

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.107/MP/2021

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order: 31.12.2025

In the Matter Of:

Petition under Sections 79(1)(c), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 seeking directions against Power Grid Corporation of India Limited to comply with the Ministry of Power's Order bearing Reference No. 23/12/2016-R&R dated 15.1.2021 and extend the commencement of the Petitioner's Long-Term Access under the LTA Agreement dated 15.10.2018 to coincide with the revised Scheduled Commissioning Date under the Petitioner's Power Purchase Agreement dated 4.9.2018.

And in the Matter Of:

Avikiran Solar India Private Limited,
12th Floor, Crescent 1, Prestige,
Shantiniketan, ITPL Main Road, Hoodi,
Whitefield, Bengaluru, Karnataka-560048.

...Petitioner

Versus

1. Power Grid Corporation of India Limited,
SAUDAMINI, Plot No. 2, Sector 29,
Near IFFCO Chowk,
Gurgaon, Haryana-122001.
2. Central Transmission Utility of India Limited,
SAUDAMINI, Plot No. 2,
Sector 29, Gurugram, Haryana-122001.

...Respondents

Parties Present: Shri Syed Jafar Alam, Advocate, ASIPL
Shri Ashwin Ramanathan, Advocate, ASIPL
Shri Parthsarathi Srivastava, Advocate, ASIPL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Divya Sharma, Advocate, CTUIL
Shri Nitai Aggrawal, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Ms. Kavya Bhardwaj, CTUIL
Shri Haribabu Vakada, CTUIL
Shri Yogeshwar, CTUIL



ORDER

Avikiran Solar India Private Limited (AS IPL) has filed the instant petition seeking a direction against Central Transmission Utility of India Limited (CTUIL) to comply with the Ministry of Power order dated 15.1.2021 on waiver of transmission charges and to consequently extend the commencement of the Petitioner's Long-Term Open Access (LTA) under the Long Term Access Agreement (LTA Agreement) dated 15.10.2018 to coincide with the revised Scheduled Commissioning Date (SCD) under its Power Purchase Agreement (PPA) dated 4.9.2018.

2. The Petitioner made the following prayers in the original petition:

"a) *Direct Respondent No. 1 to comply with the Ministry of Power's Order bearing Reference No. 23/12/2016-R&R dated 15.01.2021 and consequently extend the commencement of the Petitioner's LTA under the Long-Term Access Agreement dated 15.10.2018 to coincide with the revised Scheduled Commercial Operations Date under its Power Purchase Agreement dated 04.09.2018;*

b) *Hold and direct that Respondent No. 1 cannot levy any transmission charges from the Petitioner, in view of the circumstances described in the Petition;*

c) *Restrain the Respondent from taking any coercive steps against the Petitioner during the pendency of the present Petition including raising of any purported invoices claiming transmission charges under the LTA Agreement and/ or encashment of the LTA BG No. PEBNDH900374 dated 11.01.2019 for an amount of INR 14,25,00,000/- and/or revocation of LTA granted to the Petitioner;*

Without prejudice and in the alternative to prayer (a) and (b), exercise the Power to Relax the application of the 2020 Sharing Regulations to the Petitioner, in view of the circumstances described in the Petition;

d) *Without prejudice and in the alternative to prayer (a) and (b), exercise the Power to Remove Difficulties in giving effect to the 2020 Sharing Regulations as against the Petitioner, in view of the circumstances described in the Petition;*

e) *During the pendency of this Petition, pass appropriate ad-interim ex parte orders in terms of the prayers above inter alia directing the CTU to maintain status quo and restraining CTU from taking any coercive action against the Petitioner including under the LTA Agreement dated 15.10.2018, Transmission Service Agreement dated 15.10.2018 or any other financial/ regulatory action; and*

f) *Pass such other orders that this Hon'ble Commission deems fit in the interest of justice."*

3. Along with the petition, the Petitioner also filed IA No.36/IA/2021 seeking directions to restrain PGCIL from taking any coercive steps against the Petitioner during the



pendency of the petition, including raising any invoices and not encashing the LTA BG and to maintain the status quo.

4. The petition was admitted on 4.6.2021, and notice was issued to the Respondents, PGCIL and CTUIL, and the Petitioner was directed to submit the present status of the Project and the anticipated COD on affidavit. PGCIL was directed to submit the status of Bhuj Pooling Station and the associated transmission system along with its reply. As regards IA No.36/IA/2021, filed by the Petitioner seeking directions to restrain PGCIL, the Commission observed that CTUIL has not raised any invoices for payment of transmission charges and losses as on that date and, as such, there is no possibility for default of the payment by the Petitioner and consequent encashment of BG by PGCIL and therefore declined to grant any interim order. Accordingly, IA No.36/IA/2021 was disallowed and disposed of.

5. The Petitioner made the following submissions in the petition in support of its claims:

(a) SECI issued a Request for Selection on 5.2.2018, inviting proposals for selection of wind power developers for development of a cumulative capacity of 2000 MW of ISTS Connected Wind Power Projects in India on a “Build Own Operate” basis. Enel Green Power India Private Limited (“Enel”) (previously known as BLP Energy Private Limited) submitted its bid and emerged as the successful bidder for the establishment of a Wind Power Plant with a capacity of 285 MW at a tariff of ₹ 2.51/kWh in the Kutch District of the State of Gujarat (Project). Thereafter, SECI issued a Letter of Award on 1.6.2018 in favour of Enel. The Petitioner, i.e. ASIPL, was established by Enel as a Special Purpose Vehicle to implement the Project.

(b) The Petitioner and SECI entered into a PPA on 4.9.2018. The SCD of the Project as per the PPA was 29.2.2020. Stage-I Connectivity was granted on



17.7.2018, and Stage-II Connectivity was granted by CTUIL along with bay allocation at the Bhuj PS on 19.7.2018. The Petitioner executed a Connectivity Agreement with the CTUIL on 6.8.2018. The Petitioner also submitted the Connectivity BG dated 16.8.2018 for an amount of ₹5,00,00,000/- (Rupees Five Crore Only) to the CTUIL, as required under the Connectivity Agreement.

(c) On 19.9.2018, the Petitioner was granted 285 MW LTA to the ISTS with Western Region as the target region. On 15.10.2018, the Petitioner submitted the LTA Agreement and Transmission Service Agreement (TSA) to the CTUIL. The Petitioner also submitted the LTA BG in terms of the LTA Agreement.

(d) As per the LTA Agreement, the LTA granted to the Petitioner was to be operationalised by 29.2.2020 or upon the availability of the requisite ISTS transmission system, whichever is later. As per the LTA Agreement, the transmission charges for utilising the LTA shall be governed by the provisions of the Sharing Regulations issued by the Commission and the orders issued by the Ministry of Power under the National Tariff Policy, 2016, with respect to waiver of transmission charges and losses for renewable energy projects.

(e) The Central Government is empowered to waive the transmission charges and losses for renewable energy projects in order to promote the development of the renewable energy sector under the 2016 Tariff Policy.

(f) MoP has issued orders waiving transmission charges and losses for renewable energy projects subject to the fulfilment of certain terms and conditions mentioned in such orders. The MoP vide order No. 23/12/2016-R&R dated 30.6.2016 waived transmission charges and losses for the first time for renewable energy Projects subject to the fulfilment of conditions. Thereafter, the MoP vide orders dated 14.6.2017, 13.2.2018, 6.11.2019, 5.8.2020 and 15.1.2021 ("MoP Waiver Orders"), have extended the benefit of waiver of ISTS charges and losses



to all the renewable energy projects that are commissioned up to 30.6.2023. The Petitioner is entitled to seek an extension in the date of commencement of LTA in view of the relaxation granted by the MoP.

(g) The Petitioner promptly began the implementation and construction work for the development of the Project. However, the Project work was adversely affected by the following *force majeure* events:

Delay in procurement of land *inter alia* on account of frequent and materially adverse changes in the Government of Gujarat's land allocation policy.

(h) The Petitioner faced significant delays in procuring land for its wind power Project due to frequent changes in Gujarat's land policy. At the time of bid submission, there were no preconditions or qualifications prescribed for the allotment of revenue land to wind power developers in Gujarat, and the said allotment was carried out within a reasonable timeframe based on applications received by the State revenue department. In fact, as per the Policy for Allotment of Land on Lease for Wind Projects issued by the Gujarat Government on 11.6.2004 ("2004 Land Allotment Policy"), priority was given to the allocation of Government waste land for the construction of wind farms. However, the said policy of land allotment was arbitrarily changed on 25.7.2018 when the Gujarat Government issued directions to District Collectors in all districts to allocate revenue land to Projects selected through bids invited by GUVNL only and to keep all other applications for land pending until the finalisation of a new land allotment policy.

(i) Based on the representations received from various renewable project developers, the MNRE addressed a letter to the State Government of Gujarat in August, 2018, directing the relevant State authorities to process land-related applications irrespective of the bidding agency. Subsequently, the State Government on two separate occasions in September 2018 and March 2019,

clarified that revenue land would also be allocated to projects awarded under SECI bids. The above-mentioned position has been reiterated by the Gujarat Government in its letter dated 27.11.2019 addressed to all District Collectors in the State, that government land would be allotted to bid winners up to SECI-IV.

(j) While the Gujarat Government has declared that it will allocate government land to wind Project developers, including projects awarded under SECI tranche IV bids, the same was not translated into actual allotment of land to developers. Even as on date, despite several assurances, there has been no progress in relation to land allotment due to administrative delays by the Gujarat Government, which is clearly beyond the control of the Petitioner.

(k) Despite assurances from the Gujarat Government through letters in 2019 and a high-level meeting chaired by the Chief Minister in November 2020, land allocation for SECI bid winners remains stalled. This uncertainty has hindered the Petitioner's ability to secure funding and commit additional equity. Nevertheless, the Petitioner remained optimistic that the pending land approvals would be granted soon and has, accordingly, planned to commission the Project by the revised SCD of 14.8.2021.

Delays in the grant of the requisite NOC by the Ministry of Defence, Government of India, for the erection of WTGs at various locations;

(l) The Petitioner submitted applications for NOCs from the Ministry of Defence (MoD) in November 2018 and August, 2019 for erecting WTGs. Despite MNRE's directive dated 22.10.2019 stating that NOCs should be granted within 60 days, the approvals were delayed by approximately 4 and 5 months, respectively. This delay hindered the Project development activities in the affected areas. The NOCs were eventually received in May 2019 and March, 2020. MNRE, in a directive dated 22.10.2019 to SECI, has provided that a timeline of 60 days from the date of application may be considered as a reasonable time for the grant of NOCs by

the MoD, beyond which any delay in the grant of NOCs ought to be considered for the purpose of granting any extensions in the SCD of a generating station.

Delay on account of the imposition of a nationwide lockdown to control the COVID-19 pandemic outbreak.

(m) Covid-19 pandemic severely impacted the implementation of the Project, causing delays between March, 2020 and May 2020 due to lockdown restrictions. These restrictions disrupted business operations, halted construction, and affected supply chains globally. Despite the phased reopening from June, 2020, the Project's progress remained slow due to continued supply chain delays, labour shortages, and strict Covid-19 protocols.

(n) On 31.3.2020, the Petitioner issued a *force majeure* notice under the TSA, requesting exemption from transmission charges and protection against LTA BG encashment. The Government of India and MNRE recognised Covid-19 as a 'natural calamity' and directed all renewable energy agencies to treat the lockdown as a *force majeure* event, granting a blanket extension of five months to the affected Projects.

(o) The Petitioner is developing the Project in a bona fide manner but has suffered delays on account of certain unavoidable, unforeseen and uncontrollable events. On account of the aforesaid delays, the Petitioner sought an extension in its SCD from SECI, the competent authority under the PPA to grant such extensions. SECI, after a detailed examination of the various uncontrollable, unavoidable and unforeseen events, granted extensions in the SCD from time-to-time. Therefore, as on date, by virtue of the extensions granted by SECI and MNRE, there is no delay attributable to the Petitioner.

(p) The Petitioner periodically apprised PGCIL of the occurrence of the aforesaid uncontrollable events that have prevented commissioning of the Project by the

originally envisaged SCD. The CTUIL was apprised of the issues relating to delays in allotment of land and the consequent provisional extension granted by SECI on 29.3.2019 itself. On 24.2.2020, the Petitioner informed CTUIL that SECI had extended the timelines for achieving the scheduled commissioning in terms of the PPA up to 14.3.2021. However, the CTUIL vide its letter dated 18.3.2020 refused to accommodate the Petitioner's request for any extension. The CTUIL, vide email dated 27.3.2021, has indicated that the Identified Transmission System is likely to be commissioned by 31.3.2021, after which the Petitioner shall be liable to bear all the applicable charges as per law. The CTU has further required the Petitioner to establish the requisite payment security mechanism in relation to the LTA.

(q) As per the LTA Agreement, the transmission charges and losses have to be borne by the Petitioner in terms of the applicable Sharing Regulations and orders issued by the MoP, including any/ all amendments thereto. Therefore, the CTUIL has contractually pre-agreed in the LTA Agreement itself that, if any subsequent executive order, such as the MoP Order, were to be issued, such order would apply to the agreement. Since the extant MoP Order expressly waives the levy of transmission charges and losses on generators who have been granted an extension in the commissioning date by a competent authority at least up to such extended commissioning date, the Petitioner herein is entitled to the aforesaid waiver in terms of the MoP Order read with the relevant provisions of the LTA Agreement.

(r) The CTU must refrain from levying charges, revoking the LTA, or encashing the LTA BG. The Project delays are not attributable to the Petitioner, as SECI, following MNRE's recommendation, has granted a penalty-free extension in the SCD. The Petitioner originally applied for LTA commencement from 29.2.2020 in good faith, in line with its original SCD, but unforeseen delays occurred due to

uncontrollable factors. Despite keeping the CTU informed and seeking an extension of the LTA commencement, no relief was provided.

(s) Applying the MoP waiver order will not prejudice CTU. Regulations 27 and 28 of the 2020 Sharing Regulations should be revoked in order to overcome the discrepancies and anomalies arising from their implementation of the 2020 Sharing Regulations. Renewable energy generators like the Petitioner will be saddled with the liability to pay transmission charges for the LTA granted, despite having a validly postponed SCD under their PPA.

6. In compliance with the directions of the Commission in RoP dated 4.6.2021, the Petitioner has submitted, vide affidavit dated 20.6.2021, the status of the Project and the transmission system, and it is as follows:

Current Status of the Project:

- a. The progress made in relation to the setting up of the WTGs is as follows:
 - i. Land has been acquired in respect of 80 out of the total 136 WTGs to be installed under the Project;
 - ii. Significant progress has been made in the civil works relating to setting up the WTGs; Delivery of WTGs on the site has commenced since September 2020, and a total of 60 WTGs have been delivered so far.

Current Status of the Dedicated Transmission System:

- b. The progress made with respect to the Dedicated Transmission System is set out below:
 - i. Tower erection and line stringing works have been completed in respect of 18.322 km out of the 55.7 km of the 220 kV dedicated transmission line;
 - ii. Tower foundation works have been completed in respect of 188 out of 200 towers;
 - iii. Tower erection works have been completed for 163 out of 200 towers, and it is expected that the erection of all towers will be complete by August, 2021.
 - iv. Land has been acquired for setting up the pooling substation;



- v. Contract for setting up the pooling substation has been awarded, and 73.70% of the construction has been completed; and
- vi. The pooling substation is expected to be completed by July, 2021.

7. PGCIL/ CTUIL has filed its reply to the petition, vide affidavit dated 13.7.2021. The issues raised in its reply are as follows:

(a) The Petitioner was granted connectivity at the Bhuj pooling station, Stage-I connectivity on 17.7.2018 and Stage-II connectivity for 285 MW on 19.7.2018, effective from 29.2.2020. As part of the Stage-II connectivity, the Petitioner was required to sign a TSA and submit the Connectivity Bank Guarantee (Conn-BG) within 30 days of intimation. Failure to comply with this condition would result in the cancellation of Stage-II connectivity without any extension. Further, the Petitioner was obligated to complete the dedicated transmission line and pooling sub-station within 24 months from the date of bay allocation. These conditions were in accordance with the Detailed Procedure for Grant of Connectivity to Renewable Projects, 2018 (2018 Procedure), which mandates strict adherence to timelines and procedural requirements.

(b) The Petitioner made an application to PGCIL on 1.8.2018 for the grant of LTA for 285 MW on a target region basis (Western Region), with the start date of 29.2.2020. The said application was discussed at the 30th Meeting of Western Region constituents regarding connectivity, and LTA held on 5.9.2018, and the Petitioner was granted LTA as requested w.e.f. 29.2.2020, vide letter dated 19.9.2018, with the following augmentation in the transmission system at Bhuj PS:

“6x500 MVA, 400/220 kV ICTs (in addition to 2x500 MVA, 400/220 kV ICTs which are under implementation).

2x 1500MVA, 765/400 kV ICTs (in addition to 2x1500 MVA, 765/400 kV ICTs which are under implementation)”



(c) The Petitioner entered into a TSA for Connectivity with PGCIL on 6.8.2018, agreeing to furnish a connectivity bank guarantee (Conn-BG) of ₹5 crore. As per the Agreement, the Conn-BG was to be encashed if the Petitioner failed to complete the dedicated transmission line and the pooling sub-stations within 24 months from the date of bay allocation or if it failed to fulfil conditions under Para 9.3 of the RE Connectivity Procedure. The SCD of the transmission line was 15.12.2019, and the generation pooling station was 29.2.2020. The Agreement, being statutory in nature, required strict adherence to these timelines. In compliance, the Petitioner furnished the Conn-BG on 16.8.2018.

(d) Detailed Procedure notified under the Connectivity Regulations, shows that the entire mechanism for LTA grant, with or without system strengthening, was made on the basis of the date of LTA commencement date requested by the LTA applicant, so that power flow in the ISTS could be accommodated after considering the ATC. Accordingly, neither the Connectivity Regulations/ Detailed Procedure nor the TSA signed by the Petitioner made any provision for “*extension*” of the LTA commencement date.

(e) Under the LTA Agreement signed by the Petitioner with the PGCIL, the LTA start date was agreed to be 29.2.2020, and there was an unequivocal acknowledgement. The same was in consonance with the regulatory procedure for the grant of LTA. Being fully aware of the provisions governing the grant of LTA and having undertaken to avail of the LTA as per the LTA grant, the Petitioner could not later seek extension of the LTA commencement date as has been prayed for in the present petition.

(f) The Petitioner further agreed and undertook under the LTA Agreement to furnish a bank guarantee in the sum of ₹14.25 crore for its Project as a security mechanism for the LTA transmission system until the entire quantum under the

LTA became operational. The Petitioner furnished the said bank guarantee dated 11.1.2019, which was valid till 31.8.2021. The said bank guarantee was liable to be encashed by PGCIL in case of adverse progress of work within the scope of PGCIL, as assessed during the Joint Coordination Meeting.

(g) In the regulatory framework for connectivity and LTA grant, the only relevant consideration was the availability of the transmission system as per the LTA commencement date indicated in the LTA application. The contractual privity was between PGCIL (as the nodal agency) and the LTA grantee. The power purchase arrangements of the LTA grantee and the Project SCD, i.e. the date from when the power sale/ purchase obligations and arrangements were to commence, were not the underlying considerations, and PGCIL had no privity of contract with the power purchaser and/or the Project implementing agency, if any.

(h) After the grant of Stage-II Connectivity, the Petitioner was required to fulfil conditions under Para 9.3.1 of the Detailed Procedure, 2018 and provide proof of compliance. On 29.3.2019, the Petitioner informed PGCIL that it could not secure the required land due to changes in Gujarat's land allotment policy, for which SECI had granted a three-month extension to submit land documents. The Petitioner requested PGCIL to consider this as compliance under Clause 9.3.1(ii) of the Detailed Procedure. Later, during the 24th Joint Coordination Committee (JCC) Meeting of Western Region held on 25.6.2019, PGCIL informed the Petitioner that the associated transmission system would be ready by June, 2020. Subsequently, on 19.11.2019, the Petitioner requested an extension of six months for commissioning its dedicated transmission system beyond the statutory 24-month period, citing anticipated delays, which was not tenable since the 24-month period given under the Detailed Procedure, 2018, was a mandatory/fixed period, and there were no provisions available to extend the same.

(i) PGCIL refused this request in its letter dated 3.12.2019, emphasising that Para 11.2 of the Detailed Procedure, 2018 mandates completion of the dedicated transmission system within 24 months from the date of bay allocation. Failure to meet this timeline would result in the encashment of the Connectivity Bank Guarantee (Conn-BG) and revocation of Stage-II Connectivity. Despite this refusal, the Petitioner again sought an extension on 24.2.2020, citing delays caused by frequent changes in Gujarat's land allotment policy. The Petitioner claimed SECI had granted an extension for its Project's SCD without penalties or damages and requested that PGCIL align the LTA commencement date with this revised SCD to avoid financial hardship.

(j) PGCIL again refused this request on 18.3.2020, stating that the associated transmission system was at the final stage of completion and linked to multiple generation Projects; therefore, the LTA start date could not be deferred. PGCIL reiterated that the Petitioner was required to complete its dedicated transmission system by 17.7.2020, and failure to do so would result in the encashment of the Conn-BG and revocation of Stage-II Connectivity.

(k) Subsequently, the Petitioner also issued a *force majeure* notice dated 31.3.2020 to PGCIL and requested an extension in timelines under the TSA and the LTA Agreement. The Petitioner, thus, sought an indefinite extension in timelines under the TSA and LTA Agreement on account of the occurrence of the COVID-19 pandemic, claiming it as a *force majeure* event. The said notice was not accepted by the CTUIL, and the Petitioner was apprised of its liabilities in the subsequent Joint Coordination Committee Meetings.

(l) Petitioner's LTA and Connectivity were continually monitored in the Joint Coordination Committee (JCC) Meetings of generation Projects granted connectivity/ LTA in the Western Region. In the 31st JCC Meeting held on

26.3.2021, the Petitioner was informed about the imminent effectiveness of its LTA and the associated commercial liability. With the transmission system nearing completion, PGCIL informed the Petitioner via email on 27.3.2021 that its LTA would be effective from 31.3.2021 (subject to the transmission system's commissioning). The Petitioner's 285 MW LTA for power supply to the Western Region was subsequently operationalised on 9.5.2021. PGCIL, through a letter dated 7.5.2021, informed the Petitioner that it would be liable to bear all commercial and operational liabilities corresponding to the quantum of LTA operationalised as per applicable Regulations and orders of the Commission.

(m) The Petitioner has relied upon the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (2020 Sharing Regulations) whereunder, an exemption has been granted on the levy of transmission charges and losses for the use of ISTS network by the renewable energy-based power producers, which exemption (as per the then applicable Sharing Regulations, 2010) had also been recorded in the LTA Agreement entered into by the Petitioner with PGCIL.

(n) The Commission clarified that the exemption from transmission charges for solar and wind power Projects applies only when power is evacuated after commercial operation of the generating station. In cases of delayed commissioning, solar and wind generators are liable to pay transmission charges, similar to thermal and hydro generators. Therefore, the Petitioner is liable to pay the transmission charges for the delay in commissioning its power Project.

(o) The MoP order dated 15.1.2021 extending the LTA commencement date is not in consonance with the prevailing regulatory regime notified by the Commission. The LTA Agreement also provides that in the event of inconsistency between the provisions of the Regulations of the Commission and covenants and

conditions in the Agreement, the former shall prevail. Therefore, the LTA Agreement itself prohibits the enforcement of any terms or covenants that are inconsistent with the provisions of the Electricity Act, 2003, notifications/guidelines/codes/rules/regulations, or any amendments thereof.

(p) The Petitioner claimed that transmission charges under the LTA Agreement should align with the Sharing Regulations read with applicable MoP orders under the National Tariff Policy, 2016. However, the MoP order dated 15.1.2021 is not in consonance with the regulatory regime notified by this Commission; the Petitioner cannot seek to claim its benefit under the LTA Agreement.

(q) LTA Agreement only provides that the “transmission charges and losses shall be applicable as per order No. 23/12/2016-R&R dated 13.2.2018” wherein it is implicit that the Project would be commissioned within the SCD as intimated under the LTA grant and the LTA would be operationalised as per the LTA start date. The LTA Agreement, as it stands, only provides for waiver of transmission charges from the date of commissioning of the Project and further provides that the Petitioner may be liable to pay transmission charges in case of any amendment in the extant regime. Further, the MoP order specifically states that it will only be applied prospectively; the Petitioner cannot claim to avail itself of the benefit for extension of LTA with respect to those extensions in SCD which have been granted to it by SECI much prior to the date of the order.

(r) Regarding the Petitioner’s contention that it is not liable to pay the transmission charges under Regulation 13(3) of Sharing Regulations, 2020 since the liability arises only in cases when the delay is attributable to the Petitioner, it is submitted that the said regulation does not contemplate whether the delay has been caused by the generator or for any other reason. On the contrary, it simply states that if the associated transmission system has achieved its COD (which is

not earlier than its SCD) before the COD of the generating station, the latter shall pay transmission charges. As such, PGCIL comes under a statutory obligation to collect transmission charges from the date of operationalisation of the LTA, and the Petitioner is liable to pay the same. Further, this mechanism for payment of transmission charges is in consonance with the terms of the LTA Agreement, which provides that the transmission charges are to be governed by the Sharing Regulations.

(s) There is no occasion for the Commission to exercise its power to relax and remove difficulties under Regulations 27 and 28 of the Sharing Regulations, 2020, since it is a settled position that has been reiterated time and again by the Commission that commercial difficulties are not a relevant consideration for seeking extension of the LTA start date. Moreover, if the Petitioner is permitted to avoid payment of transmission charges, it will have to be adjusted from the common pool (POC) and will severely jeopardise the interest of other participants in the pool who will ultimately share the charges attributable to the Petitioner.

8. The Petitioner, during the hearing on 30.8.2023, sought leave of the Commission to amend the petition by filing an amendment application to bring on record the developments subsequent to the filing of the petition, which was allowed by the Commission. The Petitioner, on 20.10.2023, sought additional time to file an amendment application to include recent developments, and the Commission allowed it.

9. Thereafter, the Petitioner filed IA No. 4/2024 along with IA No.3/2024 on 8.12.2023 for amending the petition, including the prayers made in the original petition, and to stay the transmission charges bill dated 26.10.2023 raised by CTUIL, respectively. The Commission, vide the Record of Proceedings (RoP) of the hearing dated 21.2.2024, allowed IA No.4/2024.



10. The amended prayers made by the Petitioner in IA No. 4/2024 are as follows:

- “a) Direct Respondent No. 2 to extend the commencement of the Petitioner’s LTA under the Long-Term Access Agreement dated 15.10.2018 to coincide with the revised Scheduled Commercial Operations Date under its Power Purchase Agreement dated 04.09.2018;*
- b) Declare that the Petitioner is relieved and discharged from performing any of its obligations under the LTA Agreement and Transmission Service Agreement, without any liability whatsoever, including towards transmission charges, corresponding to the 117 MW capacity terminated by it;*
- c) Restrain Respondent No. 2 from taking any coercive steps against the Petitioner during the pendency of the present Petition including raising of any purported invoices claiming transmission charges under the LTA Agreement, and/ or encashment of any bank guarantee and/or revocation of the GNA granted to the Petitioner;*
- d) Without prejudice to the prayers from (a) to (c), exercise the Power to Remove Difficulties in giving effect to the 2020 Sharing Regulations as against the Petitioner, in view of the circumstances described in the Petition thereby exempting the Petitioner from any liability to pay transmission charges corresponding to 285 MW up to the revised Scheduled Commercial Operations Date, and corresponding to 117 MW at any point;*
- e) During the pendency of this Petition, pass appropriate interim/ ad-interim/ ex parte orders in terms of the prayers above inter alia directing Respondent No. 2 to maintain status quo and restraining Respondent No. 2 from taking any coercive action against the Petitioner including under the LTA Agreement, Transmission Service Agreement or any other financial/ regulatory action, and*
- f) Pass such other and further order/ directions as this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the case.”*

11. The Petitioner has made the following submissions in IA No. 4/2024:

(a) The Petitioner was required to commission its Project by 29.2.2020, which has been extended by SECI to 17.3.2022 due to *force majeure* events. Therefore, the LTA commencement date needs to be extended and aligned with the Revised SCD. The Petitioner had kept both SECI and the CTU apprised of the various unforeseen and uncontrollable events affecting the Project’s development.

(b) The GNA Regulations were made effective in phases from 5.4.2023 onwards, with the complete regulations coming into force by 1.10.2023. Under the GNA Regulations, the procedure for the grant of connectivity and open access to the grid has been modified, and the erstwhile regime under the Connectivity Regulations, 2009, stands repealed. As the Applicant’s connectivity and LTA had



already been made effective by the CTUIL from 9.5.2021, the Applicant became a deemed grantee of GNA in terms of Regulation 18.1(f) of the GNA Regulations, and it is now governed by the provisions of the GNA Regulations;

(c) The Petitioner at the relevant time had even requested the CTUIL for an extension of the date of commencement of LTA. However, the CTUIL refused to accommodate Petitioner's requests. Instead, on 26.10.2023, the CTUIL raised a transmission charges bill of approximately ₹6.13 crore (including interest of approximately ₹68 lakh calculated up to 29.6.2023) against the Petitioner. The Petitioner, vide its letter dated 4.12.2023 to the CTU, has disputed the Bill and the demand for transmission charges raised by PGCIL. The CTU ought to have aligned the LTA operationalisation date with the revised SCD because of the *force majeure* events.

(d) The Petitioner was compelled to terminate 117 MW of the Project capacity under the PPA due to a supervening *force majeure* event; the very purpose of seeking LTA for such quantum stood frustrated for no fault of the Petitioner. Subsequently, on 5.12.2023, the Petitioner also relinquished the Connectivity/ GNA corresponding to the 117 MW capacity. Therefore, no transmission charges ought to be imposed on the Petitioner corresponding to the 117 MW capacity for any period of time. The Bill raised by the CTU also demands transmission charges for the 117 MW as well, which is illegal, baseless and unfounded. Therefore, in addition to seeking quashing of the Bill, the Petitioner also seeks a declaration that the Petitioner is not liable to pay any transmission-related charges corresponding to the 117 MW capacity.

(e) The Petitioner was able to commission 168 MW out of the total 285 MW. Out of this 168 MW, 98.7 MW was commissioned before the revised SCD, and 69.3 MW was commissioned beyond the revised SCD, as detailed below:



- i. **98.7 MW** was commissioned in parts by 11.3.2022, i.e., before the revised SCD of 17.3.2022, due to prudent utility efforts and mitigation steps taken by the Petitioner
- ii. **12.6 MW** was commissioned on 19.4.2022, i.e., **33 days** beyond the revised SCD
- iii. **14.7 MW** was commissioned on 22.4.2022, i.e., **36 days** beyond the revised SCD
- iv. **25.2 MW** was commissioned on 16.6.2022, i.e., **91 days** beyond the revised SCD
- v. **14.7 MW** was commissioned on 19.8.2022, i.e., **155 days** beyond the revised SCD
- vi. **2.1 MW** capacity has received energisation approvals and is ready to evacuate power, but the issuance of the COD certificate for such capacity has been wrongfully refused by SECI.
- vii. **117 MW** capacity could not be commissioned. The PPA corresponding to such capacity has been terminated with effect from 7.12.2022 due to the continued subsistence of a force majeure event for a period of more than 9 months, and acceptance of such termination by SECI.

(f) The implementation of the EHV line of the Project was also delayed on account of severe RoW issues faced by the Petitioner. In cases filed by objecting landowners before the High Court of Gujarat, stay orders were issued against the implementation of the EHV line by the Petitioner's subcontractors, and no work could be undertaken for a substantial period of time. Therefore, the Petitioner submitted multiple representations in this regard before SECI, and SECI extended the Project SCD vide its letter dated 17.12.2021 due to RoW issues.

(g) The Petitioner is not liable for payment of any transmission charges corresponding to 285 MW capacity till the Revised SCD, and it is not liable for payment of any transmission charges corresponding to 117 MW capacity at any time. Accordingly, the Bill raised by the CTU ought to be quashed.

12. The Petitioner in IA No.3/2024 dated 8.12.2023 has sought an unconditional stay on the Bill raised by the CTU, and directions to the CTU to maintain the status quo and

refrain from taking any coercive actions against the Petitioner pending final disposal of the instant petition.

13. CTUIL has filed its reply vide affidavit dated 26.8.2024. The CTUIL has raised issues similar to the issues raised by PGCIL. The issues raised by CTUIL in its reply are as follows:

(a) The provisions in the Detailed Procedure clearly show that the entire mechanism for the LTA grant, with or without system strengthening, is made on the basis of the LTA commencement date requested by the LTA applicant so that power flow in the ISTS can be accommodated after considering the ATC. Accordingly, neither the Connectivity Regulations/Detailed Procedure nor the LTA Agreements signed by the grantees make any provision for “extension” or “deferment” of the LTA commencement date.

(b) When the Sharing Regulations, 2020 came into force w.e.f. 1.11.2020, the provision under the Tariff Policy, 2016 regarding exemption from payment of transmission charges and losses for RE generation, has been reiterated in Regulation 13(1). The Regulation 13(1) provides for waiver of transmission charges and losses for solar and wind power generation Projects for a period of 25 years, subject to the prescribed conditions. Thus, even under the Sharing Regulation, 2020, the waiver of transmission charges for a RE generating station is available from the date of its commercial operation. However, it cannot therefore be contended that the said waiver is applicable even prior to the COD of the generation Project.

(c) The clear regulatory position is evident from the use of the word ‘shall’ in Regulation 13(3) of the Sharing Regulation 2020, that irrespective of any delay in achieving the Project COD, whether it is due to uncontrollable reasons including on account of any *force majeure* event or otherwise, the transmission



charges are leviable on the generating station from the date of operationalisation of the LTA till the COD of the generating station. Therefore, the contention of the Petitioner that, as per the Sharing Regulation 2020, transmission charges are recoverable from the generating station that is delayed only in cases where the delay is attributable to the generating station, is wrong and inadmissible.

(d) The use of the word 'shall' in Clause 10.0 of the BCD Procedure shows that raising a bill dispute with CTUIL is a mandatory obligation of a DIC, in the absence of which, the said bill is to be considered as 'correct, complete and conclusive'. In the present case, the Petitioner has not raised any dispute regarding the impugned bills with CTUIL as required under the Procedure.

(e) The MoP has issued the order under the Tariff Policy, 2016, where waiver is for the 'sale of power' and for the 'electricity generated'. It follows that an entity which has been provided an extension of its COD date by the competent authority, its waiver is to be applicable from such extended date (i.e. when the generator starts generating power) for the period as specified. The entire provision under the MoP's order is for waiver of transmission charges after the COD of the generating station and cannot be read to give any benefit to a generating station which has not declared COD. Further, the above directions issued by the MoP, being policy directions, act as a guiding factor and such directions are required to be appropriately incorporated in the Regulations framed by this Commission to have a binding effect.

(f) In the entire regulatory scheme of connectivity and LTA grant, the contractual privity is between CTUIL (as the nodal agency) and the LTA grantee, and the only relevant consideration is the availability of the transmission system as per the LTA commencement date indicated in the LTA application. The power purchase arrangements of the LTA grantee and the Project SCD are not the

underlying considerations, and CTUIL had no privity of contract whatsoever with the power purchaser and/or the Project implementing agency. The applicable Regulations do not provide for any correlation between the COD of a generating station and the performance of obligations under the LTA Agreement.

(g) The invoices issued by CTUIL are in strict accordance with the applicable Regulations, and the said levy can neither be disputed by the Petitioner nor the same is liable to be quashed by the Commission in exercise of powers to relax and remove difficulties under Regulation 27 and Regulation 28 of the Sharing Regulations, 2020.

(h) The Petitioner, vide its letter dated 7.12.2022, exercised its rights to terminate the uncommissioned capacity of 117 MW, which was accepted by SECI vide its letter dated 20.2.2023. Out of the total 285 MW capacity, the Petitioner has declared COD of 165.9 MW as under:

Sl. No.	Capacity	COD	Remarks
1.	98.7 MW in Parts	By 11.3.2022	Before the Revised SCD, i.e., 17.3.2022
2.	12.6 MW	19.4.2022	33 days beyond the Revised SCD
3.	14.7 MW	22.4.2022	36 days beyond the Revised SCD
4.	25.2 MW	16.6.2022	91 days beyond the Revised SCD
5.	14.7 MW	19.8.2022	155 days beyond the Revised SCD
Total	165.9 MW		

Out of the 168 MW, 98.7 MW was declared COD before the Revised SCD and 67.2 MW was declared COD after the Revised SCD. Further, balance 2.1 MW is yet to be declared COD by the Petitioner.

(i) On 26.10.2023, CTUIL raised invoices amounting to ₹6,13,99,011 for the period from 9.5.2021 (LTA operationalisation date) to 31.8.2023 as per the Sharing Regulations, 2020. As of 24.6.2024, CTUIL had raised bills totalling ₹6,68,51,649 till April 2024, of which the Petitioner has paid ₹6,68,28,891,

leaving ₹22,758 outstanding. Further, the Petitioner is liable to pay the relevant charges as per existing regulations for the relinquished 117 MW deemed GNA capacity. CTUIL will continue to raise bills for the capacity that has not achieved COD, until its commissioning.

(j) There is no occasion for the Commission to exercise its powers under Regulations 27 and 28 of the Sharing Regulations, 2020, as commercial difficulties are not valid grounds for extending the LTA start date.

(k) The extension of SCD granted by SECI under the PPA has no bearing on the LTA timelines since the LTA Agreement, Transmission Service Agreement, and applicable regulations do not provide for such extensions. The Sharing Regulations, 2020, clearly state that transmission charges are payable by the Project developer if the associated transmission system is commissioned before the Project's COD. The Petitioner's reliance on MoP orders is misplaced, as these are guiding factors and not binding provisions. Allowing the Petitioner to avoid transmission charges would burden other participants in the PoC pool, impacting their financial interests.

14. The Petitioner has filed its rejoinder to CTUIL's reply, vide affidavit dated 28.11.2024, and it is as follows:

(a) As per the MoP order dated 15.1.2021 and directives issued under Section 107 of the Act, the operationalisation of LTA has to be aligned with the revised SCD granted by SECI. Consequently, no liability for transmission charges arises for delays caused by SCD extensions. The Sharing Regulations are silent on LTA commencement extensions by operation of law, and that such extensions must be treated as part of the pre-commissioning phase. The Petitioner denies CTUIL's interpretation of Regulation 13(3) and claims that transmission charges are applicable only when there's a delay beyond the extended SCD, not from the

original LTA start date. Since SECI extended the SCD until 17.3.2022, no liability for transmission charges should arise before this date.

(b) The reliance placed by CTUIL on it being the nodal agency for the grant of connectivity, enjoined to raise bills towards transmission charges as per the BCD Procedure, is misplaced. The bills can only be raised when transmission charges are payable under applicable law. CTUIL has failed to point out any particular clause of the BCD Procedure that entitles it raise transmission charges bills on RE generators, whose SCD stands extended or where there is no delay.

(c) It was submitted by CTUIL that Bills towards transmission charges have been raised as per the methodology set out in the BCD Procedure, which has been agreed by parties to be applicable under the TSA. It is submitted that in view of the applicability of the MoP orders, and particularly the MoP order dated 15.1.2021, to the Petitioner, the LTA operationalisation date shall stand realigned with the Revised SCD under the PPA. In such a scenario, CTUIL is not entitled to levy any transmission charges on the Petitioner. The liability to pay transmission charges is certainly not within the ambit of the BCD Procedure, which governs only CTUIL's billing. The billing disputes envisaged under the BCD Procedure relate only to errors made by CTUIL while raising bills, and not disputes on the very liability to pay charges. The issues raised by the Petitioner, on the other hand, concern a broader legal issue regarding liability to pay transmission charges.

(d) The words 'commencement' and 'period' of LTA are used separately in the MoP orders; they must necessarily relate to pre-commissioning periods because no extension of LTA is possible post-commissioning of a renewable power Project. If the commencement of LTA is extended by operation of law (i.e., the MoP order dated 15.1.2021), then the CTUIL does not have the right to levy any transmission charges for such pre-commissioning periods. In fact, the entire purpose of the MoP

orders and the specific reference to the extension of the commencement of LTA is to provide relief to renewable power generators who are experiencing uncontrollable delays and have received requisite extensions from the concerned nodal agencies. Hence, it is submitted that the operationalisation of LTA on 9.5.2021 in the present case is automatically extended up to 17.3.2022 by operation of the MoP order dated 15.1.2021. Since the CTUIL has not challenged the MoP order dated 15.1.2021, it is binding on the CTUIL and must be given effect. There is no conflict between the Sharing Regulations and the MoP orders. Both should be interpreted harmoniously, with the MoP orders addressing situations in which SCD is extended by a competent authority that are not covered under the Sharing Regulations. Consequently, such extensions also extend the commencement and period of LTA by operation of law.

(e) APTEL in order dated 14.12.2023 vacated the stay orders granted in the cases of ACME Deogarh Solar Power Pvt. Ltd (Appeal No. 260/2022 and ACME Phalodi Solar Energy Pvt Ltd. (Appeal No. 261/2022), the Hon'ble Supreme Court vide order dated 18.3.2024 (in Civil Appeal No. 3873-3874/2024) set aside the order dated 14.12.2023, thereby directing the APTEL to restore the stay in favour of the developers.

(f) The LTA applicants specify their commencement date based on their SCD, and CTU's role includes coordinating ISTS development and monitoring Project timelines through JCC meetings. While CTUIL claims JCC meetings confirm transmission charges apply from the LTA start date in case of generation delays, this is incorrect. The MoP order dated 15.1.2021 has deferred the LTA commencement date, and SECI's SCD extension means there is no legal delay. Further, JCC meetings cannot impose transmission charges beyond the established regulatory framework.

(g) The CTUIL wrongly claims the PPA obligations with SECI are unrelated to transmission agreements. SECI has revised the SCD for the 285 MW Project to 17.3.2022 under the MoP Orders, but later terminated 117 MW capacity on 7.12.2022 due to prolonged force majeure events. As the terminated capacity cannot utilise the transmission system, no transmission charges should apply for the terminated 117 MW. Further, CTUIL has not addressed the *force majeure* claim on its merits.

15. The Petitioner, in its written submissions dated 17.3.2025, has reiterated the submissions made initially in the petition, the amended petition and the rejoinder to the CTUIL's reply. The gist of the submissions made in the written submissions is as follows:

(a) The main prayer is to give directions to CTUIL to extend the date of commencement and period of the Petitioner's LTA/ GNA under the LTA dated 15.10.2018 to coincide with the revised SCD of its Project under its PPA, and declare that the Petitioner is not liable to pay any transmission charges corresponding to the 117 MW capacity terminated by it under the PPA, and relinquished under the LTA. Consequently, quashing of the bill dated 26.10.2023 raised by CTUIL on the Petitioner towards transmission charges based on the purported LTA from 9.5.2021 onwards.

(b) No charges can be legally levied upon the Petitioner, towards transmission charges or otherwise, in view of the *force majeure* events in terms of Clause 14 of the TSA dated 15.10.2018, which resulted in delaying the development of 168 MW beyond the original SCD and frustrated the development of 117 MW of the Project capacity on account of prolonged subsistence of the *force majeure* events. Further, as per the MoP orders dated 15.1.2021, 23.11.2021 and 30.11.2021, which require the 'commencement' and 'period' of LTA to be extended to align with

the Revised SCD, in a situation where the SCD of the Project is revised by the competent authority.

(c) CTUIL, while raising its bill dated 26.10.2023, has erroneously charged interest on the principal amount of transmission charges, for the period from 9.5.2021 till 29.6.2023. However, the levy of additional interest is without any basis whatsoever, and therefore, the Bill ought to be construed as illegal.

(d) The Petitioner cannot be penalised for the delay in raising bills by CTUIL. It is understood that CTUIL raised the bill for transmission charges only after the tariff for the ATS was determined by the Commission, vide order dated 30.6.2023 in Petition No. 110/TT/2022. However, the said order does not permit CTUIL to levy any interest on the DIC's, including the Petitioner herein.

(e) The present instance is a fit case for the Commission to exercise its powers to relax and remove difficulties in terms of Regulations 27 and 28 of the 2020 Sharing Regulations in order to overcome the discrepancies and anomalies arising upon the implementation of the 2020 Sharing Regulations wherein a renewable energy generator such as the Petitioner is being saddled with liability to pay the transmission charges for LTA despite having a validly postponed SCD under its PPA.

Written Submissions by CTUIL

16. CTUIL, in its written submissions dated 17.3.2025, has also reiterated the submissions made in its reply, and the gist of the fresh submissions made is as follows:

(a) The issues raised herein by the Petitioners are no longer *res integra* and have been settled by this Commission in orders in petitions filed by other RE-based generating stations seeking similar reliefs. As such, the reliefs sought by

the present Petitioner are liable to be adjudicated in terms of the earlier orders, which are as follows:

- i. Order dated 5.2.2020 in Petition No.195/MP/2019, Vivid Solaire Energy Private Limited Vs. Powergrid Corporation of India Limited & Ors.
- ii. Order dated 23.5.2022 in Petition No.525/MP/2020, Sprng Renewable Energy Private Limited Vs. Central Transmission Utility of India Limited (CTUIL) & Ors.
- iii. Order dated 8.6.2022 in Petition No.103/MP/2021 and Ors., ACME Deoghar Solar Power Private Limited Vs. Power Grid Corporation of India Limited & Ors.

(b) From the aforesaid decisions of this Commission, the settled position of law that emerges is that:

- i. There is no linkage between a PPA executed by an LTA grantee with its beneficiaries and the LTA executed by it with CTUIL, and the rights, obligations and consequences arising out of a PPA cannot in any manner affect the obligations under the LTA;
- ii. Since the start date of LTA is fixed as per the request of the LTA applicant, it is the responsibility of the LTA grantee to match the commissioning schedules of its generation Project under the PPA with the start date of LTA under the LTA.
- iii. Notwithstanding that the provisions of the TSA become operative only upon operationalisation of the LTA, in the absence of a notice of *force majeure* under clause 14 of the TSA, no relief on that account can be claimed by either party to the TSA; and
- iv. Waiver of transmission charges in terms of the Office Memorandums (OMs) issued by the MoP and the provisions of the Sharing Regulations

is only applicable after commencement of power supply, i.e. after the date of commercial operation (COD) of the generating station. As such, for the period when LTA is operationalised but the generation Project is yet to be declared commercially operational, the generating company is liable to bear the applicable transmission charges till its COD as per the applicable Sharing Regulations.

(c) The above-mentioned orders passed by the Commission have since been challenged before the APTEL in Appeal No.236/2022 (against order dated 23.5.2022 in Petition No.525/MP/2020) and Appeal Nos.260/2022 and 261/2022 (against order dated 8.6.2022 in Petition No.103/MP/2021) wherein, APTEL vide separate interim orders dated 8.7.2022 held that “there will be no precipitative action taken by the third respondent till further orders.” APTEL later vide order dated 14.12.2023 in IA No.752/2023 in Appeal No.260/2022 and IA No.751/2023 in Appeal No.261/2022, vacated the aforesaid *ex parte* ad interim stay orders dated 8.7.2022. The matter has travelled to the Hon’ble Supreme Court in Civil Appeal No.3872-3874/2024, and the Hon’ble Supreme Court vide order dated 18.3.2024 has set aside the APTEL’s impugned order dated 14.12.2023 and restored the ad-interim order dated 8.7.2022 pending the disposal of the Appeal by APTEL.” Pending adjudication by APTEL, the aforesaid orders passed by this Commission continue to govern the issues raised by the Petitioner, and the present petition is liable to be adjudicated in terms thereof.

Analysis and Decision

17. SECI issued an RfS on 5.2.2018, inviting proposals for the selection of wind power developers, and ENEL emerged as a successful bidder for the establishment of a wind power plant in Kutch District, Gujarat. SECI issued LoA to ENEL on 1.6.2018, and ENEL



established the Petitioner as a SPV for the implementation of the Project. A PPA was entered into between the Petitioner and SECI on 4.9.2018, and as per the PPA, the SCD of the Project was 29.2.2020. CTUIL granted Stage-I and Stage-II Connectivity on 17.7.2018 and 19.7.2018, respectively, along with bay allocation at Bhuj PS. A Connectivity Agreement was signed between the Petitioner and CTUIL on 6.8.2018. The Petitioner was granted 285 MW LTA to the ISTS with WR as the target region, and the Petitioner submitted the LTA Agreement and TSA to CTU on 15.10.2018. As per the LTA Agreement, the date of operationalisation of the LTA granted to the Petitioner was 29.2.2020 or upon the availability of the transmission system, whichever is later. The commissioning of the Project was delayed due to changes in the Government of Gujarat's land allotment policy and the COVID-19 pandemic. SECI initially extended the SCD of the Project to 14.8.2021 and further extended it till 17.3.2022 due to *force majeure* events. The Petitioner has commissioned 168 MW out of the total 285 MW capacity, and of that 168 MW, 69.3 MW has been commissioned after the revised SCD. The Petitioner could not commission 117 MW due to the subsistence of *force majeure* events for more than nine months and has accordingly terminated the 117 MW capacity of LTA with effect from 7.12.2022. The Petitioner declared the COD of the wind power Project as per the following schedule:

Out of the 168 MW, 98.7 MW was declared COD before the Revised SCD and 67.2 MW

Sl. No.	Capacity	COD	Remarks
1.	98.7 MW in Parts	By 11.3.2022	Before the Revised SCD i.e. 17.3.2022
2.	12.6 MW	19.4.2022	33 days beyond the Revised SCD
3.	14.7 MW	22.4.2022	36 days beyond the Revised SCD
4.	25.2 MW	16.6.2022	91 days beyond the Revised SCD
5.	14.7 MW	19.8.2022	155 days beyond the Revised SCD
Total	165.9 MW		

was declared COD after the Revised SCD. Further, balance 2.1 MW is yet to be declared COD by the Petitioner.

18. The CTUIL has operationalised the LTA granted to the Petitioner on 9.5.2021 and has raised bilateral bills from 9.5.2021 for uncommissioned capacity till the actual COD of the generation Project, and has also levied interest on the principal amount of transmission charges for the period 9.5.2021 till 29.6.2023. The Petitioner has contended that, as per the MoP's order dated 15.1.2021, the operationalisation of the Petitioner's LTA has to coincide with the revised SCD approved by SECI, and therefore, CTUIL cannot levy any transmission charges on the Petitioner. The Petitioner has submitted that transmission charges can be recovered under Regulation 13(3) of the 2020 Sharing Regulations only if the delay is attributable to the generator and not otherwise. The Petitioner has further submitted that the SCD of the Project has been extended by SECI, and the Petitioner is not liable for any transmission charges. The Petitioner has sought relief from the obligation to pay transmission charges on the grounds of *force majeure* under clause 14 of TSA. The Petitioner, in the alternative, has sought to extend the date of operationalisation of LTA up to the revised SCD by exercising the Power to Relax and the Power to Remove Difficulties in application by giving effect to the 2020 Sharing Regulations against the Petitioner.

19. Per contra, the CTUIL has contended that there is no linkage between the PPA and the LTA Agreement, and the rights and obligations under the PPA cannot affect the obligations under the LTA Agreement. The CTUIL has further contended that the MoP Office Memorandum and the Sharing Regulations are applicable only after the commencement of the power supply.

20. We have considered the submissions made by Petitioner and CTUIL and perused the documents on record. On the basis of the submissions made by the parties, the following issues arise for our consideration:

Issue No. 1: Whether the date of operationalisation of LTA can be aligned with the revised scheduled date of commissioning of the Project under the PPA?



Issue No. 2: Whether Petitioner is eligible for waiver of transmission charges in accordance with MoP Orders dated 15.1.2021, 23.11.2021 and 30.11.2021, etc.?

Issue No. 3: Whether this is a fit case to exercise the Power to Relax and Power to Remove Difficulty in terms of Regulation 27 and 28, respectively, of the 2020 Sharing Regulations?

21. The same are dealt with in subsequent paragraphs.

Issue No. 1: Whether the date of operationalisation of LTA can be aligned with the revised scheduled date of commissioning of the Project under the PPA?

22. The basic plea of the Petitioner is to synchronise the date of operationalisation of LTA with the revised SCD of 17.3.2022, which has been approved by SECI. As regards the start date of the LTA, the LTA Agreement dated 15.10.2018 provides as follows:

“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.

*....
1.0*

(a) The date of effectiveness of this LTA Agreement shall be as per intimation letter ref. no. C/CTU-PIg/LTA/WR/1200001618 dated 19.09.2018 issued by CTU vide letter ref no. C/CTU-PIg/LTA/WR/1200001618 dated 19.09.2018; enclosed as Attachment-1 to this Agreement and is in accordance with the relevant CERC Regulations.”

23. The snapshot of Attachment-I of the LTA intimation letter dated 19.9.2018 is as follows:

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

1	Intimation No. Date :	: C/CTU-Pig/LTA/WR/1200001618 19 th Sept, 2018
2	Ref. Application No. Date :	: 1200001618 1 st Aug, 2018
3	Name of the Applicant	: Avikiran Solar India Private Ltd.
4	Address for Correspondence	: C/o BLP Energy Private Limited, 12 th Floor, Crescent 1, Prestige Shantiniketan, ITPL Main Road, Hoodi, Bengaluru - 560048
5	Nature of the Applicant Normal Generator (other than captive) Captive Generator Bulk Consumer Electricity Trader Distribution Licensee Others	: Wind Power Generation
6	Details for Long Term Access (LTA)	
6a	Quantum (MW) for which LTA is granted	: 285 MW
7	Injection of Power (more than one only in case of single Drawl) Entity-1 State/Region Quantum-1 Connectivity with the Grid	: Avikiran Solar India Private Ltd. Gujarat / WR 285 MW At 220 kV level through Avikiran Solar India Private Ltd. - Bhuj PS 220kV S/c line (with minimum capacity of 300 MW at nominal voltage) along with associated bays at Bhuj PS & generation switchyard.
8	Drawl of Power (more than one only in case of single Injection) Entity-1 State/Region Quantum-1 Connectivity with the Grid	: Target WR 285 MW Interconnection with STU network
9	Transmission System for LTA	: As per Annexure-1
9a	Date from which LTA is granted	: 29/02/2020 or Availability of Transmission System for LTA whichever is later.

24. As per the LTA intimation letter dated 19.9.2018, the start date of LTA is 29.2.2020 or the availability of the transmission system for LTA, whichever is later. The CTUIL has operationalised the LTA on 9.5.2021.

25. The SCD of the Project as per the PPA was 29.2.2020, and the same was extended by SECI initially up to 14.8.2021 and further extended up to 17.3.2022 due to *force majeure* events, in accordance with the provisions of the PPA. The Petitioner has contended that CTUIL is required to align the date of operationalisation of the LTA with the revised SCD of the Project, i.e. 17.3.2022.

26. The Commission has considered the issue of aligning the date of operationalisation of the LTA with the SCD of the Project, in order dated 5.2.2019 in Petition No.195/MP/2019 and rejected the same. The relevant portions of the said order are as follows:

"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....."



“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, the 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.”

27. Further, the Commission, while dealing with a similar issue in an order dated 23.5.2022 in Petition No. 525/MP/2020, held that it is the responsibility of the LTA grantee to seek the start date of LTA as per its assessment, and the LTA Agreement does not provide for any matching with the SCD of the Project. The relevant portions of the order dated 23.2.2022 are as follows:

“28. Thus, it is clear that the LTA has been granted on existing transmission system and the start date of LTA has been recorded as 30.11.2019. We note that LTA agreement has no clause with respect to date from which supply under PPA is anticipated or alignment of such date with LTA start date. The start date of LTA has solely been based on Petitioner’s assessment, requirement and as agreed by the Petitioner. LTA agreement does not contain any stipulation in regard to commencement of LTA in phases. We also note that CTU operationalized the said LTA for 300 MW from 30.11.2019, as has been noted in CTU’s letter dated 5.11.2019 and 5.12.2019. Thus, we observe that RfS/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 which the Petitioner has sought under the LTA application and LTA Agreement. There is no reference of PPA clauses in the LTA Agreement and deferment of start date of LTA is provided neither in 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.

29. We observe that similar issue was dealt by the Commission in the order dated 5.2.2019 in Petition No.195/MP/2019 as under:

“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."

30. Thus, we observe that LTA is granted to the Petitioner based on its application and the start date of 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 and for the same the Petitioner can make separate LTA applications with different quantum and start dates.

31. 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. PPA and LTA Agreement, as it is the LTA applicant which signs both the sets of the agreements. "

28. We are of the view that the PPA and the LTA Agreement are two distinct agreements, and the liabilities and obligations contained in them are also different. The Petitioner's obligations under the PPAs are independent of its obligation to meet the timeline sought in the LTA application and LTA Agreement. The LTA Agreement does not provide for the anticipated date of supply under the PPA or for aligning that date with



the LTA start date. The start date of LTA is solely based on the Petitioner's assessment, request and agreement. It is the Petitioner's responsibility to correctly assess the SCD of the Project and accordingly seek the LTA. There is no reference to the PPA clauses in the LTA Agreement, and deferment of the start date of LTA is not provided either in the LTA Agreement or in any of the regulations. The Petitioner cannot claim to match the date of operationalisation of LTA with the revised SCD of the Project. Accordingly, we are of the view that the date of operationalisation of the LTA cannot be aligned with the revised SCD of the Project as approved by SECI. Issue No.1 is answered accordingly.

Issue No. 2: Whether the Petitioner is eligible for waiver of transmission charges in accordance with MoP Orders dated 15.1.2021, 23.11.2021 and 30.11.2021, etc.?

29. The Petitioner has submitted that MoP vide order No. 23/12/2016-R&R dated 30.6.2016 waived transmission charges and losses for renewable energy Projects subject to fulfilment of conditions and has extended the same vide orders dated 14.6.2017, 13.2.2018, 6.11.2019, 5.8.2020 and 15.1.2021, for all renewable energy Projects that are commissioned up to 30.6.2023. Accordingly, the Petitioner is entitled to seek an extension in the date of commencement of LTA in view of the relaxation granted by the MoP. The Petitioner has also contended that the transmission charges can be recovered under Regulation 13(3) of the 2020 Sharing Regulations only if the delay is attributable to the generator.

30. Per contra, CTUIL has submitted that the MoP order dated 15.1.2021 extending the LTA commencement date is not in consonance with the prevailing regulatory regime notified by the Commission. Further, as per the LTA Agreement, if any of the covenants of the LTA are inconsistent with the provisions of the Electricity Act, 2003, notifications/ guidelines/ codes/ rules/ regulations and any amendments thereof, then the Act and the rules, regulations and orders issued under the Act would prevail. As the MoP order dated 15.1.2021 is not in consonance with the regulatory regime, the Petitioner cannot claim



the benefit under the LTA Agreement. The CTUIL has further contended that Regulation 13(3) of the 2020 Sharing Regulations does not account for delays in generation, and it simply states that if the generator is not ready when the transmission system has achieved COD, the generator shall bear the yearly transmission charges.

31. We have considered the submissions of the Petitioner and CTUIL. We have also perused the MoP orders referred to by the Petitioner. The MoP order dated 15.1.2021 provides as follows:

“Subject: Waiver of Inter-State Transmission charges and losses on transmission of electricity generated from solar and wind sources of energy.

Pursuant to the provisions of the Tariff Policy, Government have issued revised orders on the 5th of August 2020 providing that the inter-state transmission charges and losses will not be levied on the transmission of electricity generated from power plants using solar and wind sources of energy including solar-wind hybrid power plant with or without storage which have been commissioned on or before the 30th June 2023; provided that the sale of power is to entities having Renewable Purchase Obligations, irrespective of whether the power is within RPO or not - and provided that in case of distribution licensees, the power has been procured competitively in accordance with the guidelines issued by the Central Government.

2.0 It has been brought to the notice of the Central Government that there may be renewable power projects which are eligible for waiver of inter-state transmission charges and losses and having their scheduled commissioning date on or before the 30th June 2023 which are granted extension of the scheduled commissioning date by the Solar Energy Corporation of India/NTPC Limited or other Project Implementing Agencies on behalf of Government of India for reasons of Force Majeure or delays on the part of the transmission provider or inaction / delays on the part of Government Agency; and it had been represented that in such cases the eligible renewable power projects should not be deprived of the waiver of inter-state transmission charges and losses. It was also considered that provisions related to applicability of ISTS charges and losses waiver to all obligated entities needs a relook.

3.0 Government have examined this issue and have decided that there is merit in the contention. Government of India have therefore decided that in supersession of Ministry of Power's earlier order No 23/12/2016-R&R dated 13.2.2018, Order No. 23/12/2016-R&R dated 6th November, 2019 and 5th August 2020 no inter-state transmission charges 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 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.

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."

32. The MoP order dated 30.11.2021 provides as follows:

"Subject: Waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy under Para 6.4 6 of the Tariff Policy, 2016- Addendum regarding.

In continuation to the Ministry of Power Order No. 23/12/2016-R&R dated 23.11.2021 and in supersession of order dated 26.11.2021 regarding the waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy, I am directed to convey that the following para will be added after para 3.1 (vi) of the Order dated 23.11.2021: (vii) for any solar, wind and sources mentioned in para 3.1 (ii) and (iii) of the Order dated 23.11.2021, which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30th June 2025 is granted extension of time from the commissioning by Ministry of New and Renewable Energy after careful consideration, 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 such power plant as if the said plant had been commissioned on or before 30th June 2025:

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."



33. The above said MoP orders regarding waiver of transmission charges have already been dealt with by the Commission in Petition No. 525/MP/2020. The Commission, in an order dated 23.5.2022 in Petition No. 525/MP/2020, observed as follows:

"51. We observe that above quoted MOP Orders are issued under paragraph 6.4(6) of the Tariff Policy, 2016. The paragraph 6.4(6) of the Tariff Policy 2016 is extracted as under: "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."

52. Thus, the above extracted provision clearly shows that no transmission charges are to be levied for the purpose of "sale". Further, the subject of all the above quoted MOP Orders is "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". Therefore, it is abundantly clear that waiver of transmission charges is on "electricity generated".

53. Further, the MOP Orders including the Order dated 13.2.2018 have been incorporated in 2010 Sharing Regulations and 2020 Sharing Regulations including the modalities of its implementation. Regulation 13 of the 2020 Sharing Regulations provides as under:

"13. Treatment of transmission charges and losses in specific cases (1) No transmission charges and losses for the use of ISTS shall be payable for: (a) generation based on solar power resource for the useful life of the projects commissioned during the period from 1.7.2011 to 30.6.2017. (b) generation based on solar or wind power resources for a period of 25 years from the date of commercial operation, fulfilling the following conditions: (i) Such generation capacity has been awarded through competitive bidding; and (ii) Such generation capacity has been declared under commercial operation during the period from 1.7.2017 to 12.2.2018 for solar based resources or during the period from 30.9.2016 to 12.2.2018 for wind based resources; and (iii) Power Purchase Agreement(s) have been executed for sale of power from such generation capacity to the Distribution Companies for compliance of their renewable purchase obligation. (c) generation based on solar or wind power resources, for a period of 25 years from the date of commercial operation, fulfilling the following conditions: (i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government; and (ii) Such generation capacity has been declared under commercial operation during the period from 13.2.2018 to 31.12.2022; and (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."

54. The 2020 Sharing regulations clearly provide that waiver of transmission charges is for generation of electricity. The same cannot be read as providing relief from payment of transmission charges due to delay of the generation project.

55. The LTA Agreement of the Petitioner is in accordance with the Regulation 13 of the 2020 Sharing Regulations, which clearly provides that transmission charges shall be as per CERC norms.



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 LTA shall also get extended accordingly, and it will be deemed that the period of ISTS 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.”

34. The Commission in the above-referred order dated 23.5.2022 in Petition No. 525/MP/2020 has held that the waiver of transmission charges is applicable under the MoP orders only after the COD of the generating station and does not provide any exemption from payment of charges before the COD. A similar decision was taken by the Commission in its order dated 8.6.2022 in Petition No. 103/MP/2021 & batch. We are of the view that these decisions of the Commission are applicable to the present case as well. In the instant case, the Petitioner has claimed waiver of transmission charges levied

by CTUIL. As it has already been held that the waiver of transmission charges is applicable only after commissioning of generation, the Petitioner is not eligible for such a waiver under the MoP orders.

35. As regards the liability of the transmission charges, Regulation 13(3) of the 2020 Sharing Regulations, prior to the amendment on 1.1.2023, which is applicable in the instant case, provided as follows:

“Where COD of a generating station or unit(s) thereof is delayed and the Associated Transmission System has achieved COD, which is not earlier than its SCOD, the generating station shall pay Yearly Transmission Charges for the Associated Transmission System Corresponding to Long Term Access granted for the generating station or unit(s) thereof, which have not achieved COD:

Provided that Yearly Transmission Charges in respect of Associated Transmission System shall be included for determination of transmission charges of DICs in accordance with Regulations 5 to 8 of these regulations upon the generating station or unit(s) thereof achieving COD”

36. In accordance with the above provision, in case of delay in commissioning of the generating station and the associated transmission system has achieved the COD, the generator is liable to pay the transmission charges for the associated transmission system corresponding to the LTA granted to the generator. The associated transmission system was defined prior to the amendment on 1.1.2023 as the transmission system identified by the CTUIL for the generating station in the LTA grant. Accordingly, we are of the view that the Petitioner is liable to bear the transmission charges for the associated transmission system for the period of delay. The transmission charges for the associated transmission system for the period of delay shall be paid by the Petitioner within a period of three months from the date of issue of this order, along with interest as specified in the 2019 Tariff Regulations. Issue No.2 is answered accordingly.

Issue No. 3: Whether this is a fit case to exercise the Power to Relax and Power to Remove Difficulty in terms of Regulations 27 and 28, respectively, of the 2020 Sharing Regulations?

37. The Petitioner has also requested to exercise the Power to Relax and Power to Remove Difficulty in terms of Regulation 27 and Regulation 28, respectively, of the 2020 Sharing Regulations.

38. We have already concluded that, as per the MoP orders, the waiver of transmission charges is applicable only after the COD of the generating station, and it does not provide for any exemption from payment of transmission charges before the COD of the generating station. Further, as per the 2020 Sharing Regulations, the waiver of transmission charges is for the generation of electricity, and it cannot be read as providing relief from payment of transmission charges due to the delay in the generation Project.

39. The Hon'ble Supreme Court in judgement dated 7.11.1974 in Mahendra Upendra Sinai Etc. Vs Union of India & Ors., 1975 SCR (2) 640, observed that there must be a "difficulty" in giving effect to the provisions for exercising the Power to Remove Difficulty and that the "difficulty" must not be extraneous.

"Now let us turn to Clause (7) of the Regulation. It will be seen that the power given by it is not uncontrolled or unfettered. It is strictly circumscribed, and its use is conditioned and restricted. The existence or arising of a "difficulty" is the sine qua non for the exercise of the power. If this condition precedent is not satisfied as an objective fact, the power under this Clause cannot, be invoked at all. Again, the "difficulty" contemplated by the Clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde, or an extraneous difficulty. Further, the Central Government can exercise the power under the Clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act."

40. As per the above judgement of the Hon'ble Supreme Court, the condition precedent for invoking the Power to Remove Difficulty is the existence of "difficulty". In the instant case, there is no "difficulty" in the implementation of the 2020 Sharing Regulations. As such, there is no requirement for us to exercise the Power to Remove Difficulty under Regulation 28 of the 2020 Sharing Regulations. Moreover, neither the Petitioner has made out a case nor do we find any reason to relax any of the provisions of the 2020 Sharing Regulations. Accordingly, this is not a fit case for us to exercise the Power to



Relax and the Power to Remove Difficulty under Regulation 27 and Regulation 28, respectively, of the 2020 Sharing Regulations. Issue No.3 is answered accordingly.

41. The Petition No. 107/MP/2021, along with I.A. No. 3/2024, is disposed of in terms of the above.

sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V)
Member

sd/-
(Jishnu Barua)
Chairperson

