

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 68/MP/2023 along with 18/IA/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 16th May, 2024

In the matter of:

Petition under Sections 79 of the Electricity Act, 2003, seeking for quashing/ setting aside of the invoice dated 27.04.2022 issued by the Central Transmission Utility of India Limited (CTUIL), and the consequent email dated 21.01.2023 and letter dated 17.02.2023 issued by the Grid Controller of India Limited.

And in the matter of:

1. SEI Sunshine Power Pvt. Ltd.,
Plot no. 13, sy.no. 64 Part,
Block-D, Second Floor, Hitech City Layout, Madhapur village,
Hyderabad 500081
2. SEI Ravikiran Energy Pvt. Ltd.,
Plot no. 13, sy.no. 64 Part,
Block-D, Second Floor, Hitech City Layout, Madhapur village,
Hyderabad 500081
3. SEI Jyotisaroop Power Pvt. Ltd.,
Plot no. 13, sy.no. 64 Part,
Block-D, Second Floor, Hitech City Layout, Madhapur village,
Hyderabad 500081
4. SEI Renewable Energy Power Pvt. Ltd.,
Plot no. 13, sy.no. 64 Part,
Block-D, Second Floor, Hitech City Layout, Madhapur village,
Hyderabad 500081

.....Petitioner(s)

Versus

1. Central Transmission Utility of India Limited,
Saudamini, Plot No. – 2, Sector – 29
Near IFFCO Chowk Metro Station Gurgaon, Haryana– 122 001
2. Grid Controller of India Limited (Grid-India),
Saudamini, Plot No. 2, Sector- 29,



Gurugram, Haryana- 492001

3. Western Regional Load Despatch Centre,
F-3, M.I.D.C. Area, Marol
Andheri (East), Mumbai-400093
4. Power Grid Corporation of India Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016

.....Respondent(s)

Parties Present: Shri Hemant Singh, Advocate, SEISPPL
Shri Harshit Singh, Advocate, SEISPPL
Shri Shaurya Kumar, Advocate, SEISPPL
Shri Suparna Srivastava, Advocate, CTUIL
Ms. Divya Sharma, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Shri Ranjeet Rajput, CTUIL
Ms. Kavya, CTUIL
Shri Gajendra Sinh, Grid-India

ORDER

The present petition has been filed by SEI Sunshine Power Pvt. Ltd., SEI Ravikiran Energy Pvt. Ltd., SEI Jyotisaroop Power Pvt. Ltd., SEI Renewable Energy Power Pvt. Ltd. (hereinafter to be referred collectively as 'Petitioners'), under Sections 79 of the Electricity Act, 2003, seeking for quashing/ setting aside of the invoice dated 27.04.2022 issued by the Central Transmission Utility of India Limited (CTUIL), and the consequent email dated 21.01.2023 and letter dated 17.02.2023 issued by the Grid Controller of India Limited (Grid-India/ GCIL). The Petitioners have also filed an IA bearing No. 18/IA/2023 seeking a stay on the operation of the invoice dated 27.04.2022 issued by CTUIL and the impugned communications dated 21.01.2023 and 17.02.2023 issued by Grid-India till the pendency of the present petition. The Petitioners have made the following prayers:

Prayers in the Petition No. 68/MP/2023:

- (a) *Quash/ Set aside the impugned invoice dated 27.04.2022 issued by Central Transmission Utility (CTUL) and the consequent impugned email dated 21.01.2023 and letter dated 17.02.2023 issued by Grid Corporation of India Limited (GCIL), in terms as stated in the present petition;*
- (b) *Hold that the LTA of the Petitioner stands operationalized with effect from 27.10.2020, in terms as stated in the present petition;*
- (c) *Hold that the Petitioner is not liable to pay transmission charges, in any manner whatsoever, in terms of the directives/ orders dated 05.08.2020 and 15.01.2021 issued by the Ministry of Power, Government of India and the CERC Sharing Regulations, 2020 of this Hon'ble Commission; and*



(d) Pass such other order(s) and/or direction(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case.

Prayers in 18/IA/2023:

- (a) Stay the operation of the impugned invoice dated 27.04.2022 issued by CTUIL, and the impugned communications dated 21.01.2023 & 17.02.2023 issued by GCIL, till the pendency of the present petition;
- (b) Pass an ex-parte ad-interim order, thereby directing the Respondents not to curtail/ regulate the LTA of the Applicant No. 1 as communicated by GCIL vide the impugned letter dated 17.02.2023, till the pendency of the present petition;
- (c) Direct the Respondents not to take any coercive actions, in any manner whatsoever, till the pendency of the present petition; and
- (d) Pass any other or further orders as this Hon'ble Commission may deem fit in the present facts and circumstances of the case and in the interest of justice.

Submissions of the Petitioners:

2. The Petitioners have mainly submitted as follows:

- (a) The Petitioner No.1 has three power projects (with capacity of 30 MW each) viz., SEI Ravikiran Energy Pvt. Ltd. ("SEI Ravikiran"), SEI Jyotisarwarp Power Pvt. Ltd. ("SEI Jyotisarwarp") and SEI Renewable Energy Pvt. Ltd. ("SEI Renewable"). These projects are located at District, Shivpuri, Madhya Pradesh. The said projects were part of the "SEI Sunshine Phase-II" solar projects in Madhya Pradesh.
- (b) The Petitioners, after a competitive bidding process, executed Power Purchase Agreements (PPAs) dated 15.07.2015 with Tata Power Delhi Distribution Company Limited ("TPDDL"), for the supply of 30 MW power each for a period of 20 years.
- (c) Apart from the aforesaid three projects, there were another three projects namely, SEI Sunshine Power Pvt. Ltd., SEI Solarvana Power Pvt. Ltd. And SEI Suraj Renewable Energy Pvt. Ltd., (having the same capacity of 30 MW) for which TPDDL executed three separate PPAs. The said projects were part of "SEI Sunshine Phase-I".
- (d) For the purpose of evacuating 180 MW of power from Madhya Pradesh (WR) to Delhi (NR), Petitioner No.1 SEI Sunshine on 28.07.2015 applied for LTA to CTUIL. CTUIL on 29.07.2016 granted the Long-Term Access (LTA) qua the aforesaid quantum of 180 MW. The Petitioner No.1 SEI Sunshine being the lead company amongst six solar plants in MP state, executed a Long-Term Access Agreement (LTAA) with CTUIL on 24.08.2016 for the evacuation of 180 MW.

- (e) The dispute in the present Petition concerns the LTA of 90 MW (qua the aforesaid three solar power projects, which are part of Phase-II).
- (f) The Petitioner No.1 on 26.08.2016, executed a Transmission Service Agreement (TSA) with CTUIL/ PGCIL in terms of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 ('2010 Sharing Regulations').
- (g) As per Article 4.1.1 and Schedule 1.1 of the PPAs dated 15.07.2015, the scheduled delivery date/ commissioning of the project was to take place by 30.06.2017. However, subsequently, the Petitioner executed Supplementary Agreements dated 03.08.2018 with TPDDL, whereby the commissioning date of the project was further revised to 21.11.2019. Thereafter, Second Supplementary PPAs were executed on 17.01.2020 whereby the commissioning date was further revised to 20.04.2020.
- (h) Originally, under the LTA Agreement, the operationalization/grant date was mentioned as 30.09.2016 or Availability of Transmission System, whichever is earlier. Pursuant to the execution of the aforesaid supplementary PPAs, CTUIL issued a letter dated 23.01.2019, whereby it communicated that, while the LTA of 90 MW (*concerning the projects under SEI Sunshine Phase-I*) stands operationalized/ effective from 18.11.2019, however, the remaining LTA of 90 MW (*concerning the projects under SEI Sunshine Phase-II*) will be made effective from 01.03.2020.
- (i) CTUIL issued another letter dated 31.03.2020, whereby it revised the operationalization date of LTA qua 90 MW from 01.03.2020 to 01.04.2020.
- (j) During the months of February-August, 2020, the country saw a massive spread of the COVID-19 pandemic, which had disrupted the functioning of all the businesses, including that of the Petitioners. In fact, on 20.03.2020 the Government of India announced a nationwide lockdown with effect from 23.03.2020. The said lockdown continued for a substantial period of time. In fact, even when the lockdown was lifted by the Government of India, there still existed various restrictions, which hampered the functioning of the business across the country.
- (k) On 31.03.2020, CTUIL issued a letter to Petitioner No.1, thereby intimating that the Pole-IV (1500MW) extension of the Champa-Kurukshetra HVDC link has been commissioned and the remaining LTA of 90 MW is being made effective from

01.04.2020 in accordance with applicable Regulations framed by this Commission and directions issued from time to time. As such, the LTA operational date of Petitioner No.1 qua evacuation of 90 MW quantum of power was 01.04.2020.

- (l) On account of the disruption caused globally due to the COVID-19 pandemic, which was an 'admitted' force majeure event, the Petitioners could not commission their project within the timelines contemplated in the PPAs.
- (m) On account of the force majeure event, the Ministry of New and Renewable Energy (MNRE), Government of India issued notifications dated 20.03.2020, 31.03.2020, 17.04.2020, 30.06.2020 and 13.08.2020, thereby extending the commissioning dates of the renewable energy projects which were affected by the said Force Majeure event of COVID-19.
- (n) Petitioners Phase-II group companies could commission their project only on 24.10.2020.
- (o) Thereafter, on 27.07.2020, the Ministry of Power (MoP), Government of India issued a Circular wherein it was decided that all inter-state transmission projects, which were under construction as on the date of lock-down, i.e., 25.03.2020, shall get an extension of five months in respect of SCOD. However, this order shall not apply to those projects whose SCOD date was prior to 25.03.2020. It was also decided that the start date of LTA granted to a generator by CTUIL/ PGCIL based on the completion of a transmission line, whose SCOD is extended by 5 months due to COVID-19, as mentioned above, shall also be extended by 5 months.
- (p) The Petitioners approached the Delhi Electricity Regulatory Commission ("DERC") by filing a petition, Petition No. 34/2020 seeking an extension of the Scheduled Delivery Date (SDD). The DERC, vide an order dated 05.03.2021, held that on account of the Force majeure event of COVID-19, the SDD/ commissioning date shall be 27.10.2020.
- (q) However, even after the aforesaid extension of SDD/ commissioning date granted to the Petitioners, the Respondents proceeded to issue the impugned invoice and communications, thereby illegally holding the Petitioner No.1 liable towards the payment of transmission charges and further proceeded to threaten the Petitioner qua curtailing/ regulating 10% of its LTA by 20.03.2023. Rather, it ought to have considered the deemed operationalization of LTA with effect from 27.10.2020.

- (r) Vide invoice dated 27.04.2022, CTUIL has proceeded to raise a demand of Rs. 18,24,81,477/- towards the transmission charges allegedly payable by Petitioner No.1 for the period commencing from April 2020 to October 2020.
- (s) On account of the non-payment of the said illegal invoice, Grid Controller of India Limited (GCIL) proceeded to issue the following:
- i) Impugned email dated 21.01.2023, thereby intimating the trigger date of 21.01.2023 for taking coercive actions in terms of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.
 - ii) Impugned letter dated 17.02.2023, thereby intimating to curtail/regulate 10% of the total Long Term Open Access (LTA) of the Petitioner No.1 with effect from 20.02.2023, in terms of Regulation 7(2) of the LPS Rules 2022, by alleging that the transmission charges remain unpaid by the Petitioner No.1 for a period of three and a half months.
- (t) The Ministry of Power on 05.08.2020 issued an order whereby it has directed that no transmission charges would be levied upon the solar generating plants which are/ going to commission on or before 30.06.2023. Further, as per Regulation 13(1)(c) of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, the solar power projects, which were awarded through the competitive bidding process and declared their COD between 13.02.2018 to 31.12.2022 (*which further stands extended up to 30.06.2023 in terms of the 1st amendment of the Sharing Regulations 2020*), are exempted from payment of transmission charges and losses for the use of ISTS. Thus, in terms of the aforesaid, Petitioner No.1 is completely exempted from any levy of transmission charges by CTUIL.
- (u) The MoP issued another order dated 15.01.2021 in which it has categorically directed that the renewable energy generation capacity, which is eligible for a waiver of transmission charges and losses, and has been granted an extension of COD by a competent authority, the LTA of the said generating capacity shall also be extended.
- (v) Thus, in terms of the aforesaid statutory scheme read with the directions of the MNRE/ MoP, it is clear that there cannot at all be any transmission charges levied upon a solar power generator in case its COD is extended by a competent authority, meaning thereby that there is no delay.

- (w) The issue qua the implementation of the aforesaid directions of the Ministry of Power dated 15.01.2021 has been raised earlier before this Commission in Petition No. 525/MP/2020, wherein an order dated 23.05.2022, this Commission denied the extension of the operationalization of the LTA to the renewable generator (Sprng Renewable Energy Private Limited) in the said case. Further, the directions contained in the aforesaid order were challenged by Sprng Renewable Energy Private Limited before the APTEL in Appeal No. 236 of 2022, wherein the said Tribunal vide an order dated 14.07.2022 granted a stay on order dated 23.05.2022 of this Commission. In fact, there were certain other orders also passed by this Commission (*on similar lines of Sprng Renewable Energy Private Limited Case*), which have also been stayed by APTEL.
- (x) Thus, in terms of the above, there is a fit case for relaxation of the 2010 Sharing Regulations, keeping in mind the mandate and provisions of the 2020 Sharing Regulations and the entire statutory scheme discussed aforesaid. Accordingly, the invoice dated 27.04.2022 issued by the CTUIL and the consequent letter dated 17.02.2023 issued by the Grid-India needs to be quashed.
- (y) There has been a gross violation of the entire statutory/ regulatory scheme by CTUIL, which raises the question - Can Petitioner No.1 be held liable to pay transmission charges for the period when the transmission system has been declared under commercial operation when it was originally mandated under Statute that the said system will commission at the time of planned commissioning of RE generation by the Petitioners, and that such commissioning of RE generation was never delayed by the Petitioners in light of MNRE notifications and the regulatory order passed by the DERC?.
- (z) Transmission system cannot be built in isolation/being oblivious to the ground realities. The entire coordination mandate under Section 38 of the EA 2003 has been thrown to the toss by the conduct of the Respondents in the present case, despite the aforementioned events (read with the MNRE notifications and the order of the DERC), This means that there is no delay in achieving of COD by the Petitioners, but it will still be liable to pay transmission charges for the period when the transmission system has been declared under commercial operation.
- (aa) When the delay in commissioning of the generators by the Petitioners was on account of force majeure events duly recognized by the Central Government (MNRE/

MOP) and the extension of such commissioning was also approved by a regulatory forum (DERC), then the same means that the Petitioner never delayed their commissioning. As such, there remains no occasion for the Respondents to raise/ levy the impugned transmission charges.

Submissions of the Petitioners in 18/IA/2023:

3. The Petitioners reiterated their submissions in the main Petition and mainly made the following submissions:
 - (a) Impugned invoice and the communications raised by the Respondents (CTUIL and Grid-India) are not only illegal but also run contrary to the statutory scheme and framework of the EA, 2003.
 - (b) Irreparable loss and injury would be caused to the Applicants if the interim reliefs as sought are not granted by this Commission, as any curtailment/ regulation of LTA would lead to the Applicants being not able to fulfill their contractual obligations qua supply of power, which ultimately affects the interest of the end consumers of electricity.

Hearing dated 22.02.2023:

4. The counsel for the Petitioners submitted that the instant Petition had been filed by the Petitioners, inter-alia, seeking to quash /set aside the invoices dated 27.4.2022 issued by the CTUIL and the consequent email dated 21.1.2023 and letter dated 17.2.2023 issued by the Grid Controller of India Ltd. and presently, and urged for ad-interim directions to the Respondents not to curtail/regulate the Long-Term Access of the Petitioners. Learned counsel for the CTUIL strongly opposed the grant of any interim protection in favour of the Petitioners. Considering the submissions made by the learned counsel for the parties, the Commission directed that the Respondents CTUIL and Grid-India will not take any coercive actions against the Petitioners till the next date of hearing, subject to the condition that the Petitioners deposit 50% of the total outstanding transmission charges, i.e., Rs. 9.12 crore to CTUIL within one week. In the event that the Petitioners fail to comply with the above directions and deposit the above-mentioned amount, the Respondents shall be at liberty to take all the appropriate steps available under the LPS Rules and available regulatory framework.

Hearing dated 15.05.2023

5. Learned counsel for the Petitioners submitted that the decision of the Commission to deposit 50% of total outstanding transmission charges, i.e., Rs. 9.12 crore to CTUIL within a week thereof, was challenged by the Petitioners before the Appellate Tribunal for Electricity in IA No. 398 of 2023 in Appeal No. 255 of 2023 wherein the APTEL by order dated 2.3.2023 permitted the Petitioners to pay the said 50% amount in three equal instalments, the first by 15.3.2023, the second by 15.4.2023 and the third and final instalment latest by 15.5.2023. Learned counsel for the Respondent, CTUIL submitted that as per the direction of the APTEL, the Petitioner has already made the payments due.
6. After hearing the parties, the Commission admitted the Petition and directed the respondents, CTUIL and Grid-India not to take any coercive actions against the Petitioners till the next date of hearing provided the Petitioner deposits the 50% of the total outstanding transmission charges, in particular the 3rd Instalment, within the timeframe allowed by the APTEL vide order dated 2.3.2023.

Reply of CTUIL

7. The Respondent, CTUIL, in its reply vide affidavit dated 14.08.2023, has mainly submitted as follows:
 - (a) The statutory obligation/function fastened upon CTUIL is to provide open access for the inter-State transmission system (ISTS) upon payment of transmission charges. A grantee of open access is thus necessarily liable to pay such charges except to the extent it is exempt from doing so under the Regulations of this Commission. The open access granted to the Petitioner is, therefore, necessary to be administered by CTUIL as per the statutory/regulatory mandate as well as the regulatory Orders of this Commission.
 - (b) In accordance with the regulatory scheme, which only requires the CTU as the system planner (in the context of LTA granted to a generator) to coordinate with the transmission licensee and the generator so as to ensure that the associated transmission system is available on the LTA start date as applied for, granted and contractually agreed to by the LTA grantee-generator.
 - (c) The waiver from payment of transmission charges and losses is available for generation projects based on solar and wind power resources for a period of 25 years

from the date of commercial operation, subject to the prescribed conditions that have to be met to claim such waiver. In this regard, this Commission, vide its Order dated 5.2.2020 passed in Petition No.195/MP/2019, has clarified that for the capacity that has not been declared in commercial operation, the renewable energy-based generator is liable to pay the transmission charges. Further, the entire provision under the MoP's Order dated 15.1.2021 is for the waiver of transmission charges after the commissioning of the generating station and does not extend to providing relief to a generating station that has not yet been commissioned, which is also the extant regulatory provision.

- (d) Further, in the entire regulatory scheme of connectivity and LTA grant, the only relevant consideration was the transmission system availability as per the LTA commencement date indicated in the LTA application, and the contractual privity was between CTU (as the nodal agency) and the LTA grantee. The power purchaser and/or the project implementing agency, if any, had no privity of contract whatsoever to the LTA Agreement. Similarly, the PPAs of the LTA grantee and the project SCOD, i.e., the date from when the power sale/purchase obligations and arrangements under the executed PPA were to commence, were not the underlying considerations, and CTUIL had no privity of contract whatsoever with the power purchaser and/or the project implementing agency, if any. The applicable Regulations did not provide for any correlation between the commissioning of a generating station and the performance of obligations under the LTA Agreement. The position has been well settled by this Commission in the orders in Petition nos. 195/MP/2019, 525/MP/2020 and 103/MP/2021.
- (e) There was no nexus whatsoever between a project SCOD and the LTA commencement date agreed under the LTA Agreement. Besides, if the Petitioners were permitted to avoid payment of transmission charges, this would severely jeopardize the interests of other participants in the common PoC pool who were to ultimately share the charges attributable to the Petitioners.
- (f) The only obligation under the TSA that was undertaken to be performed by Petitioners was with respect to payment of transmission charges as per the bills raised upon it by CTUIL. Since there was no inter-se obligation agreed to or recorded in the TSA relating to the construction of the generating station of the Petitioners' projects or any other matter, issues arising out of or relating to the same could not be considered under the operation of clause 14. It followed that in the event of any delay in commissioning of the

Petitioners' projects and upon operationalization of the subject LTA, the liability of the Petitioners to pay transmission charges commenced and also continued till the Petitioners became eligible to claim exemption by satisfying the required conditions.

- (g) Further, perusal of the JCC Meetings shows that the LTA for Petitioner No.1 was operationalized upon commissioning of the associated transmission system in accordance with the provisions of the Connectivity Regulations and the agreed terms under the LTA Agreement; the same, therefore, could not be faulted with. Further, contrary to the Petitioners' contention, the required coordination by the answering Respondent was amply reflected in the JCC Meetings where Petitioner No.1 was duly informed of the LTA operationalization as per the agreed start date upon commissioning of the associated transmission system together with the liability to pay transmission charges for the un-commissioned capacity.
- (h) The extensions for project commissioning granted by TPDDL were related to the power sale purchase/obligations under the PPAs executed by the Petitioners with TPDDL and had no nexus with the rights and obligations undertaken by Petitioner No.1 under the transmission agreements entered into with CTUIL.
- (i) The Petitioner No.1 did not submit the required documents to claim waiver from payment of transmission charges, they became liable to pay transmission charges for the un-commissioned 90 MW capacity as per the regulatory and contractual provisions as well as the Orders of this Commission.
- (j) On 27.4.2022, CTUIL issued a transmission charges invoice of Rs.18,24,81,477/- for the period from April 2020 to October 2020 as per the 2010 Sharing Regulations. Further to the Petitioners' contention that they did not receive the said invoice since the same was delivered to the earlier/old address of Petitioner No.1's office, it is submitted that under the BCD Procedure (clause 2.1), any change in the designated persons "*authorized to process bills, raising & resolving any dispute regarding bills raised by CTU, releasing payment and signing reconciliation of accounts with CTU*" was required to be informed to the answering Respondent; the said provisions applied *mutatis mutandis* in so far as any change in address of Petitioner No.1 was concerned. However, no such information as regards the change in address was ever received from Petitioner No.1.

- (k) The MoP had issued the Electricity (Late Payment Surcharge and related matters) Rules, 2022 ["LPS Rules"] on 3.6.2022, which came into effect from 6.8.2022 for implementation of the regulation of access to power by PFC Consulting Ltd and Grid Controller of India Ltd. Under the said Rules, any entity that failed to clear its outstanding dues towards transmission charges within two and a half months from the date of presentation of a bill was liable for its power supply regulation.
- (l) The dispensation sought by the Petitioners from this Commission is beyond the regulatory scheme and is in violation thereof, and as such, cannot be permitted. Further, it is not a right but a statutory duty of CTU to levy transmission charges in terms of Section 38(2)(d) of the 2003 Act read with Regulation 26 of the Connectivity Regulations. Further, CTUIL is not a direct beneficiary and the charges collected by it are then disbursed amongst the ISTS licensees in a prescribed manner, and the role of CTU is revenue-neutral in the billing process.
- (m) In the event of any delay in the commissioning of the Petitioners' projects and upon operationalization of the subject LTA, the liability of Petitioner No.1 to pay transmission charges commences and also continues till Petitioner No.1 becomes eligible to claim exemption by satisfying the required conditions.
- (n) Plea of Covid-19 as a force majeure event is not available for being pleaded by the Petitioners, and this Commission has time and again reiterated that long term transmission customers are required to pay transmission charges from the date of operationalization of their respective LTAs as per the start date of LTA till the commissioning of their respective generation. It follows that in case of delay in the commissioning of the Petitioner projects, transmission charges are to be borne by the Petitioner till they achieve COD.

Hearing dated 20.09.2023

8. The Commission directed that Grid-India shall not take any coercive action against the Petitioners till the next date of the hearing as per the directions issued under the Record of Proceedings for the hearing dated 15.5.2023.

Rejoinder of the Petitioners to the reply filed by CTUIL

9. The Petitioners, vide affidavit dated 08.11.2023, in their rejoinder to the reply filed by CTUIL, have mainly submitted as follows:

- (a) Since the pre-condition for levy of bilateral transmission charges upon a generating station is that there has to be a 'delay' on its part. However, in the present case, the above pre-condition qua 'delay' has not taken place as the COD/ SDD of the Petitioners' group companies stood modified/ extended in terms of a regulatory order passed by the DERC.
- (b) Reference is made to the Statement of Reasons (SoR) dated 26.10.2015 issued under the CERC 3rd Amendment to the 2020 Sharing Regulations, wherein the following stands crystallized:
- i) It is 'necessary' for both generation and transmission to come up 'simultaneously' by phasing the implementation of the transmission system as far as possible to match the commissioning schedules of the generation project with the transmission systems.
 - ii) It is the statutory obligation on the part of CTUIL (*as recognized under Section 38 as well as in the SoR*) to plan and coordinate with Petitioner No.1 in order to commission its transmission system in tandem with the commissioning of the generation projects of the Petitioners' group companies.
- (c) CTUIL is statutorily bound to ensure that there is no mismatch between the commissioning of the transmission system and the commissioning of the generating plant, qua LTA, and cannot act in any manner whatsoever that is contrary to the aforesaid scheme of the EA, 2003.
- (d) CTUIL itself changed the LTA commencement date on various occasions, which shows that its system was not ready on a particular date. This shows that since the beginning, there has been no certainty about the commissioning of CTUIL's transmission system. Still, it seeks to raise bilateral transmission charges upon Petitioner No.1, especially when there is 'no delay' on the part of the said Petitioners.
- (e) CTUIL failed to take into account the very fact that the statutory documents do not contemplate a situation qua extension of operationalization of LTA in case a RE generator's commissioning date of the project is extended by a competent authority. Therefore, it is imperative for this Commission to exercise its regulatory powers conferred under the EA, 2003 to provide relief to the Petitioners and interpret the 2020 Sharing Regulations accordingly, which regulations provide for the imposition of

transmission charges in the event the COD of a generating station is delayed and the transmission system is ready.

- (f) Irrespective of the provisions contained in any regulations, the rules notified by the Central Government (and the orders issued thereunder) would certainly prevail. In the present case, the 2020 Sharing Regulations do not contemplate a scenario of extension of LTA commencement in case the SCOD of a generating project is extended; rather, the said scenario is contemplated under the Electricity Rules 2021 (and the orders passed thereunder).

Hearing dated 18.12.2023

10. During the hearing, learned counsel for the Petitioners and Respondent, CTUIL, made their respective submissions in the matter. Considering the submissions of Petitioners and Respondent, the Commission permitted the parties to file their respective written submissions and reserved the matter for order.

11. The Respondent, CTUIL, and the Petitioners have filed their written submissions in the matter dated 05.01.2024 and 09.01.2024, respectively, and mainly reiterated their earlier submissions .

Analysis and decision

12. We have considered the rival submissions.

13. The present Petition has been filed by the Petitioners seeking quashing/setting aside the invoice dated 27.4.2022 issued by Respondent No.1, CTUIL, and the consequent email dated 21.1.2023 and letter dated 17.2.2023 issued by Grid-India.

14. The Petitioners have submitted that they are developing three power projects having a capacity of 30 MW each (total 90 MW) and have PPA with TPDDL with a scheduled delivery date/ commissioning of the project as 30.06.2017 which was revised to 20.04.2020. 180 MW LTA (including 90 MW for the projects covered under the present Petition) was granted to Petitioner No.1 with a start date of 30.09.2016 or Availability of Transmission System, whichever is earlier, and the same was revised to 01.04.2020 by CTUIL. The LTA quantum of 90 MW covered under the present Petition was operationalised by CTUIL on 01.04.2020. However, on account of the disruption caused globally due to the COVID-19 pandemic, the Petitioners could not commission

their projects within the timelines contemplated in the PPAs, and the Petitioners' Projects were finally commissioned on 24.10.2020. The Petitioners approached the DERC, and DERC, vide an order dated 05.03.2021, held that on account of the Force majeure event of COVID-19, the SDD/ commissioning date should be 27.10.2020. However, even after the extension of the SDD/ commissioning date, the Respondents proceeded to issue the impugned invoice and communications, thereby illegally holding Petitioner No.1 liable towards the payment of transmission charges and further proceeded to threaten the Petitioners qua curtailing/ regulating 10% of its LTA by 20.03.2023. Rather, it ought to have considered the deemed operationalization of LTA with effect from 27.10.2020.

15. The Petitioners had further stated that MoP had issued an order dated 15.01.2021, whereby it has categorically directed that the renewable energy generation capacity, which is eligible for a waiver of transmission charges and losses, and has been granted an extension of COD by a competent authority, the LTA of the said generating capacity shall also be extended. Thus, in terms of the aforesaid statutory scheme read with the directions of the MNRE/ MoP, it is clear that there cannot at all be any transmission charges levied upon a solar power generator in case its COD is extended by a competent authority, meaning thereby that there is no delay.

16. CTUIL has submitted that the open access had been granted to Petitioner No.1, is therefore necessarily to be administered by CTUIL as per the statutory/regulatory mandate as well as the regulatory Orders of this Commission. The waiver from payment of transmission charges and losses is available for generation projects based on solar and wind power resources for a period of 25 years from the date of commercial operation, subject to the prescribed conditions that have to be met to claim such waiver, and the renewable energy-based generator is not liable to pay the transmission charges. Further, the entire provision under the MoP's Order dated 15.1.2021 is for the waiver of transmission charges after the commissioning of the generating station and does not extend to providing relief to a generating station that has not yet been commissioned, which is also the extant regulatory provision. The power purchaser and/or the project implementing agency, if any, had no privity of contract whatsoever to the LTA Agreement. Similarly, the PPAs of the LTA grantee and the project SCOD, i.e., the date from when the power sale/purchase obligations and arrangements under the executed PPA were to commence, were not the underlying considerations, and CTUIL had no privity of contract whatsoever with the power purchaser and/or the

project implementing agency, if any. The applicable Regulations did not provide for any correlation between the commissioning of a generating station and the performance of obligations under the LTA Agreement.

17. CTUIL has further submitted that the extensions for project commissioning granted by TPDDL were related to the power sale purchase/obligations under the PPAs executed by the Petitioners with TPDDL and had no nexus with the rights and obligations undertaken by the Petitioner No.1 under the transmission agreements entered into with CTUIL. If Petitioner No.1 did not submit the required documents to claim waiver from payment of transmission charges, they became liable to pay transmission charges for the un-commissioned 90 MW capacity as per the regulatory and contractual provisions as also the Orders of this Commission. In the event of any delay in the commissioning of the Petitioners' projects and upon operationalization of the subject LTA, the liability of Petitioner No.1 to pay transmission charges commences and also continues till Petitioner No.1 becomes eligible to claim exemption by satisfying the required conditions.

18. We have considered the submissions of Petitioners and Respondents. The following issues arise for our consideration:

Issue No. 1: Whether the impugned invoice dated 27.04.2022 issued by Central Transmission Utility (CTUIL), the consequent impugned email dated 21.01.2023, and the letter dated 17.02.2023 issued by Grid-India are liable to set aside.

Whether the date of commencement of long term access can be aligned with the revised SCoD of Projects of the Petitioner?

Issue No. 2: Whether the Petitioner No.1 is entitled to get an exemption from the payment of transmission charges in terms of MOP Orders on the waiver?

19. The above issues are dealt with in the succeeding paragraphs.

Issue No. 1

20. We observe that vide invoice dated 27.04.2022, CTUIL has raised a demand of Rs. 18,24,81,477/-, towards the transmission charges to be payable by Petitioner No. 1 for the period commencing from April 2020 to October 2020. The snapshot of the bill dated 27.04.2022 is as under:

To,
SEI Sunshine Power Private Ltd
Menon Eternity, 10th Floor, , , New # 165, Old no. # 110, St. Marys Road
Chennai , 600018
Tamil Nadu

DIC PAN :

Subject: Bill of Supply for Billing period of Apr'20 to Oct'20

Dear Sir,

Please find enclosed the Bill of Supply for Billing period Apr'20 to Oct'20 as per sharing Regulation 2010.

1. Bill of Supply No : **MI6001220162** Dated : **27 APR 2022**

2. Amount : **Rs.182,481,477.00**

(In words: Rupees Eighteen Crore Twenty Four Lakh Eighty One Thousand Four Hundred Seventy Seven Only)

The Bill has been raised as per CERC (Sharing of Inter-State transmission charges & losses) Regulation 2010.

Thanking You,

Yours Faithfully.



Authorized signatory
For & On Behalf of

Central Transmission Utility of India Ltd

Encl: a/a

21. On account of the non-payment of the above-referred invoice, Grid-India proceeded to issue email dated 21.01.2023 for taking coercive actions in terms of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, and a letter dated 17.02.2023, thereby intimating to curtail/ regulate 10% of the total Long Term Open Access (LTA) of Petitioner No.1 in terms of Regulation 7(2) of the LPS Rules 2022. The relevant extract of the e-mail dated 21.01.2023 is as under:

"Ministry of Power has notified Electricity (Late Payment Surcharge and related matters) Rules 2022 on 3rd June 2022. Subsequently, the said rule has been made effective from 06th August 2022.

As per the statement available in PRAAPTI portal on 20.01.2023 (Statement for trigger date 21.01.2023 attached), payment against the invoices raised to SEI Sunshine Power Pvt Ltd by CTU are due. The statement are available at 'ANNOUNCEMENTS' tab of PraapTI Portal (<http://praapti.in/>).

Accordingly, in compliance of LPSC rule 2022, the short-term open access for sale and purchase of electricity in the STOA collective and STOA bilateral category shall be regulated in full with effect from delivery date 22.01.2023. Also, the already approved

Bilateral STOA shall be curtailed from delivery date 22.01.2023 till the status in statement is changed on Praapti Portal.

The Rule 7(2) of LPS Rules 2022 mandates regulating the Long Term/Medium Term Open Access to the defaulting Entity to the extent of 10% in case the default continues for a period of three and a half months. Rule 7(2) of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 is quoted below for ready reference.

Quote

“(2) If, even one month after the regulation of the short-term access or if the dues have remained unpaid for three and a half months, apart from the regulation of the short-term access in its entirety, the long-term and medium-term access shall be regulated by ten per cent.”

Unquote

Further the Rule 7(3) of LPS Rules-2022 mandates to increase the regulation of Long Term/Medium Term Open Access to the defaulting entity, progressively by 10% for each month of default. The same is quoted below for reference.

Quote:

“(3) Reduction or withdrawal of long-term access and medium-term open access shall be in such manner that the quantum of reduction in drawl schedule increases progressively by Ten per cent for each month of default.” Unquote

In this backdrop, you are requested to inform the curtailment to the concerned parties of your STOA power transactions for enabling them to maintain the load generation balance for safe and secure operation of grid.

22. Further, the relevant extract of the Grid-India letter dated 17.02.2023 is as under:

“As you are aware, Ministry of Power (MoP) has notified Electricity (Late Payment Surcharge and related matters) Rules 2022 on 3rd June 2022. The said rule become effective from 06.08.2022. In accordance with the status available on the “PRAPTI portal”, Regulation was imposed on SEI Sunshine Power Private Limited by CTUIL, w.e.f. 21.01.2023 due to non-payment of outstanding dues. SEI Sunshine Power Private Limited was regulated in all categories of Short-Term Open Access w.e.f. 22nd January 2023.

.....

As per the latest statement uploaded in PRAPTI portal by CTUIL, (for trigger date 17.02.2023), M/s SEI Sunshine continues to appear in the default category for 28 days. Accordingly, the Long Term/ Medium Term Open Access from SEI Sunshine Power Private Limited shall be regulated by 10% w.e.f. 20th February 2023 in addition to regulation on the short-term open access.

Accordingly, the reduction in LTA by 10% will reflect in the Web Based Energy Scheduling (WBES) Portal of WRLDC w.e.f. 20.02.2023 (as per Annexure -I, enclosed herewith)”

As per the above, Grid India, vide e-mail dated 21.01.2023 and letter dated 17.02.2023, intimated to the Petitioner that due to non-payment of the pending dues, the LTA of the Petitioner shall be regulated by 10% w.e.f. 20.02.2023.

23. We observe that the Petitioners are seeking alignment of commencement of LTA to coincide with its revised SCOD of the Projects citing Force Majeure events, which have been allowed by the DERC. In this context, it is important to peruse the Intimation of Grant of LTA and the LTA Agreement. The Intimation of Grant of LTA issued by CTUIL dated 29.07.2016 is as follows:

**POWER GRID CORPORATION OF INDIA LTD.
Intimation for Grant of Long - term Access (LTA)**

1	Intimation No. Date :	C/CTU-Pig/LTAW/2016/SSPPL 29.07.2016
2	Ref. Application No. Date :	1200000127 18.08.2015
3	Name of the Applicant	M/s SEI Sunshine Power Private Ltd. (SSPPL)
4	Address for Correspondence	Menon Eternity, 10th Floor, New # 165, Old no. # 110, St. Marys Road, Alwarpet, Chennai-18 Tamil Nadu, India
5	Nature of the Applicant Normal Generator (other than captive) : Captive Generator Bulk Consumer Electricity Trader Distribution Licensee Solar Park Developer Others	Generator (Other than captive)
6	Details for Long Term Access (LTA)	
6a	Quantum (MW) for which LTA is granted	180 MW
7	Injection of Power (more than one only in case of single Drawl)	
	Entity-1	SSPPL
	State/Region	Madhya Pradesh / WR
	Quantum-1	180 MW
	Connectivity with the Grid	220 kV Shivpuri S/S (MPPTCL)
8	Drawl of Power (more than one only in case of single Injection)	
	Entity-1	Tata Power Delhi Distribution Ltd.
	State/Region	Delhi / NR
	Quantum-1	180 MW
	Connectivity with the Grid	Interconnection of STU with ISTS network
9	Transmission System for LTA	As per Annexure - I
9a	Date from which LTA is granted	30.09.2016 or Availability of Transmission System whichever is later
9b	Date from which LTA is granted	29.09.2014



9c. Implementing Agency for transmission system required for LTA	POWERGRID	415
9d. Agencies between which agreement is to be signed for implementation of transmission system	CTU (i.e. POWERGRID) & SSPPL	
9e. Amount (in Rupees) for which Bank Guarantee is to be provided by the applicant	NA	
10 Transmission Charges Applicable	Transmission charges as per CERC Sharing of ISTS charges & Losses Regulations, 2010	
11. Amount (in Rupees) for which Bank Guarantee is to be provided by the applicant	As per CERC Regulations	

Annexure-I

Transmission system required for LTA for transfer of 180 MW of power from SSPPL, Madhya Pradesh to Delhi – which is under implementations as part of different schemes

Inter-Regional System Strengthening Scheme in WR and NR (Part-B)

- Jabalpur PS - Orai 765kV D/C line
- Orai - Aligarh 765kV D/C line
- Orai - Orai 400kV D/C (Quad) line
- LILO of one ckt of Satna - Gwalior 765kV 2xS/C line at Orai
- LILO of Agra - Meerut 765kV S/C at Aligarh
- LILO of Kanpur - Jhatikara 765kV S/C at Aligarh

Transmission System Strengthening in WR-NR Transmission Corridor for IPPs in Chhattisgarh

- Up-gradation of \pm 800kV, 3000MW HVDC bipole between Champa PS – Kurukshetra (NR) to 6000MW
- Kurukshetra (NR) – Jind 400kV D/c (Quad)

We observe that the Intimation of Grant of LTA does not provide anything relating to SCOD or revised SCOD of the project. The intimation of the Grant of LTA provides the date of start of LTA as 30.09.2016 or the commissioning of the transmission system, whichever is later. There is no mention of SCOD or revised SCOD of the project. Further the intimation for the LTA grant clearly provides that the transmission charges shall be applicable as per the CERC Sharing of ISTS Charges and Losses Regulations 2010.

24. We have also perused the LTA Agreement dated 26.08.2016, which provides as follows:

“1.0

a) The date of from which LTA is granted shall be mentioned in intimation no. C/CTU-Plg/LTA/W/2016/SSPPL dated 29.07.2016 issued by CTU vide intimation letter no. C/CTU-Plg/LTA/W/2016/SSPPL dated 29.07.2016 enclosed as Attachment-I to this Agreement.”

As per the above, there is no mention of SCOD or revised SCOD of the project in the LTA Agreement. We note that the start date of the LTA is solely based on Petitioner No. 1’s assessment, requirement, and request and as agreed by Petitioner No.1.

25. Petitioner No.1’s LTA for 90 MW covered under the present Petition was operationalized with effect from 01.04.2020, vide CTUIL letter dated 31.03.2020. The relevant extract of the CTUIL letter dated 31.03.2020 is as under:

“Subject: Effectiveness of balance 90 MW LTA out of 180MW granted to M/s SEI Sunshine Power Private Limited (SSPPL) – reg.

Dear Sir,

This is with reference to 180 MW LTA granted to M/s SEI Sunshine Power Private Limited (SSPPL) vide intimation dated 29.07.2016. On the request of SSPPL, out of 180MW, 90MW LTA was operationalised vide our letter dated 14.11.2019. Subsequently, vide our letter dated 23.01.2020, it was informed that the balance 90MW LTA shall be made effective with the commissioning of remaining 1500MW capacity of up-gradation of ± 800 kV, 3000MW HVDC bipole between Champa PS and Kurukshetra to 6000MW which was expected by Feb'20.

In this regard, it is to mention that the Pole-IV (1500MW) extension of Champa - Kurukshetra HVDC link has been commissioned and the remaining LTA of 90MW is being made effective from 01.04.2020 in accordance with applicable CERC Regulations and directions issued from time to time. Details are as under:

Sl. No.	Applicant	Injection Point	Drawee Regions	Quantum (MW)	Details of beneficiaries	Start date of LTA	End date of LTA
1.	SEI Sunshine Power Private Ltd.	SSPPL, MP, WR	Delhi, NR	90	Tata Power Delhi Distribution Ltd. (TPDDL)	01.04.20	30.09.37
					NR (Target)	01.10.37	29.09.41
			Total	90			

“

As per the above, Petitioner No.1’s LTA was operationalized with effect from 01.04.2020 after the availability of transmission system as per the LTA grant.

26. The relevant extract of the order dated 05.03.2021 passed by the DERC in Petition No. 34 of 2020 is as under:

“Issue No. 2: Whether the Petitioner is eligible for extension to shift the Schedule Delivery Date as per PPA?”

18. It is observed that Article 7.3 read with Article 7.7 of the PPA provides for extension of period of scheduled delivery date or the revised scheduled delivery date, as the case may be, by a period for which the Seller has been affected by force majeure event. Therefore, in view of above Articles of PPA related to Force Majeure, facts placed on record and considering the grim situation of COVID-19 global pandemic, the prayer of the Petitioner related to extension of Scheduled Delivery Date (SDD) is granted upto 27.10.2020, without any additional cost burden to consumers.

19. The Respondent vide its affidavit dated 02.11.2020 has submitted that the period of delay between 26.08.2020 till actual delivery date has to be separately scrutinized by the Commission and for such delay the Respondent is entitled to receive indemnification payments along with interest charges till COD of balance 90MW projects.

20. In view of the above, summary of our decision with respect to the prayers of the Petitioner is as under: -

a. On account of Force Majeure condition, the extended Scheduled Delivery Date shall be 27.10.2020.

b. No indemnification payments will be payable to the Respondent for the period of delay between 25.03.2020 till Actual Delivery Date i.e. 27.10.2020.”

As per the above, the DERC has observed that the provisions of the PPA provide for the extension of the period of the scheduled delivery date or the revised scheduled delivery date, as the case may be, by a period for which the Seller has been affected by force majeure event, accordingly the DERC allowed the extension of Scheduled Delivery Date (SDD) up to 27.10.2020 under the PPA.

27. The Commission, in a similar matter in its order dated 05.02.2020 in Petition No. 195/MP/2019, has observed as follows:

“24. The Petitioner has also referred to Regulation 15B of the 2009 Connectivity Regulations to argue that dates of PPAs and LTA should be aligned. The Petitioner has further submitted that under Section 28(3)(a) of the Act, Regional Load Despatch Centre (“RLDC”) has the responsibility of optimum scheduling and dispatch of electricity, strictly in accordance with the contracts entered into with the licensee or the generating companies. It has submitted that non-alignment of PPAs with operationalization of grant has led to non-optimal scheduling.

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.

26. PGCIL has submitted that in terms of third proviso to Regulation 12(1) of the 2009 Connectivity Regulations, the relevance of PPA is limited to firming up the drawal or injection point (as the case may be) and is not at all determinative of the start date or date of effectiveness of LTA and that LTA is solely determined as per the applicable Regulations of the Commission, LTA application, LTA grant letter and LTA agreement. It has further submitted that it is only when Connectivity or LTA is granted with system augmentation that the start date of Connectivity or LTA is dependent on the commissioning of the identified transmission elements required for Connectivity/ LTA. In such cases, Connectivity/ LTA is granted with 'availability of the requirement transmission elements/ system or the start date, whichever is later'.

28. Thus, the Petitioner was fully aware of all the relevant dates and was a party to the grant of LTA. It was the Petitioner at whose behest the date of LTA was decided as 31.07.2019. In our view, the Petitioner cannot now contend that CTU should have matched the dates of SCOD in the PPAs and the operationalization of LTA. It was the responsibility of the Petitioner to assess and inform the correct dates from when it required LTA, specially, when there is no system augmentation involved and LTA is granted on existing system. The Petitioner has itself submitted that there were incentives attached for early commissioning and, therefore, it cannot be ruled out that the Petitioner wanted to commission its project earlier than SCOD and for that purpose, it sought LTA from 31.07.2019. This is also borne out from JCC meetings where the Petitioner had stated that it was expected to Commission 150 MW by 31.7.2019. Therefore, PGCIL cannot be faulted for operationalizing the LTA from the date it was sought by the Petitioner."

A bare perusal of the extracted order, it is evident that it is the responsibility of an LTA applicant to seek the start date of LTA as per its assessment, and the LTA Agreement does not provide for any matching with SCOD of the project subsequent to the grant of LTA.

28. The Commission, in its order dated 5.2.2020 in Petition No. 195/MP/2019, has also observed as under:

"30. The Petitioner has prayed for shifting of date of operationalization of LTA. However, once LTA is granted from a specific date, CTU reserves the transmission capacity for such Applicant from that date subject to provisions of Regulations. In case there are new applications for the same corridor on which such an Applicant is granted LTA, CTU has to plan new corridor to accommodate request of the new Applicants. Shifting such dates as per PPA dates would put the burden of transmission charges for the period from which capacity was allocated to a certain LTA grantee to other DICs of ISTS. An LTA Applicant has to seek LTA keeping in view the commercial implications of such LTA grant. In the

instant case the Petitioner, being fully aware of its SCOD, signed LTA Agreement for a date prior to its SCOD. Therefore, Petitioner's request for aligning date of start of LTA with SCOD of the project under provisions of "Power to relax" or "Power to remove difficulty" cannot be agreed to. Hence, the prayer of Petitioner is rejected."

As per the above, the Commission has observed that any shifting/alignment of commencement of LTA as per PPA dates would put the burden of transmission charges on other DICs of ISTS for the period from which capacity was allocated to the LTA Applicant until the revised commencement date of LTA.

29. The Commission, in its order dated 08.06.2022 in Petition No. 103/MP/2021 along with I. A No. 71/2021 batch matter, observed as under:

"54. The Petitioner has contended that the entire transmission scheme envisaged under the agreements is interconnected and must be operational for the successful supply of power from the Project to the beneficiaries through the Transmission Licensee. In our view, there are two parts in the entire transaction: (a) power and (b) transmission. The Petitioner has entered into a PPA for sale of power from a specific date. The Petitioner has separately entered into an agreement for access to the transmission system as per its own assessment of start date and quantum of supply of power. The transmission licensee constructs the transmission system based on the requirement given by the LTA Applicant. Once the transmission licensee has constructed the transmission system, it is entitled to get its tariff as determined or adopted by Commission. Now, if the project of the LTA Applicant gets delayed for some reasons and the SCOD of the project is extended, it cannot become the reason for transmission licensee not to get its entitled tariff."

As per the above, the Commission has taken the view that once the transmission licensee has constructed the transmission system, it is entitled to get its tariff as determined or adopted by the Commission. However, if the project of the LTA Applicant gets delayed for some reason and the project's SCOD is extended, it cannot become the reason for the transmission licensee not to get its entitled tariff.

30. The Petitioners have referred to the MoP Order dated 15.01.2021 stating that the referred Order provides that where COD of a Project has been extended by the Competent Authority, the commencement and period of LTA shall also get extended accordingly and it would be deemed that the period of ISTS waiver is extended. We have perused the referred MOP Order dated 15.01.2021, quoted as follows:

"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 LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.”

As per the above, it is provided that Renewable Energy generation capacity, which is eligible for ISTS waiver in terms of the extant orders, is granted an extension in COD by the competent authority, the commencement and the period of the LTA shall also be extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.

31. With respect to the quoted MOP Order dated 15.1.2021, 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 30 of this Order provides that for an entity that is provided an extension of COD by the competent authority, LTA under waiver shall start from such COD date (i.e. 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 the COD of the generating station. Nowhere is it provided that a generator that has not declared COD would not be levied transmission charges as per extant regulations.

32. The Commission in Order dated 23.5.2022 in Petition No. 525/MP/2020 has already dealt with the issue and is 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."

33. The Petitioners have submitted that the directions contained in the aforesaid order were challenged by Sprng Renewable Energy Private Limited before the APTEL in Appeal No. 236 of 2022, wherein the Tribunal vide an order dated 14.07.2022 granted a stay on order dated 23.05.2022 of this Commission. We have perused the Order dated 14.07.2022 of APTEL, whereby APTEL has directed that "in the facts and circumstances, there will no precipitative actions taken by the second respondent till further orders. As such APTEL has not given any final decision on the merits of the findings of the Commission.

34. We observe that the MOP Order was issued on 15.01.2021, and it has been specifically mentioned in the said Order that the Order would be applicable prospectively. The Petitioner's LTA has been operationalized with effect from 01.04.2020, and the disputed period in the present Petition is 01.04.2020 to 27.10.2020, which is prior to

the issuance of the MOP's Order dated 15.01.2021. Therefore, the reliance of the Petitioner on this Order is anyway misplaced. ,

35. In view of forgoing discussions, the prayer of the Petitioners in the present petition to align the LTA commencement date with the revised SCOD, i.e., 27.10.2020, stands rejected, and accordingly, Petitioner No.1's LTA stand operationalized w.e.f. 01.04.2020, and the Petitioner shall be liable to pay the corresponding transmission charges.

36. Further, with regard to the outstanding dues, we observe that in terms of this Commission direction vide RoP for hearing dated 22.02.2023 to deposit 50% of total outstanding transmission charges, i.e., Rs. 9.12 crore to CTUIL within a week thereof was challenged, by the Petitioner before the Appellate Tribunal for Electricity in IA No. 398 of 2023 in Appeal No. 255 of 2023 wherein the APTEL by order dated 2.3.2023 permitted Petitioner No. 1 to pay the said 50% amount in three equal instalments and accordingly Petitioner No.1 has already deposited 50% of the total outstanding transmission charges, i.e., Rs. 9.12 crore to CTUIL.

37. As we have already concluded that we are not inclined to give any relief to the Petitioners with respect to the alignment of the LTA operationalization date with the extended SCOD. Therefore, the prayer of the Petitioners to set aside the impugned invoice dated 27.04.2022 issued by Central Transmission Utility (CTUIL) and the consequent email dated 21.01.2023 and letter dated 17.02.2023 issued by Grid-India, is hereby rejected. Accordingly, Petitioner No.1 is directed to pay the balance amount against the invoice dated 27.04.2022, issued by CTUIL.

38. Issue No.1 is answered accordingly

Issue No. 2: Whether the Petitioner No.1 is entitled to get an exemption from the payment of transmission charges in terms of MOP Orders on the waiver?

39. The Petitioners, referring to the Ministry of Power (MoP) Orders dated 05.08.2020 on the subject of waiver of ISTS charges on the transmission of electricity generated from solar and wind sources of energy, have prayed for relief from payment of transmission charges for the period of delay of the Project. We have perused the MOP Order dated 05.08.2020 quoted below:

“Subject: Waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources of energy under Para 6.4 (6) of the

revised Tariff Policy, 2016.

1.0 Para 6.4 (2) of the revised Tariff Policy provides that "In order to further encourage renewable sources of energy, no inter-State transmission charges and losses may be levied till such period as may be notified by the Central Government on transmission of the electricity generated from solar and wind sources of energy through the inter-state transmission system for sale."

2.0 Ministry of Power vide reference number 23/12/2016-R&R dated 13th February, 2018 had issued an Order for Waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources of energy. This Order had superseded the earlier Orders dated 30th September, 2016 and 14th June, 2017. Further, Ministry of Power vide Order No. 23/12/2016-R&R dated 6th November, 2019 had extended the waiver date from date 31st March, 2022 to 31st December, 2022.

3.0 In supersession of Ministry of Power's earlier order No 23/12/2016-R&R dated 13.2.2018 and Order No. 23/12/2016-R&R dated 6th November, 2019 it has been decided that **no inter-state transmission charges and losses will be levied on transmission of the electricity generated from following power plants for a period of 25 years from the date of commissioning of the power plants** which meet the following criteria:

a) Power plants using solar and wind sources of energy, including solar-wind hybrid power plants with or without storage commissioned till 30th June, 2023 for sale to entities having a Renewable Purchase Obligation (RPO), irrespective of whether this power is within RPO or not, provided that in case of distribution licensees, the power has been procured competitively under the guidelines issued by the Central Government.

b) Solar PV power plants commissioned under "MNRE's Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) dated 5.3.2019", and

c) Solar PV power plants commissioned under SECI Tender for manufacturing linked capacity scheme (RFS No SECI/C&P/RfS/2GW Manufacturing/P 3/R1/062019 dated 25.06.2019) for sale to entities having RPO, irrespective of whether this power is within RPO or not.

4.0 This Order shall be applied prospectively i.e. from the date of issue of Order."

40. The above extracted MoP Order dated 05.08.2020 provides that no inter-state transmission charges shall be applicable on the transmission of the electricity generated from solar and wind sources of energy for a period of 25 years from the date of commissioning of the power plants. Therefore, the MoP letter envisages waiver of the transmission charges only after the Commissioning of the power plants, and it does not provide for granting relief from payment of transmission charges due to delay of the generation project. Accordingly, the Petitioners' reliance on the MoP order dated 05.08.2020 is misplaced.

41. Further, Petitioner No.1 has been granted LTA in terms of the 2010 Sharing Regulations, and the LTA grant clearly provides that the transmission charges shall be applicable as per the 2010 Sharing Regulations. The MOP Orders with regard to waiver of transmission charges have been incorporated in the 2010 Sharing Regulations

including the modalities of its implementation. The relevant extract of Regulation 7 of the 2010 Sharing Regulations is as under:

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

(i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government;

(ii) Such generation capacity has been declared under commercial operation between 13.2.2018 till 31.3.2022;

(iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to all entities including Distribution Companies for compliance of their renewable purchase obligations.”

42. As per the above, the 2010 Sharing regulations clearly provide that waiver of transmission charges is for generation of electricity i.e. from the date of commercial operation. Nowhere is it provided that a generator that has not declared COD would not be levied transmission charges.

43. In light of the discussions in the foregoing paragraphs, we find no merit in Petitioners' submissions, and accordingly, we are of the view that Petitioner No.1 shall not be entitled to any waiver of inter-State transmission charges till the COD of its generating stations.

44. Issue No.2 is answered accordingly.

45. Petition no. 68/MP/2023, along with I.A. Nos. 18/2023 is disposed of in terms of the above.

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

**Sd/
(Arun Goyal)
Member**

**Sd/
(Jishnu Barua)
Chairperson**