeping in view of outcome of system studies. The entity shall submit the Technical Data for changed renewable energy source(s) and CTU shall incorporate the necessary change in connectivity agreement in line with GNA Regulations.”

As per the above, the applicant may change the configuration of their generation projects under the quoted clause by following the due procedure. However, there is nothing on record as to when the configurations of the projects changed from Solar to Hybrid project and whether due process has been followed. We are of the view that Petitioner(s) shall follow the due process to change the configuration, if not done already, failing which it shall be treated as per the details provided at the time of grant of Connectivity by the CTUIL.

64. The issue is answered accordingly.

65. Accordingly, Petition No. 291/MP/2023, along with IA No. 75/2023 and Petition No. 292/MP/2023, along with IA No. 74/2023, are disposed of in terms of the above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(Jishnu Barua)
Chairperson