

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 332/MP/2020 along with I.A. Nos. 18/2022 & 65/2022

Coram:

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

Date of Order: 12th January 2024

In the matter of:

Petition under Section 79(1)(c) and (f) of the Electricity Act, 2003 for adjudication of dispute arising out of the action of Power Grid Corporation of India in seeking opening of a Letter of Credit in favour of PGCIL towards PoC charges for the unutilized Long-Term Access for 50 MW capacity.

And in the matter of:

1. Ostro Kutch Wind Private Limited
138 Ansal Chamber-II,
Bhikaji Cama Place,
New Delhi – 110066Petitioner

Versus

1. Power Grid Corporation of India Limited
Saudamini, Plot No. 2,
Sector 29, Gurugram-122001, Haryana, IndiaRespondent

Parties Present:

Shri Sanjay Sen, Senior Advocate, OKWPL
Ms. Mazag Anarabi, Advocate, OKWPL
Ms. Mandankini Ghosh, Advocate, OKWPL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Aastha Jain, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Shri Agam Kumar, OKWPL
Shri Shashank Shekhar, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Shri Swapnil Verma, CTUIL



ORDER

Ostro Kutch Wind Power Limited (Petitioner) has filed the present Petition under Section 79 (1) (c) of the Electricity Act, 2003 and sought an extension of the date of operationalisation of Long Term Access/ exemption from the opening of a Letter of Credit in favour of PGCIL towards transmission charges for unutilized Long Term Access for 50 MW capacity. The Petitioner has made the following prayers:

Prayer in 332/MP/2020

“

- i. *Extend the date of operationalisation of LTA for the remaining 50 MW capacity to 31.03.2022;*
- ii. *Grant an exemption to the Petitioner from payment of PoC charges/ opening of Letter of Credit as demanded by PGCIL by way of letter dated 21.05.2019 till the commissioning of the 50 MW project;*
- iii. *Stay the effect and operation of the letter dated 21.05.2019 seeking submission of Letter of Credit issued by the Respondent No. 1; and*
- iv. *Grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner.”*

Prayer in 18/IA/2022

“

- a) *allow the instant Application seeking amendment of the captioned Petition;*
- b) *allow substitution of Prayer (i) of the Petition by the new Prayer (i), set out in para 4.2, above;*
- c) *take the letters dated 08.09.2020, 15.03.2021 and 15.09.2021 on record as ANNEXURE P16 (COLLY.) to the Petition; and*
- d) *pass such further order or orders as this Ld. Commission may deem just and proper in the circumstances of the case.”*

The para 4.2 mentioned at (b) in 18/IA/2022 above is as under:

“4.2 Extend the date of operationalization of LTA for the remaining 50MW capacity to 05.09.2022, being the Scheduled Date of Commercial Operation”

Prayer in 65/IA/2022

- a) *allow the instant Application seeking amendment of the captioned Petition;*
- b) *allow substitution of Prayer 11(i) of the Petition by the new Prayer 11(i) set out in paragraph 4.2 (a) above;*
- c) *allow addition of Prayer (iv) set out in paragraph 4.2 (b) above;*
- d) *take on record letters dated 08.09.2020, 15.03.2021, 15.09.2021 and 18.07.2022 as ANNEXURE P17 (COLLY.) and ‘Bills of Supply’ raised by CTUIL for the months of January 2022 to June 2022 as ANNEXURE AP18 (COLLY.) to the Petition; and*



- e) *pass such further order or orders as this Ld. Commission may deem just and proper in the circumstances of the case.*

The para 4.2 (a) and 4.2 (b) mentioned in 65/IA/2022 above are as under:

4.2(a) amend the Prayer at 11(i) as follows:

"i. Extend the date of operationalization of LTA for the remaining 50MW capacity and align it with the revised Scheduled Date of Commercial Operation i.e., 05.12.2022;

4.2(b) add the following Prayer at 11(iv) and 11(v):

"iv. Set aside the 'Bills of Supply' dated 29.03.2022, 04.04.2022, 05.05.2022, 06.06.2022, 08.07.2022 and 11.08.2022 raised on the Petitioner/ Applicant by CTUIL and 'Bills of Supply' raised after the filing of the instant Application and till the disposal of the captioned Petition;

v. Direct CTUIL to not take any coercive or precipitative action against the Applicant till the disposal of the captioned Petition;

Prayer in 14/IA/2023

- a) *Stay levy and recovery of transmission charges raised by CTUIL, till the final adjudication and disposal of the present Petition;*
- b) *Injunct the Respondents from taking any coercive action/steps against the Petitioners, pending final adjudication of the present Petition; and*
- c) *Pass such further order or orders as this Ld. Commission may deem just and proper in the circumstances of the case.*

Submissions of the Petitioner:

1. The Petitioner has mainly submitted as follows:

- (a) The Petitioner is a generating company setting up a Wind Farm of 300 MW capacity in District Kutch in the state of Gujarat.
- (b) Petitioner vide application dated 18.04.2016, applied for Connectivity to the interstate transmission system at the existing 400/220 kV, 2 x 315 MVA Bhachau Substation (Bhachau S/s) for 300MW capacity.
- (c) The Bachau S/s was developed as part of regional system strengthening in the Western Region for Mundra (4000 MW) UMPP, and the transmission charges for the same have since been included in the POC computation.



- (d) PGCIL granted Connectivity to the Petitioner's proposed 300 MW Wind Farm by way of intimation dated 29.07.2016 at the Bhachau S/s. It was informed that connectivity would be operational from 31.03.2018, and Petitioner was directed by PGCIL to sign the requisite Connectivity Agreements and Transmission Service Agreements in terms of the 2009 Connectivity Regulations.
- (e) SECI issued a Letter of Award dated 05.04.2017 to the Petitioner for the development of a 250 MW ISTS-connected wind power project for the generation and sale of wind power at the Bhachau substation. The LoA provided that PTC India Limited would purchase the power generated from the Petitioner 250 MW Wind Project for onward sale.
- (f) Petitioner, vide Application dated 10.11.2017, applied for LTA for evacuation of 300 MW capacity with 150 MW capacity to Northern Region (NR) and 150 MW capacity to Western Region (WR) on target region basis.
- (g) Petitioner executed four (4) Power Purchase Agreements (PPAs) dated 21.07.2017 with PTC, and PTC executed back-to-back Power Supply Agreements (PSAs) with various distribution companies as follows:

Capacity	Agreement	Parties
50 MW	PPA dated 21.07.2017	Petitioner and PTC
	PSA dated 27.07.2017	PTC and North Bihar Power Distribution Company Limited (NBPDC)/ South Bihar Power Distribution Company Limited ("SBPDCL")
50 MW	PPA dated 21.07.2017	Petitioner and PTC
	PSA dated 20.07.2017	PTC and GRIDCO Limited
50 MW	PPA dated 21.07.2017	Petitioner and PTC
	PSA dated 23.06.2017	PTC and Jharkhand Bijli Vitran Nigam Limited ("JBVNL")
100MW	PPA dated 21.07.2017	Petitioner and PTC
	PSA dated 13.07.2017	PTC and Uttar Pradesh Power Corporation Limited (UPPCL)

- (h) Petitioner had only been able to secure a procurer for 250 MW capacity only, Petitioner in the 25th Meeting of WR Constituents held on 17.11.2017, requested PGCIL to grant LTA for 250 MW capacity (150 MW to ER and 100 MW to NR) from 04.10.2018 and for the balance 50 MW capacity (to NR) from 01.03.2020. The request was, however, denied by PGCIL.
- (i) PGCIL granted LTA on a target-region basis (150 MW to NR and 150 MW to WR) by way of intimation dated 20.12.2017, with the operational date as 04.10.2018 or the date of availability of the Transmission system for LTA, whichever is later.
- (j) Pursuant to the grant of LTA, Petitioner and PGCIL executed an LTA Agreement dated 21.12.2017 and a TSA dated 21.12.2017. The LTA Agreement expressly states that the transmission system for the transfer of 300MW power from the Petitioner's Wind Farm would not involve any system strengthening and that the transmission assets to be utilized by the Petitioner for the transfer of its power from the western region to other regions were already under implementation as part of different schemes for development of the Green Energy Corridor.
- (k) Petitioner developed and commissioned its 250 MW wind power in parts as follows:

Capacity MW	COD and Operationalization	LTA
126		24.08.2018
50		02.11.2018
50		29.12.2018
24		30.03.2019

- (l) On 15.05.2018, this Commission issued the Detailed Procedure for "Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System" in accordance with Regulation 27 of the Connectivity Regulations 2009. A bare perusal of the various provisions of the Detailed Procedure makes the following abundantly clear:

i. Insofar as Connectivity is concerned, the Petitioner, having been granted Connectivity, having signed the Bay Implementation Agreement and paid the initial advance thereunder prior to the issuance of the Detailed Procedure, has been relegated to the status of a deemed Stage-II connectivity grantee, subject to submission of a letter of award issued by designated agency within 9 months from the date of issuance of the Detailed Procedure; and

ii. insofar as LTA is concerned, as per Clause 10.13, the Petitioner, having been granted LTA prior to notification of the Detailed Procedure, shall be issued revised LTA (inter-alia including date of start and point of connection) along with grant of Stage-II Connectivity.

(m) Further to the Detailed Procedure, PGCIL, by way of intimation dated 14.06.2018, notified the Petitioner that since the Petitioner already meets the requirements of Clause 5.1(2) of the Detailed Procedure, it had acquired the status of a deemed Stage-II connectivity grantee. The Petitioner was directed to submit the requisite documents for Stage-II connectivity within 9 months from the date of issuance of the Detailed Procedure.

(n) Pursuant to the Petitioner's request, PGCIL, by way of letter dated 09.08.2018, regularized LTA for the awarded 250 MW capacity. The revised details of the Firm and Target beneficiaries for the 300 MW LTA granted to the Petitioner are as follows:

Regions	Quantum allocated as per original intimation dated 20.12.17	Revised Quantum allocated as per firm-ed-up beneficiaries (250 MW)
Eastern Region	150 MW (Target)	50 MW (GRIDCO/Odisha DISCOMs)
		50 MW (Bihar DISCOMs)
		50 MW (Jharkhand Bijli Vitran Nigam Ltd.)
Northern Region	150 MW (Target)	100 MW (UPPCL) 50 MW (Target)

(o) Upon the Petitioner's request for operationalization of LTA for part capacities, PGCIL, by way of various intimations, operationalized the LTA for 126 MW capacity on 24.08.2018; 50 MW capacity on 02.11.2018; 50



MW on 29.12.2018; and 24MW on 30.03.2019. Subsequently, the Petitioner submitted a declaration in regard to the waiver of transmission charges for the commissioned 250 MW capacity.

- (p) PGCIL, vide letter dated 12.04.2019, informed the Petitioner that the identified Transmission system for its LTA had been commissioned on 14.04.2019, and accordingly, the LTA for the balance unutilized 50 MW capacity stood operationalized from the said date. Further to the above letter, PGCIL, vide letter dated 21.05.2019, directed the Petitioner, in view of the operationalization of the LTA for 50 MW capacity, to furnish a confirmed irrevocable, unconditional and revolving Letter of Credit in favour of PGCIL for an amount of INR 2,83,00,335/- towards PoC rates, as approved by this Commission.
- (q) In response to PGCIL's letter, the Petitioner, vide its letter dated 10.06.2019, sought a waiver of the PoC charges levied by PGCIL and brought to PGCIL's notice that the Petitioner has been declared successful for 50 MW capacity in the SECI (Tranche-7) bid process and the balance LTA capacity of 50 MW capacity would be used for the same. The Letter of Award for the aforementioned 50 MW capacity is in the process of being issued to the Petitioner. The Petitioner submitted that it will set up and commission the wind power project before 31.03.2022, i.e. within the waiver period notified by this Commission in the Fifth Amendment to Sharing Regulations, 2017. The Petitioner intended to execute the 50 MW project within the timelines stipulated by SECI within the next 12 to 15 months.
- (r) In view thereof and of the earnestness of the Petitioner in regard to utilizing the LTA for balance 50 MW capacity, the Petitioner requested PGCIL that it be exempt from levy of transmission charges and opening of LC till the commissioning of the 50 MW capacity.
- (s) The Petitioner, by way of a letter dated 24.06.2019, informed PGCIL that it has received a Letter of Award dated 19.06.2019 for setting up a 50 MW wind power project from SECI under Tranche- 7 and submitted the said 50

MW LoA to PGCIL in compliance with the eligibility criteria for Stage-II connectivity under the Detailed Procedure.

(t) This Commission, vide its Order dated 06.08.2019, in Petition No. 172/TT/2018, approved the Transmission Tariff of certain transmission assets of PGCIL, including but not limited to the Asset-III- 2X400 kV D/C(Quad) Tirunelveli Pooling Station and Asset-IV- 2X500 MVA 400/230 kV transformers along with associated bays. A bare perusal of the said Order, the following is abundantly clear:

- i. Insofar as Asset III is concerned, this Commission exempted MEIL from payment of transmission charges and losses for the same since the Asset is being utilized for an alternate purpose and has directed that the Asset be included in the PoC computation w.e.f. COD thereof; and
- ii. Insofar as Asset IV is concerned, this Commission directed MEIL to bear the transmission charges for the said Asset proportionate to the quantum of LTA granted to it i.e. 75 MW from 10.6.2018 till the COD of its project for the reason that the Asset remains unutilized.

(u) The 'Transmission System' for the transfer of power from the Petitioner's 300 MW Wind Farm to the respective Procurers did not require any system strengthening and was already under implementation as part of different schemes for the development of the Green Energy Corridor. Further, the transmission charges for the same have since been included in the POC pool. No asset within the Transmission System was specifically created for the benefit of the Petitioner.

2. Petitioner is on the equitable ground seeking an exemption from levy of transmission charges and opening of LC till the commissioning of the 50 MW capacity or December 2022 i.e. the deadline for the waiver of inter-state transmission charges and losses on transmission of electricity generated from solar and wind sources of energy.

Submission in 18/IA/2022

3. Petitioner, by way of 18/IA/2022 dated 29.03.2022, submitted an application for amendment of prayer and bringing on record subsequent developments. The petitioner submitted that in terms of the 50 MW PPA, the SCOD of the wind power project was 18.04.2021. However, due to the disruptions caused by the COVID-19 pandemic, the SECI, by way of a letter dated 15.09.2021, revised the SCOD of the Applicant's wind power project to 05.09.2022. Hence, the Applicant requested this Commission to amend the Prayer at 11(i) and extend the date of operationalization of LTA for the remaining 50 MW capacity to 05.09.2022, which is the Scheduled Date of Commercial Operation.

Submission in 65/IA/2022

4. Petitioner, by way of 65/IA/2022 dated 27.10.2022, further submitted an application for bringing on record subsequent developments and submitted that due to the disruptions caused by the Covid-19 pandemic, SECI by way of its latest letter dated 18.07.2022 extended the SCOD of the Wind Project from 2022 from 05.09.2022 to 05.12.2022.
5. Petitioner also submitted that CTUIL, from the month of March 2022, started raising 'Bills of Supply' for transmission charges on the Applicant, which is illegal and in contravention of Regulation 13(3) of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (hereinafter '2020 Sharing Regulations'). Since the issue of levy of transmission charges on and opening of LC by the Applicant is sub-judice before this Commission,

CTUIL should maintain status-quo and refrain from raising the 'Bills of Supply' on the Applicant.

6. In view of the developments stated above, the Petitioner sought this Commission's permission to amend the prayer as follows:

A. amend the Prayer at 11(i) as follows –

i. Extend the date of operationalization of LTA for the remaining 50 MW capacity and align it with the revised Scheduled Date of Commercial Operation i.e., 05.12.2022;

B. add the following Prayer at 11(iv) and 11(v)–

iv. Set aside the 'Bills of Supply' dated 29.03.2022, 04.04.2022, 05.05.2022, 06.06.2022, 08.07.2022 and 11.08.2022 raised on the Petitioner/ Applicant by CTUIL and 'Bills of Supply' raised after the filing of the instant Application and till the disposal of the captioned Petition;

v. Direct CTUIL to not take any coercive or precipitative action against the Applicant till the disposal of the captioned Petition;

Submission in 14/IA/2023

7. Petitioner, by way of 14/IA/2022 dated 06.02.2023, submitted an application and sought a stay on levy and recovery of transmission charges by way of 'Bills of Supply' raised by CTUIL and issuance of appropriate directions to CTUIL to not take any coercive steps against the Petitioner during the pendency of the present Petition.

8. Petitioner also submitted that levy of transmission charges is contrary to the Order dated 15.01.2021, of the MoP whereby directions have been issued under Section 107 of the Electricity Act to this Ld. Commission to extend the commencement and period of LTA in line with any extension for commissioning granted to a Renewable Energy generation capacity which is eligible for ISTS waiver by the competent authority on account of force majeure.



9. CTUIL has erroneously levied transmission charges for the period 14.04.2019 to 31.10.2020 in terms of CERC (Sharing of inter-State transmission charges and losses) Regulations, 2010 (hereinafter '2010 Sharing Regulations'). It may be noted that such a levy of transmission charges is incorrect since the transmission charges ought to be computed as per the law existing as on the date of raising the bills levying transmission charges. Pertinently, the earliest demand for transmission charges was made by CTUIL on 29.03.2022. As on that date, the applicable Regulations were the 2020 Sharing Regulations. Computation of transmission charges in terms of the 2010 Sharing Regulations amounts to the retrospective application of a repealed regulation which is impermissible in law.

Hearing dated 30.07.2020:

10. The matter was admitted on 30.07.2020, and the Respondent was directed to file its reply.

Reply of PGCIL:

11. PGCIL, in its reply, vide affidavit dated 14.09.2020, has submitted as follows:

- (a) Petitioner was granted connectivity to the ISTS for 300 MW at the existing 400/220 kV Bhachau sub-station of the Respondent, vide intimation dated 29.7.2016 and was to come into effect from 31.3.2018. The Petitioner was required to construct the connectivity line from the generation switchyard to the Bhachau pooling station along with associated line bays at both ends and also enter into a Connection Agreement with the Respondent.
- (b) LTA was granted to the Petitioner for 300 MW on a target region basis (150 MW to NR and 150 MW to ER) vide intimation dated 20.12.2017. As per the said intimation, the start date of LTA was 4.10.2018 or the availability of the transmission system, whichever was later.
- (c) The Petitioner was also given an option to relinquish the 50 MW LTA (to NR) after the grant of LTA and apply afresh for the same as per its requirement. However, the Petitioner on its own, chose to retain the entire



300 MW of LTA even when there was no identified beneficiary for 50 MW power.

- (d) Till 30.3.2019, a total LTA quantum of 250 MW out of the 300 MW (to the extent of the Petitioner having firm beneficiaries) was operationalized, and the balance LTA quantum of 50 MW LTA (on target region basis to NR) remained to be operationalized and for which the Petitioner had not intimated any identified beneficiary.
- (e) The 250 MW LTA was operationalized on the existing system in view of the Petitioner's requests for part-operationalization of LTA as aforesaid, while the transmission system identified under the LTA grant was under implementation.
- (f) Subsequent to the commissioning of the transmission system under the Petitioner's LTA, the Respondent operationalized the remaining LTA of 50 MW vide letter dated 12.4.2019 w.e.f. 14.04.2019 with the said system. However, the generation capacity commensurate with the said 50 MW LTA had not yet been commissioned, and no PPA/PSA in respect thereof had been submitted to the Respondent. The Petitioner thus did not qualify for the exemption from payment of ISTS transmission charges under the 6th Amendment to the Sharing Regulations.
- (g) As per the Billing, Collection and Disbursement Procedure notified under the Sharing Regulation, Respondent vide letter dated 21.5.2019, requested the Petitioner to furnish a confirmed irrevocable, unconditional and revolving LC for Rs.2.83 Cr. based on the PoC rates prescribed by this Commission.
- (h) Vide its letter dated 24.6.2019, the Petitioner submitted a copy of an LOA issued in its favour by SECI under Tranche 7 of the competitive bidding process and reiterated its request for waiver of ISTS transmission charges and exemption from LC submission.

- (i) Respondent vide its email dated 25.6.2019, requested the Petitioner to follow the prescribed method under the Advisory and submit the requisite documents in the prescribed format in order to avail the exemption sought by it. Instead of submitting its documents in the prescribed manner, the Petitioner chose to approach this Commission by filing the present Petition, seeking an extension for the date of operationalization of 50 MW LTA and exemption from payment of transmission charges.
- (j) The 50 MW LTA has been operationalized upon commissioning of the transmission system set out under the LTA grant itself, which commissioning has taken place only after the scheduled commissioning of the generation capacity for 50 MW has been reached. Considering the delay in commissioning of the said generation capacity, the liability to pay ISTS transmission charges and opening of LC for the same has ensued upon the Petitioner, and this liability has no co-relation with the grant of LTAs to other entities with the same transmission system. When the assets have been included in the PoC pool upon their commissioning, the Petitioner is also liable to share the transmission charges till the time the facility of waiver/extension is available to it.
- (k) The reliance of the Petitioner on the Order dated 6.8.2019 passed in Petition No.172/TT/2018 by this Commission is concerned, it is submitted that issue was related to mismatch between commissioning of one of the assets of the transmission system vis-à-vis associated generating units and it was in this context that this Commission had held that since the instant asset had achieved its COD and was being utilized for controlling over voltage at Tirunelveli pooling station, the same was to be included in the PoC computation w.e.f. COD of the asset.
- (l) This Commission further noted in the said Order that there had been a delay in the commissioning of the generation project of Mytrah Energy India Ltd. And the liability to pay transmission charges was fastened upon it from the COD of the transmission assets till the commissioning of the generation project. In the present case also, the liability to pay transmission charges is being fastened upon the Petitioner from the date of commissioning of the

transmission system set out in the LTA grant till the commissioning of its 50 MW generation capacity within the prescribed cut-off date of commissioning.

Rejoinder of the Petitioner:

12. The petitioner in their rejoinder vide affidavit dated 20.11.2020, has submitted as follows:

- (a) As per the RFP dated 28.10.2016, it was specified that bidders could only bid for a project capacity between 50 MW to 250 MW. Accordingly, the Petitioner submitted its bid for generation and sale of 250 MW capacity only. Had there not been a restriction on the project capacity that each bidder could bid for, the Petitioner would have bid for the entire envisioned capacity of 300 MW.
- (b) Petitioner, in the 25th Meeting held on 17.11.2017, requested PGCIL to consider 01.03.2020 as the date of operationalization of the unawarded 50 MW capacity. However, PGCIL denied the Petitioner's request and instead directed the Petitioner to relinquish 50 MW capacity after the grant of LTA and apply afresh for 50 MW capacity as per their requirement.
- (c) The option of withdrawing the Application was not available to the Petitioner as submission of the Transmission Agreement and Transmission Service Agreement within 9 months from the date of issue of LoA was a Condition Precedent under the RFP. The time period provided for fulfilment of the Condition Precedent was expiring on 04.01.2018. Relinquishment and filing of a fresh Application for a grant of LTA, consideration thereof at the next meeting for the Western Region Constituents (which was finally held on 11.05.2018) regarding Connectivity/ Open Access and grant of LTA would take a few months at least, which would be beyond the deadline for fulfilment of Conditions Precedent under the RFP and would entail penalties thereunder.
- (d) As regards the uncommissioned 50 MW capacity, the LTA for which was operationalized on 14.04.2019, it is reiterated that the said capacity has been awarded by SECI by way of Letter of Award dated 19.06.2019.



Further, the Petitioner has signed a PPA with SECI dated 25.10.2019 and is scheduled to commission its project by the SCOD of the project which is 18.09.2021 in terms of the PPA (extension granted by SECI due to COVID-19 and its impact).

- (e) The 'Transmission System' for transfer of power from the Petitioner's 300 MW Wind Farm to the respective Procurers did not require any system strengthening and had already been developed and has been in use as part of the "Mundra UMPP-Bhuj PS 400kV D/c (Triple) line" Transmission System.
- (f) The LTA Agreement expressly states that the transmission system for the transfer of 300MW power from the Petitioner's Wind Farm would not involve any system strengthening and that the transmission assets to be utilized by the Petitioner for the transfer of its power from the western region to other regions were already under implementation.
- (g) SECI has already executed a Power Sale Agreement dated 01.10.2019 with Uttar Pradesh Power Corporation Limited for the sale of 50 MW capacity from the Petitioner's Wind Power Project

Hearing dated 16.02.2023:

13. The matter was again heard on 16.02.2023. Learned senior counsel for the Petitioner mainly submitted as under:

(a) Ministry of Power (MoP) directions dated 15.1.2021 issued under Section 107 of the Electricity Act, 2003 ('the Act') along with MoP Orders dated 15.1.2021, 23.11.2021 and 30.11.2021 provide that where the COD of a Project has been extended by the Competent Authority, the commencement period of LTA shall also get extended accordingly and it would be deemed that the period of ISTS

waiver is extended.

(b) In the present case, Solar Energy Corporation of India Ltd. (SECI) had extended the SCOD of the Project up to 5.12.2022. Therefore, in terms of the



Sharing Regulations 2020 read with Section 107 of the Act directions issued by MoP, no transmission charges can be levied for the period prior to 5.12.2022.

(c) Even if the transmission charges are payable, the same ought to be computed in terms of Regulation 13(7) of the Sharing Regulations 2020 i.e., at the rate of 10% of the transmission charges since LTA had been granted on 'existing transmission system' already under implementation as part of different schemes for development of the Green Energy Corridor without any system strengthening. The transmission charges for the same have since been included in the POC pool.

(d) Since its LTA was granted on an existing transmission system, in terms of the Commission's Order dated 23.5.2022 in Petition No. 525/MP/2020, CTUIL must identify the associated transmission elements for the Petitioner's LTA for determination of appropriate transmission charges for delay.

(e) Considering the above, the issue of levy of transmission charges and the Petitioner's liability to pay the same requires a determination by the Commission. The Petitioner cannot be compelled to pay transmission charges levied by CTUIL during the pendency of the captioned Petition.

(f) The Petitioner has paid 10% of the transmission charges liability (Rs. 3 crore approximately) as per the Sharing Regulations, 2020.

14. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed CTUIL to file data relating to the associated transmission elements of the Petitioner to determine the transmission charges payable by the Petitioner. Further, the Commission directed CTUIL not to take any coercive measure till the next date of hearing. Accordingly, the IA No. 14/2023 was disposed of.

Submissions of CTUIL:

15. The CTUIL vide affidavit dated 10.03.2023 submitted the following information in compliance to ROP for a hearing dated 16.02.2023:

(a) The CTU *vide* intimation dated 29.07.2016 had granted Connectivity to the Petitioner for 300MW for its WPP through the following transmission system for Connectivity:



- OKWPL switchyard-Bhachau 220kV D/c line along with associated line bays at both ends (to be constructed by M/s OKWPL)

(b) The CTU vide intimation dated 20.12.2017 granted LTA to the Petitioner for transfer of 300MW from its WPP to various beneficiaries in NR & ER w.e.f. 04.10.2018 or availability of the following transmission system for LTA, whichever is later:

- Common Transmission System requirement for transfer of power from the Western Region to the Northern Region and eastern Region which is under implementation as part of different schemes:

A. Green Energy Corridor – ISTS:

- Bhuj PS – Banaskantha 765kV D/c line
- Banaskantha – Sankhari 400kV D/c line
- Banaskantha – Chittorgarh 765kV D/c line
- Chittorgarh – Chittorgarh (RVPN) 400kV D/c (quad) line

B. Transmission System Strengthening associated with Mundra UMPP (Part-B):

- Mundra UMPP- Bhuj PS 400kV D/c (Triple) line.

(c) The transmission system strengthening at (A) above was planned for the integration of RE capacity addition in the Kutch complex in Gujarat & Rajasthan. However, the transmission system at (B) above was planned for Mundra UMPP, to comply with the 'N-1-1' criteria of the new Transmission Planned Criteria published in Jan'13.

(d) That in view of the above, the Petitioner was granted LTA through a common transmission system (CTS), and no associated transmission system (ATS) was related to M/s OKWPL for transfer of its power under LTA.

Hearing dated 16.05.2023 and 12.07.2023



16. The matter was again heard on 16.05.2023. During the course of the hearing, the learned counsel for CTUIL submitted that the Petitioner has paid only 10% of the amount due, i.e. Rs.3 crore out of Rs.30 crore, and the Petitioner may be directed to pay the remaining amount due. In response to a query of the Commission, the learned senior counsel for the Petitioner informed that its generation has now been commissioned. The Commission directed the Petitioner to submit the date of commissioning of its generation.

17. The matter was again heard on 12.07.2023. The Commission directed the Petitioner to submit the date of commissioning of its 50 MW and also directed the parties to file their written submissions within one week. Subject to the above, the Commission reserved the order.

Submissions of the Petitioner:

18. Petitioner vide affidavit dated 27.07.2023 has made the following submissions:

- (a) The 50 MW wind power project was commissioned on 05.12.2022 (11MW on 13.11.2021, 11MW on 04.12.2021, 13.2MW on 30.03.2022, 11MW on 09.05.2022 and 4.4MW on 05.12.2022).
- (b) The Petitioner raised the question of whether CTUIL can raise any demand for the period under the 2010 Sharing Regulations after the same have been repealed and made the reference to Regulation 26 of the 2020 Regulations. In terms of Regulation 26.2, it is clearly provided that notwithstanding such repeal, anything done or any action taken or purported to have been done and taken under the repealed regulation would have been done or taken under the new regulation.
- (c) Since there was no demand under and during the period of the validity of the repealed 2010 Sharing Regulations, nothing was done, no action was taken or purported to have been done or taken under the repealed 2010 Sharing Regulations and action, if any, for demand of transmission charges for the period covered by the 2010 Sharing Regulations was raised for the first time under the 2020 Sharing Regulations, such non-action on the part of CTUIL, action not taken or purportedly not done or taken under the 2010 Sharing Regulations cannot survive under the 2020 Sharing Regulations.

- (d) Petitioner submitted that only those bills which were raised prior to the repeal would qualify as a thing done or action taken under the 2010 Sharing Regulations and overcome the bar of repeal. Admittedly, no bill was issued while the 2010 Sharing Regulations were in force. It cannot be done for the first time as an action under the 2020 Sharing Regulations. The aforesaid proposition of law goes to the very root of the matter and the demand now raised by CTUIL.
- (e) Further, in order to understand the meaning and intent of the savings and repeals clause, such as in the present case, the petitioner placed its reliance on the Supreme Court judgment in the matter of Bishambhar Nath Kohli vs. State of UP (Constitution Bench judgment reported in AIR 1966 SC 573 and deduced that where no action was taken under the repealed 2010 Sharing Regulations, such non-existent action cannot be saved/ deemed to have been taken under the 2020 Sharing Regulations. The savings clause in the 2020 Sharing Regulations cannot be read as saving the future operation of the repealed 2010 Sharing Regulations.
- (f) This Commission cannot apply this ACME Order dated 23.06.2023 in petition 330/MP/2019 to the present case as there is no finding or judgment on the scope of Regulation 26.2 qua actions taken by CTUIL well after the repeal of the 2010 Sharing Regulations. The ACME Order does not cover the issue, and the conclusion is without any reference, analysis, discussion or finding on Regulation 26.2 and, therefore, suffers under the principles of sub silentio and is liable to be ignored being per incuriam.

Submissions of CTUIL

19. Respondent, CTUIL, vide affidavit dated 04.08.2023, has submitted as follows:

- (a) In terms of Section 6 of the General Clauses Act, unless a different intention appears, a repeal of a Regulation is not to affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment. Thus, the repeal of the Sharing Regulations, 2010 would have



no effect on the obligation that ensued and liability accrued onto the Petitioner qua transmission charges and notwithstanding its repeal, the said obligation and liability of the Petitioner continue to subsist.

- (b) The LTA of 50 MW was operationalized on 14.4.2019, and the liability of the Petitioner to pay transmission charges for the same has ensued upon it under the Sharing Regulations, 2010. However, since the bills for such liability have been raised by the Respondent only upon the availability of the transmission tariff of the transmission assets forming part of the ATS for the Petitioner project (ATS), the Respondent raised Bills of Supply onto the Petitioner for the period from 14.4.2019 (date of operationalisation of LTA) to 5.12.2019 (the CoD of the generating capacity).
- (c) Regulation 26 of the Sharing Regulations 2020 neither makes any departure from the position under Section 6 of the General Clauses Act nor does it create any bar for recovery of any liability ensued under the repealed Sharing Regulations, 2010. Thus, reliance by the Petitioner on the decisions of *Bishambhar Nath Kohli v. State of U.P.* [AIR 1966 SC 573] is also wholly misplaced and is liable to be ignored by this Commission.

Analysis and decision:

20. The petitioner had applied for connectivity vide application dated 18.04.2016 at Bhachau S/s which was granted by CTU on 29.07.2016. Petitioner had applied for LTA to a target region on 10.11.2017 for 300MW, which was granted by CTU vide letter dated 20.12.2017 on a target region basis (150MW to NR and 150MW to ER) with operationalization date from 04.10.2018 or the date of availability of Transmission system for LTA, whichever is later. Petitioner secured 250MW LoA from SECI on 05.04.2017 and signed PPA with PTC for 250 MW.
21. Subsequently, Petitioner was declared successful for a 50MW capacity wind power project in the SECI (Tranche-7) bid process with SCOD of 18.4.2021, for which PPA was signed on 25.10.2019. SECI vide letter dated 18.07.2022

extended the SCOD of the remaining 50 MW capacity from 18.09.2021 to 05.12.2022.

22. The 300MW LTA capacity was operationalized in the following manner by the CTU:

LTA Capacity	Date of Operationalization
126 MW	24.08.2018
50 MW	02.11.2018
50 MW	29.12.2019
24 MW	30.03.2019
50 MW (subject matter of petition)	14.04.2019

23. POWERGRID vide letter dated 21.05.2019, asked Petitioner to furnish a confirmed irrevocable, unconditional and revolving Letter of Credit (LC) in favour of PGCIL for an amount of INR 2.83/-cr towards PoC rates for the 50 MW capacity.

24. The Petitioner is praying to extend 50MW LTA operationalization date to extended SCOD of project (i.e. 05.12.2022) and contending that as LTA was granted on Common Transmission System without any ATS, it is not liable for PoC charges/ opening of LC, and if any liability arises then it should be limited to the provisions under 2020 Sharing Regulations since no bill was raised by CTU during the period when 2010 Sharing Regulations was in force.

25. After considering the submissions of the parties and perusal of documents available on record, the following issues arise for our consideration:

Issue No. 1: What shall be the date of commencement of LTA of 50MW capacity of the Petitioner?

Issue No. 2: What shall be the methodology for calculating the liability of Petitioner for transmission charges for the period before COD of its Project for the remaining 50MW capacity?

The same is dealt with in subsequent paragraphs.

Issue No. 1: What shall be the date of commencement of LTA of 50MW capacity of the Petitioner?

26. Petitioner has prayed to defer the operationalization of LTA and align it to 05.12.2022 (i.e. the extended SCoD of the generation capacity). The LTA was operationalized by CTU on 14.04.2019.

27. Respondent PGCIL has submitted that in the 35th meeting of WR constituents regarding connectivity and LTA held on 17.11.2017, the petitioner was informed that the petitioner would be liable to pay transmission charges for 300MW w.e.f. 04.10.2018 or the commissioning of the transmission system for LTA, whichever is later.

28. The LTA Agreement dated 21.12.2017 provides regarding the start date of LTA as under:

“G) AND WHEREAS in accordance with LT Access Regulations and Procedures thereof and Electricity Act 2003, CTU has granted such access from the date as mentioned in LTA intimation placed as Attachment-I to this Agreement, subject to signing of LTA and Transmission Service Agreements.

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(a) The date of effectiveness of this LTA Agreement shall be as per intimation letter ref. no. C/CTU/L TA/W/OKWPL/1200000904 dated 20.12.2017 enclosed at Attachment-1 to this Agreement.”

29. The snapshot of Attachment-I mentioning the Date from which LTA is granted as below:



6 Details for Long Term Access (LTA)		
6a	Quantum (MW) for which LTA is granted	300 MW
7 Injection of Power (more than one only in case of single Drawl)		
	Entity-1	OKWPL
	State/Region	Gujarat / WR
	Quantum-1	300 MW
	Connectivity with the Grid	OKWPL (Kutch project) - Bhachau 220kV D/c line along with associated line bays at both ends
8 Drawl of Power (more than one only in case of single Injection)		
	Entity-1	Target
	State/Region	NR
	Quantum-1	150MW
	Connectivity with the Grid	Interconnection with STU Network
	Entity-1	Target
	State/Region	ER
	Quantum-1	150 MW
	Connectivity with the Grid	Interconnection with STU Network
9 Transmission System for LTA		As per Annexure-I
9a	Date from which LTA is granted	04.10.2018 or Availability of Transmission System whichever is later

30. Thus, it is clear that the LTA has been granted on the Common Transmission System being developed for the transfer of power from the Western Region to ER & NR as a Green Energy Corridor. The LTA for 250MW was operationalized on 04.10.2018, whereas the LTA for 50MW was operationalized on 14.04.2019.

31. We observe that the PPA and LTA Agreement are two entirely different and distinct agreements, and the liabilities and obligations contained therein are also different. The obligation of the Petitioner arising out of the PPAs is independent of its obligation to meet the timeline that the Petitioner has sought under the LTA application and LTA Agreement. We note that the LTA agreement has no clause with respect to the date from which supply under PPA is anticipated or the alignment of such date with the LTA start date. The start date of LTA has solely been based on the Petitioner's assessment and requirement and as agreed by the Petitioner. There is no reference to the PPA clauses in the LTA Agreement, and deferment of the start date of LTA is provided neither in the LTA Agreement nor in any Regulation. Therefore, the Petitioner cannot contend that CTU should have matched the SCOD in the PPA and the date of operationalization of LTA. It was the sole responsibility of the Petitioner to correctly assess and inform the correct start date of LTA. Therefore, the Petitioner cannot contend to match the SCOD in the PPA and the date of operationalization of LTA.

32. We observe that a similar issue was dealt with by the Commission in the order dated 05.02.2019 in Petition No.195/MP/2019 as under:

“25. The PGCIL has submitted that the Petitioner has requested 31.07.2019 as the start date while submitting applications for Stage-I Connectivity, Stage-II Connectivity as well as LTA. The Petitioner signed Transmission Agreement dated 07.08.2018 and LTA Agreement dated 20.09.2018 wherein the stipulated start date of 31.07.2019 was again endorsed. In the present case, LTA has been granted to the Petitioner without any system augmentation and, therefore, the start dates of Petitioner’s Connectivity/ LTA is as requested by the Petitioner in its respective applications. PGCIL has submitted that the Petitioner was at liberty to suitably apply for LTA in terms of its consequent contractual/ bidding obligations. The Petitioner was also at liberty to make separate LTA applications with different quantum and start dates. It is the LTA applicant, who comes up with the date from which it requires the Connectivity and Long-term Access. Accordingly, it is the responsibility of the LTA applicant to synchronize between the two sets of agreements i.e. PPAs and LTA agreements.”

33. Thus, we observe that LTA is granted to the Petitioner based on its application, and the start date of the Petitioner’s LTA is as requested by the Petitioner itself in its application. The Petitioner is at liberty to suitably apply for LTA in terms of its contractual/ bidding obligations. Therefore, we are of the view that it is the responsibility of the LTA applicant to synchronize and match the dates between the two sets of agreements, i.e. the PPA and the LTA Agreement, as it is the LTA applicant who signs both sets of the agreements.

34. Petitioner, during the hearing held on 16.02.2023, has referred to MOP Orders dated 15.1.2021, 23.11.2021 and 30.11.2021, stating that the referred Orders provide that where COD of a Project has been extended by the Competent Authority, the commencement period of LTA shall also get extended accordingly and it would be deemed that the period of ISTS waiver is extended. The issue of applicability of the referred Orders has been covered in Order dated 23.05.2022 in Petition No. 525/MP/2020, quoted as follows:

“56. The Petitioner has also referred to a provision in MOP Orders dated 15.1.2021, Order dated 30.11.2021 read with Order dated 23.11.2021 indicating that “where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and

it will be deemed that the period of ISTS waiver is extended by the said period". The relevant provision of the Order dated 15.1.2021 is quoted as under:

"a) Power plants using solar and wind sources of energy, including solar-wind hybrid power plants with or without storage commissioned upto 30th June, 2023 for sale to distribution licensees, irrespective of whether this power is within RPO or not, provided that the power has been procured competitively under the guidelines issued by the Central Government. Power from such solar and wind plants may also be used for charging of storage including Hydro pumped storage plants:

Provided that where any renewable power project which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30th June 2023 is granted extension of time from the commissioning on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by the power plant as if the said plant had been commissioned on or before 30th June 2023:

Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LT A shall also get extended accordingly, and it will be deemed that the period of I STS waiver is extended by the said period."

57. We observe that the Order dated 15.1.2021 has been issued under the Tariff Policy where waiver is for the sale of power and for the electricity generated from identified sources satisfying specified conditions. The quoted provision in the Order dated 15.1.2021 extracted in paragraph 56 provides that for an entity which is provided extension of COD by the competent authority, LTA under waiver shall start from such COD date (i. e. when the generator starts generating power) and waiver shall be applicable for the period as specified (such as 25 years). Thus, the entire provision is for waiver of transmission charges after COD of the generating station. Nowhere it is provided that a generator which has not declared COD would not be levied transmission charges as per extant regulations.

58. We also observe that the MOP Orders referred to by the Petitioner have been issued on 23.11.2021, 30.11.2021 and 15.1.2021 and it has been specifically mentioned in the said Orders that these would be applicable prospectively. The Petitioner's LTA has been operationalized much before on 30.11.2019. Therefore, the reliance of the Petitioner on these Orders is anyway misplaced."

As per the above, it has been concluded that the entire provision is for the waiver of transmission charges after the COD of the generating station. Nowhere it is provided that a generator which has not declared COD would not be levied transmission charges as per extant regulations.

35. In the instant case also, the LTA of Petitioner stood operationalized on 14.04.2019, and the Petitioner delayed in declaring its COD. Hence, the reliance of Petitioner on referred Orders of MOP is found to be misplaced.



36. In light of discussions in the foregoing paragraphs, we find no merit in Petitioner's prayer to align the LTA Operationalization date with the extended SCOD of generation project.

37. The petitioner has applied LTA and entered in LTA Agreement that has been operationalized by POWERGRID on 14.04.2019 and hence LTA for 50MW capacity stands operationalized on 14.04.2019.

38. Issue No.1 is answered accordingly, and prayer (i) of the Petitioner is disallowed.

Issue No. 2: What shall be the methodology for calculating the liability of Petitioner for transmission charges for a period before the COD of its Project for 50MW?

39. Petitioner has submitted that CTUIL has raised the bill of transmission charges for the generation capacity of 50 MW for the period 14.04.2019 to 31.10.2020 on 27.4.2022, in terms of the 2010 Sharing Regulations. However, as on 27.4.2022, the 2010 Sharing Regulations were already repealed. Only those bills which were raised prior to the repeal would qualify as a thing done or action taken under the 2010 Sharing Regulations and overcome the bar of repeal. Therefore, transmission charges, if any, can only be levied in accordance with Regulation 13(7) of 2020 Sharing Regulations.

40. CTUIL, vide affidavit dated 10.03.2023, has submitted that LTA was granted on the Common Transmission System without any ATS. CTUIL, vide affidavit dated 04.08.2023, has submitted that bills for such liability have been raised only on the availability of the transmission tariff of the transmission assets forming part of the ATS for the Petitioner project.

41. CTUIL has referred to Section 6 of the General Clauses Act, 1977, in reference to the repeal of 2010 Sharing Regulations quoted as under:

“6. Effect of repeal. - Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or



hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or
(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

In terms of the above, unless a different intention appears, a repeal of a Regulation (such as the 2010 Sharing Regulations) is not to affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

42. We have considered the submissions of Petitioner and Respondents. We observe that it is settled law that, unless specified otherwise, the regulations/statutes operate prospectively. Accordingly, the petitioners' liability for transmission charges for the period 14.04.2019 to 31.10.2020 shall be in terms of 2010 Sharing Regulations and for 01.11.2022, the COD of the project shall be in terms of 2020 Sharing Regulations. We observe that CTU has already raised the bills in terms of the 2010 Sharing Regulations and 2020 Sharing Regulations for the applicable period. The Petitioner is directed to make payment of the transmission charges bills along with LPS as applicable as per the law.

43. We also observe that CTU has invariably delayed raising the bills in the instant case by more than 2 years. We also take note that CTU has made contradictory statements regarding reasons for the delay in raising the bills where at one place, CTU has submitted that it was waiting for the transmission tariff for the elements of ATS and at another place, it has stated that there was no ATS and hence it raised the bills applicable for LTA grantees on the existing system. The tardiness on the part of CTU to raise the bills for the period Apr'19 to Oct'20 on

27.04.2022 is a cause of concern. CTUIL is directed that all the transmission bills in future, must be raised within the stipulated time.

44. Since Petitioner has already achieved COD of 50MW capacity under the subject matter and is availing waiver of ISTS charges, therefore, there are no further regular bills under the 2020 Sharing Regulations, for which opening of Letter of Credit (LC) is required, hence the issue of opening of Letter of Credit (LC) does not survive.

45. The Petition no. 332/MP/2020 along with I.A. Nos. 18/2022 and 65/2022 are disposed of in terms of the above.

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

**Sd/
(Arun Goyal)
Member**

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

**Sd/
(Shri Jishnu Barua)
Chairperson**

