

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 282/MP/2024, along with IA.No.70/2024**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Ramesh Babu V., Member**

**Shri Harish Dudani, Member**

**Date of Order 27.03.2025**

**In the matter of:**

Petition under Section 79 of the Electricity Act read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity And General Network Access to the Inter-State Transmission System) Regulations, 2022, along with Regulation 65-68 of the CERC (Conduct Of Business) Regulation 2023, seeking relief(s) against Central Transmission Utility Of India Limited in connection with the 160 MW Connectivity at Koppal district in the state of Karnataka at Gadag II substation, granted to the Petitioner herein.

**And**

**In the matter of:**

M/S Halvad Renewables Private Limited,  
1'st floor, eastern wing,  
Thapar House, 124 Janpath  
New Delhi- 110001, India 1

..... Petitioner

**Versus**

Central Transmission Utility of India Limited  
Suadamini, Plot No.2, Sector-29,  
Near IFFCO Chowk Metro Station  
Gurugram, Haryana-122001

..... Respondent 1

Solar Energy Corporation of India Limited  
6<sup>th</sup> Floor, Plate B, NBCC Office, Block Tower-2  
East Kidwai Nagar, New Delhi-110023

..... Respondent 2

**Parties Present:**

Shri Buddy Ranganadhan, Sr. Advocate, HRPL  
Ms. Molshree Bhatnagar, Advocate, HRPL  
Shri Punyam Bhutani, Advocate, HRPL  
Ms. Kamyia Sharma, Advocate, HRPL  
Shri Shubham Arya, Advocate, CTUIL  
Ms. Shirin Gupta, Advocate, CTUIL

## ORDER

Halvad Renewables Private Limited has filed the instant Petition under Section 79 of the Electricity Act read with applicable provisions of the Central Electricity Regulatory Commission (Connectivity And General Network Access to the Inter-State Transmission System) Regulations, 2022 along with Regulation 65-68 of the CERC (Conduct Of Business) Regulation 2023, seeking relief(s) against Central Transmission Utility Of India Limited in connection with the 160 MW Connectivity at Koppal District in state of Karnataka at Gadag II substation, granted to the Petitioner herein.

2. The Petitioner has made the following prayers in the present Petition:

- (a) *Allow the present Petition;*
- (b) *Issue appropriate order(s) / direction(s) allowing the Petitioner herein to continue to retain the 160 MW Connectivity at Gadag II under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022; and/or*
- (c) *Issue appropriate order(s) / direction(s) to Central Transmission Utility of India Limited to re-instate connectivity of 160 MW at Gadag – II S/s in favour of the Petitioner; and/or*
- (d) *Issue appropriate order(s) / direction(s) to Central Transmission Utility of India to allow the Petitioner to retain the connectivity by allowing conversion from LOA/PPA route to Land / Land BG route in terms of the GNA Regulations; and / or*
- (e) *Issue appropriate order(s) / direction(s) to Central Transmission Utility of India to return INR 50 lacs to the Petitioner in lieu of the CONBG – I if the same has been encashed; and/or*
- (f) *Pass such other and further order(s) / direction(s) that this Hon'ble Commission may deem fit, considering the facts and circumstances of the present case and in the interest of justice and equity.*
- (g) *Pass any such other and further order(s) as this Hon'ble Commission may deem fit and appropriate in the facts and circumstances of the present case.*

### **Prayer in IA.No.70/2024**

- (a) *Allow the present application and issue ex-parte, ad-interim, appropriate order(s) /*



*direction(s) to keep in abeyance the implementation and application of the Letter dated 08.08.2024 issued by the Central Transmission Utility of India Limited to the Petitioner, till the final disposal of the accompanying petition; and/or*

- (b) Issue ex-parte, ad-interim appropriate order(s) / direction(s) to Central Transmission Utility of India Limited restricting it to take any coercive and/or precipitative steps against the Petitioner pursuant to the letter dated 08.08.2024, including invocation / encashment of the CONBG – II by CTUIL and / or allotting the 160 MW connectivity at Gadag – II to any other entity, till the final disposal of the accompanying petition; and/or*
- (c) Pass any order or such other orders as this Hon'ble Commission may deem fit in the interest justice.*

### **Submissions of Petitioner**

3. The petitioner has made the following submissions:
- a) Petitioner, M/s Halvad Renewables Private Limited is a Generating Company and a wholly owned subsidiary of EDF Renewables, France. By way of the present petition, the Petitioner is challenging the action of revocation of the 160 MW Connectivity at Gadag – II undertaken by CTUIL without considering the change in regulatory dynamics, especially the amendments to the GNA Regulations and recently passed Orders of this Commission, which protect the rights and interests of the Petitioner.
  - b) The action of CTUIL to revoke the 160 MW connectivity of the Petitioner, is in teeth of the Commission Order dated 21.04.2024 in Petition No. 291/MP/2023 and Petition No. 292/MP/2023, and read with Second Amendment to GNA Regulations, which allows the Petitioner to retain such connectivity if the LOA/PPA has been terminated/cancelled on account of reasons not attributable to the Petitioner.
  - c) Despite CTUIL being aware of the status of the Generation Project, which was discussed in a series of Joint Coordination Meetings (2023-2024), it did not once insist on submission of Conn-BG3 since it was also the understanding of CTUIL that there is regulatory uncertainty and the clarity on treatment of transition cases, especially where the LOA/PPA has been cancelled, is sub-judice and being dealt by this Commission. CTUIL is barred from taking such coercive and precipitative steps against the Petitioner on account of acquiescence and waiver by its conduct.
  - d) On 08.02.2022, the Petitioner submitted its application to CTUIL in terms of Connectivity Regulations, 2009, for a grant of Stage-I Connectivity for its 300 MW Wind Project at Gadag S/s. On 29.04.2022, CTUIL issued its Grant to Stage-I Connectivity. Under the identified transmission scheme, the Petitioner was required to undertake construction of the dedicated transmission system from its Project at



Koppal to Gadag S/s. The petitioner, knowing how connectivity is a scarce commodity, applied for the same in advance to avoid any future connectivity-related delays.

- e) On 24.05.2022, the Petitioner, after participating in the e-Reverse Auction conducted by SECI, emerged as one of the successful bidders for a total capacity of 300 MW at a tariff of INR 2.93 per kWh. On 12.07.2022, SECI issued a Letter of Award (LOA) in favour of the Petitioner for setting up Project – 300 MW at Koppal district in the State of Karnataka with an interconnection point at Gadag. A power purchase agreement (PPA), ought to have been executed between SECI and the Petitioner within 90 days from the issuance of the LOA. SECI failed to execute the same within the stipulated timelines as per the RfS, the LoA, and the MoP Bidding Guidelines. At the same time, SECI could not execute Power Supply Agreements (PSA) within the stipulated timelines. Even when belatedly, SECI entered into power procurement arrangements with certain distribution companies, SECI was unable to provide clarity on the Effective Date under the PPA/PSA and the time available to the Petitioner for the completion of various milestones under the PPA, including the scheduled commercial operation date (SCOD). Due to such delay, the bid submitted by the Petitioner also became redundant. Accordingly, upon the request of the Petitioner, SECI allowed the Petitioner to exit the LOA process without any liability. PBG submitted by the Petitioner to SECI was returned without any deductions.
- f) On 07.06.2022, this Commission issued the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (hereinafter referred to as “GNA Regulations”), which was made effective from 15.10.2022, except for a few provisions which were made effective subsequently.
- g) On 07.09.2022, Petitioner submitted its application for a grant of Stage-II Connectivity for its 160 MW Wind Project at Gadag S/s. On 23.11.2022, CTUIL issued a letter to the Petitioner in relation to the transition of Connectivity under the GNA Regulations, wherein the Petitioner was required to submit for transition within 30 days from the issuance of the letter. On 19.12.2022, within the stipulated timelines, the Petitioner, vide its email, submitted the requisite documents for the transition of 160 MW Connectivity under the GNA Regulations to CTUIL. On 16.02.2023, CTUIL granted Stage-II Connectivity to the Petitioner for 160 MW capacity at the Gadag-II Pooling Station.



- h) The above grant of Stage – II Connectivity was post-notification of the GNA Regulations. However, CTUIL insisted on compliance under the previous regime, i.e., the 2009 Connectivity Regulations. Once the GNA Regulations were notified on 15.10.2022, it repealed the existing 2009 Connectivity Regulations. The Petitioner ought to have been considered in terms of the provisions of the GNA Regulations. However, the transition clauses under the GNA Regulations were not notified.
- i) On 06.03.2023, in compliance with CTUIL’s communication dated 16.02.2023 for the grant of Stage-II Connectivity, the Petitioner executed a Transmission Agreement for Connectivity with CTUIL. Since the Connectivity /Transmission Agreement was executed post 15.10.2022, the Petitioner was under the impression that CTUIL had already aligned the same in terms of the provisions of the new GNA Regulations. In compliance with the regulatory framework and CTUIL’s communication dated 16.02.2023 for the grant of Stage-II Connectivity, the Petitioner on 17.03.2023, submitted both, Conn-BG 1 and Conn-BG 2 amounting to INR 50,00,000 and INR 3,00,00,000 to CTUIL.
- j) On 01.04.2023, the Commission, vide its notification, issued the First Amendment to the GNA Regulations, 2022, and notified that the effective date of Regulations 37.1 to 37.8 shall be 05.04.2023 instead of 15.10.2022.
- k) On 02.05.2023, the Petitioner again received an email from CTUIL wherein transition documents were again sought from the Petitioner afresh. Accordingly, on 03.05.2023, the Petitioner submitted the transition documents to CTUIL. On 09.10.2023, CTUIL granted in-principal Connectivity to the Petitioner under Regulations 7.1 and 7.2 of the GNA Regulations for its 160 MW capacity at Gadag-II PS with the tentative start date of 30.09.2025.
- l) On 20.09.2023, the Commission, while dealing with the issue pertaining to the retention of connectivity by a solar/wind developer in the absence of the LOA/PPA, which was annulled by SECI since no PSA was executed in 90 days from the LOA, granted interim stay on the revocation of the Connectivity by CTUIL in Petition No. 291/MP/20223 and 292/MP/2023. During such pendency of the proceedings, both the Petitioner and CTUIL, having no certainty regarding in what manner the provisions of the GNA shall be interpreted by the Commission, maintained the status quo of their actions. The Petitioner did not submit the Conn-BG3 under the bona fide assumption that the issue of transition in cases where the LOA is cancelled/annulled for reasons not attributable to the developer is sub-judice before the Commission and that the

Petitioner had already submitted the Conn-BG1 and Conn-BG2 of INR 50 lacs and INR 3 Crores. CTUIL, too, did not take any coercive and/or precipitative steps against the Petitioner during the entire pendency of the proceedings. On 21.04.2024, the Commission passed its Order in Petition Nos. 291/MP/2023 and 292/MP/2023 relaxing the provisions of Regulation 24.6 and allowing the Petitioners to convert their Connectivity granted under LOA route to any other route as provided for in Regulation 5.8(xi), keeping in view that the annulment of the LoAs was not due to default on the part of the Petitioners and the seriousness and commitment shown by the Petitioners, by way of progress made to bring on the projects.

- m) Once the Commission passed the Order dated 21.04.2024, certain other subsequent orders were issued by the Commission, including in Petition No.218/MP/2024 and 219/MP/2024 filed by CTUIL seeking clarification on the implementation of the Order dated 21.04.2024, which according to CTUIL, it was unable to implement since it was against Order of 9/MP/2024. The orders in CTUIL's petition came to be passed on 02.08.2024.
- n) Once the regulatory certainty was provided by the orders of the Commission, it was the Petitioner who reached out to CTUIL over a telephonic conversation seeking clarity on how to proceed with the submission of Conn-BG3, which was kept on hold till there existed clarity on the interpretation of GNA clauses, in relation to transition projects where the LOA/PPA have been cancelled for no fault of the connectivity grantee. CTUIL, instead of reverting to the request of the Petitioner, proceeded to issue communication dated 08.08.2024 to the Petitioner and revoked the grant of connectivity for its 160 MW Project on account of failure to submit Conn-BG3 in a timely manner in accordance with the GNA Regulations. On 14.08.2024, the Petitioner, in response, informed CTUIL that connectivity granted to the Petitioner had been unduly revoked and it could not have submitted Conn-BG 3 in view of the fact that there was no certainty on the availability of the transmission system. Petitioner requested CTUIL to revoke the letter dated 08.08.2024 and restore the 160 MW connectivity granted to the Petitioner without adverse action with respect to the Conn-BG1 and Conn-BG2 already submitted on 17.03.2023. Furthermore, in light of the LoA being cancelled with SECI, the Petitioner is also entitled to seek for conversion of 160 connectivity from the LOA/PPA route to the Land / Land BG route. There is no response whatsoever received from CTUIL, and it is apprehended that the 160 MW Connectivity Granted to the Petitioner, once revoked, shall be offered to other entities to the detriment of the rights and interests of the Petitioner. On the contrary, it is given



to understand that CTUIL has invoked and encashed the Conn-BG1 without reverting to the Petitioner's request for seeking details for submission of Conn-BG3.

- o) The Commission has notified the second amendment to the GNA Regulations on 19.06.2024 to protect the rights and interests of the project developers like the Petitioner, whose LOA/PPA has been cancelled for reasons not attributable to the Petitioner, and the same has been agreed or approved by the Renewable Energy Implementing Agency (SECI), to convert its connectivity either in full or in part from LOA/PPA route to Land /Land BG route, with no change in the start date of the connectivity.
- p) Despite the above clear and unambiguous position in law and a representation being placed before CTUIL for its consideration covering all the legal and contractual framework, the Petitioner herein is yet to receive any communication from CTUIL on the subject issue. Therefore, there is a strong apprehension that CTUIL may not consider the representation made by the Petitioner herein and/ or take any step(s) against the Petitioner that are coercive and prejudicial in nature and be legally and commercially detrimental to its interest.
- q) The Petitioner has already invested substantial amounts towards the implementation of the 160 MW Wind Project at Koppal and has entered into/in the advanced stage of formalizing EPC and OEM agreements. The Petitioner is also in a position to demonstrate its seriousness by submitting the requisite land documents (50 percent of the total project requirement) and/or Bank Guarantee in lieu of the land documents to retain the 160 MW Connectivity at Gadag–II. No prejudice is being caused to CTUIL regarding any delay in the utilisation of the transmission asset since the Petitioner is committed to utilise such connectivity as and when the transmission system is made available by CTUIL.
- r) The Petitioner is already engaged in securing power supply agreements with certain commercial and industrial customers and is committed to utilizing the connectivity as originally envisaged by CTUIL. i.e., December 2025 or as soon as the transmission system is made available. Considering that the works contract for Gadag – II S/s is yet to be granted by CTUIL, there is no prejudice caused to CTUIL if the Petitioner is allowed to retain the connectivity by changing from LOA/PPA route to the Land/Land BG Route.



## **Submission of Petitioner in I.A No. 70/2024**

4. The Petitioner under IA No. 70/2024 reiterated its submission made under the main Petition and sought interim reliefs to keep in abeyance the implementation of the CTUIL's letter dated 08.08.2024 and restrict CTUIL from taking any coercive steps against the Petitioner, including encashment of the Conn-BG2 and/or allotting the 160 MW connectivity at Gadag – II to any other entity till the final disposal of the instant petition.
5. The Petitioner vide additional affidavit dated 27.08.2024 has submitted the following to bring on record the status of the 160 MW Wind Project:
  - a) The Petitioner has made substantial investments amounting to INR 53 Crores (approx.) for GO, Land, S/s, and studies for the implementation of its 160 MW Wind Project at Koppal. The Petitioner is committed to invest approx. INR 1400 Crores for the entire 160 MW Wind Project and is committed to utilize the 160 MW Connectivity at Gadag S/s-II.
  - b) The Petitioner has also initiated investment in the EHV infrastructure by incurring approximately INR 5 lacs towards the PSS design.
  - c) The Petitioner has identified a total of 25 land parcels, out of which 18 sale deeds have already been executed and 7 are at the GPA stage. Considering each wind turbine generator of 3.6 MW, a total of 45 locations, has been worked out to be 40.5 acres are required for establishing a 160 MW Wind Power Project. As per the CEA Guidelines, [the minimum land required for wind project shall be 0.25 acres per MW], the total footprint area required for 160 MW therefore, works out to be 40.5 acres. The Petitioner has already executed sale deeds/GPA deeds for 25 locations, totalling 35.8 acres for the footprint area and a total of 175 acres inclusive of the access path and swept area. The Petitioner is compliant with the 50 percent criteria under the GNA Regulations to retain the 160 MW Connectivity at Gadag - II S/s.
  - d) Petitioner is committed and willing to retain its 160 MW Connectivity at Gadag-II Substation and shall submit the Conn-BG3 within two weeks. The two weeks are required since the Petitioner's parent company is based out of France and the board approval for the same shall take such time.

## **Hearing on 28.08.2024**

6. Relevant extract of the RoP of hearing dated 28.08.2024 is as under:





“ .....

2. In response to the specific query of the Commission as to why the Petitioner did not approach the Commission at the relevant point in time back in December 2023, learned senior counsel fairly submitted that there has been a delay on the part of the Petitioner in approaching the Commission. Learned senior counsel, however, hasten to add that keeping in view the regulatory uncertainty prevailing at that time, CTUIL also did not take any coercive and/or precipitative steps against the Petitioner.

.....

4. In response to the specific query of the Commission regarding any pending application for the grant of connectivity at Gadag II PS and the allocation/re-allocation of the 160 MW capacity pursuant to revocation, if any, learned counsel for CTUIL sought liberty to seek necessary instructions on the above aspect.

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

- (a) Issue notice to the Respondents subject to just exceptions;
- (b) The Petitioner is to implead SECI as a party to the present Petition and file a revised memo of parties within a week;
- (c) The Respondents are to file their reply to the Petition as well as IA within three weeks with a copy to the Petitioner, who may file its rejoinder(s), if any, within three weeks.
- (d) The Petitioner is to submit the following details/information on an affidavit within two weeks:
  - i. A copy of SECI's letter allowing the Petitioner to exit from the LoA,
  - ii. A copy of the RfS issued by SECI corresponding to the LoA dated 12.7.2022,
  - iii. Reasons for non-submission of the Conn-BG3 within the stipulated timelines subsequent to the conversion of the 160 MW of Connectivity under the GNA Regulations.
  - iv. Status of the project. Indicate the steps taken by the Petitioner towards implementation of the Project, including the status of acquiring of land for the project, i.e., land required vis-à-vis land acquired for the project, with actual land acquired through a registered title deed or on lease or land use rights basis.
  - v. Details of investment made with timeline for the project along with the supporting documents.
- (e) The Respondent, CTUIL, is to provide the reasons for the delay in revocation of the connectivity for non-submission of Conn BGs by the Petitioner along with its reply.
- (f) The Respondent, SECI to respond, in its reply, to the Petitioner's averment that the Petitioner was allowed to exit from the LoA for the reasons not attributable to the Petitioner.
- (g) Insofar as the grant of interim reliefs/directions as prayed for by the Petitioner is concerned, the Commission declined to grant any reliefs at this stage prior to considering the submissions of the Respondents thereon.

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### **Submission of Petitioner**

7. Petitioner on 04.09.2024 has filled Amended Memo of Party by impleading SECI as party to the present Petition.



## **Submissions of Respondent CTUIL**

8. CTUIL vide affidavit dated 23.09.2024 submitted as under:
- a) The Petitioner was granted Stage-I connectivity for 300 MW capacity on 29.04.2022 and Stage-II Connectivity on 16.02.2023 under the erstwhile 2009 Connectivity Regulations. Thereafter, as per the CERC notification dated 01.04.2023 for the effectiveness of the GNA Regulations, the Petitioner was directed to transition the said connectivity in accordance with GNA Regulations.
  - b) In the video letter dated 03.05.2023, the Petitioner requested the transition of its Connectivity for 160 MW from the 2009 Connectivity Regulations to the GNA Regulations. CTUIL vide Letter dated 09.10.2023, communicated the in-principle grant of connectivity in terms of Regulation 37.2 of GNA Regulations and intimated the Petitioner about the submission of applicable Conn-BGs (Conn-BG1 of Rs 0.5 Crores, Conn-BG 2 of Rs. 3 Crores and Conn-BG3 of Rs. 3.2 Crores) within two months, from the date of issuance of the letter, i.e., by 19.12.2023, failing which the application for Connectivity shall be closed and application fee shall be forfeited. The petitioner was only required to submit the Conn-BG3 of Rs. 3.2 Crores, as Conn-BG1 and Conn-BG2 were already submitted under the erstwhile 2009 Connectivity Regulations. The petitioner did not submit the requisite Conn-BGs even after the date of revocation of the connectivity, i.e., 08.08.2024. The petitioner never approached CTUIL on this matter till the revocation of its Connectivity due to non-submission of Conn-BGs in terms of CTUIL intimation letter dated 09.10.2023.
  - c) The petitioner was well aware of the regulatory action that would be taken if he failed to comply with the conditions mandated in the in-principle grant issued by CTUIL. Regulation 37.2 of the GNA Regulations provides that in the event of non-submission of Conn-BGs, as intimated by the CTUIL, the connectivity granted would be revoked along with encashment of Conn-BG1, and Conn-BG2 would only be encashed in cases where the terminal bay had been awarded for implementation.
  - d) During the transition phase from the 2009 Connectivity Regulations to the GNA Regulations, CTUIL received more than 500 applications that were being processed and for which more than 1400 bank guarantees were received, which were being scrutinized. In earlier instances, CTUIL had revoked the Connectivity of the respective entities in terms of GNA Regulations in case of default in submitting requisite BGs as per regulatory timelines. Furthermore, it is mentioned that the connectivity of M/s Project Ten Renewable Pvt. Ltd. which was to be submitted by 29.01.2023, was also



revoked on 05.08.2024 due to non-submission of the BG. In the present case, the BG was not invoked because of the inadvertent bona fide mistake of CTUIL.

- e) The contention of the Petitioner that delays on the part of CTUIL to revoke the connectivity is waiver of a right is baseless as there is no intentional relinquishment of right by CTUIL. The proceeds of the encashment of Conn-BGs are used to reduce the monthly transmission charges under the 2020 Sharing Regulations. In any event, CTUIL could not have said to waive a right contrary to the public interest.
- f) The Stage-II connectivity had been sought for and granted on the basis of the LoA dated 12.07.2022 issued by SECI. LoA was cancelled by SECI, vide a Letter dated 27.12.2023. This fact was not disclosed and, in fact, concealed by the Petitioner until the issuance of the communication dated 14.08.2024 (which was issued after the notice of revocation issued by CTUIL 08.08.2024). The above fact is also evident from the Minutes of the Joint Coordination Committee ('JCC') Meeting of Southern Region dated 17.01.2024, 10.05.2024, and 31.07.2024, which was attended by the Petitioner wherein the Petitioner failed to disclose about the termination of the LoA.
- g) As regards the contention of the Petitioner that there was regulatory uncertainty, it is submitted that the issue is not of conversion from LOA route to Land BG route but of non-submission of requisite Conn-BGs. As regards the contention of the Petitioner that no firm date of connectivity was known to the Petitioner and, therefore, Conn-BG3 was not submitted, CTUIL places reliance on Regulation 9.1 of the GNA Regulations, which states that the final grant of connectivity indicating the tentative coordinates and SCOD of the ISTS substation is to be intimated within 15 days of receipt of Conn-BG2 and Conn-BG3. In the absence of Conn-BG3, it was not incumbent upon CTUIL to intimate such details. However, without prejudice to the above, a perusal of the communication dated 09.10.2023 intimating the in-principle grant of connectivity provides the scheme details, the scheduled commissioning date of such scheme, and likely the start date of connectivity.
- h) In respect of the Petitioner's contention that it was observing the litigations in regard to the conversion of connectivity from the LOA route to the Land BG route and, therefore, did not approach this Commission at a relevant time is an afterthought, it is submitted that the Petitioner cannot be allowed to sit on a fence and thereafter, agitate stale claims.
- i) In any event, GNA Regulations provide for the transition from the LOA/PPA Route to the Land BG Route, only for connectivity grantees. It was only on 09.10.2023, that the



Petitioner was transitioned and granted in principle connectivity. Thus, the Petitioner is not even a connectivity grantee. In this regard, reliance may be placed on the judgment dated 12.05.2024, passed by this Commission in Petition No. 9/MP/2024 - ACME Cleantech Solutions Private Limited V. Central Transmission Utility of India Limited.

- j) In response to the Petitioner's Letter dated 14.08.2024, CTUIL wrote a Letter dated 29.08.2024 to the Petitioner, clarifying that on account of non-submission of Conn-BG3, CTUIL had already revoked the connectivity for 160 MW vide its Letter dated 08.08.2024.

### **Hearing on 17.10.2024**

9. Considering the request of the Petitioner, the Commission permitted the Petitioner to file its rejoinder to the CTUIL reply.

### **Submissions of Petitioner**

10. Petitioner vide affidavit dated 15.10.2024 (added on the portal on 19.11.2024) has filed its rejoinder to the CTUIL's reply dated 23.09.2024, reiterating its earlier submission along with the following additional submission:
- a) CTUIL, in no manner whatsoever from 09.12.2023 till 08.08.2024, approach the Petitioner for submission of Conn-BG3. In essence, it is stated that CTUIL waived its right by conduct with respect to the submission of the same.
- b) CTUIL has conveniently attempted to cloak its inaction under the guise of a 'bona fide mistake.' In addition, CTUIL, while making such an objection, has selectively disregarded the principle that waiver by conduct is recognized even in cases involving public interest, especially where such conduct has induced reliance and substantial investments.
- c) Regulations 10.3 of the GNA Regulations stipulate that upon the signing of the Connectivity Agreement, the entity shall become the Connectivity grantee. In the facts and circumstances of the present case, the Transmission Agreement for Connectivity was signed between the Petitioner and CTUIL on 06.03.2023. Therefore, the reliance of CTUIL on the Order dated 12.05.2024 passed in Petition No. 9/MP/2024 titled "ACME Cleantech Solutions Pvt. Ltd. v. CTUIL" is not applicable to the facts and

circumstances of the present case and therefore is liable to be rejected by this Commission.

- d) The Petitioner is not seeking any shifting in the start date of connectivity or the extension with respect to the injection of power. Therefore, CTUIL cannot be prejudiced in any manner whatsoever, and this Commission ought to discharge its regulatory powers and grant the relief as sought by the Petitioner.

### **Hearing on 27.12.2024**

11. The Commission reserved the matter for order with the liberty to the Petitioner to mention the matter for further hearing, if required. The Commission also directed CTUIL to provide the present availability of the 160 MW connectivity at Gadag-II PS for the Petitioner.

### **Submission of Respondent CTUIL**

12. CTUIL, vide reply dated 09.01.2025, has submitted that the 160 MW connectivity granted to the Petitioner has been revoked and has not been reallocated to any other applicant at this present date, and the margin so created has not been utilized. Apart from margins available due to revocation/closure of Connectivity, no margin is available at Gadag-II PS.
13. CTUIL vide written submission dated 10.01.2025 has reiterated its earlier submissions and additionally has submitted as under:
  - a) Petitioner has contended that it did not take any steps at the relevant time, i.e., in the month of December 2023, as at the relevant time, the Regulations did not allow the conversion of connectivity granted on the basis of LoA/PPA to Land/BG Route. The above contention is an afterthought and does not merit any consideration from this Commission. As stated hereinabove, the Petitioner did not take any steps, not just in the month of December 2023 but from December 2023 till August 2024, until CTUIL revoked the in-principle grant of connectivity.
  - b) The reliance on the proceedings in the case of Solar One Energy Private Limited v. CTUIL & Anr (Petition No. 291/MP/2023) to contend that the clarity on the issue of conversion only came in the month of April 2024 is also misplaced, as would be clear from hereinbelow:



- i. Petition No. 291/MP/2023 was filed in the month of September 2023. This Commission vide Record of Proceedings for the hearing held on 22.09.2023 directed *CTUIL will not take any coercive action/steps against the Petitioner with regard to the invocation/encashment of BGs and re-allocate the bays connected with the grant of the Connectivity to the Petitioner at Koppal and Gadag till the next date of the hearing.*
  - ii. Similarly, in another case filed by Acme Solar Private Limited (Petition No. 292/MP/2023) vide the Record of Proceedings dated 18.10.2023, this Commission directed CTUIL to maintain the status-quo in regard to the connectivity;
  - iii. Thereafter, this Commission, vide Order dated 21.04.2024 in Petition No. 291/MP/2023 and Petition No. 292/MP/2023, relaxed the provisions of the GNA Regulations and allowed conversion of connectivity from the LoA/ PPA route to the Land BG route. Even after the above Orders dated 21.04.2024, the Petitioner did not take any steps.
- c) On 15.07.2024, the Second Amendment to the GNA Regulations became effective, which had, by law, allowed such conversion. It is submitted that even after the above, the Petitioner did not take any steps until the revocation of connectivity done by CTUIL on 08.08.2024.
  - d) From the above, it is discernible that the Petitioner never approached CTUIL on this matter till the revocation of its Connectivity on account of the non-submission of Conn-BGs by the Petitioner in terms of the intimation letter dated 09.10.2023 issued by CTUIL. In the meantime, the Petitioner had sufficient opportunity to approach this Commission at the opportune time; however, the Petitioner was sitting on the fence, being well aware of other similarly placed power plants approaching this Commission seeking appropriate relief on similar grounds. Thus, the present Petition is an afterthought. It is a settled position of law that the law assists only those who are vigilant and not those who sleep over their rights.
  - e) On the aspect of relinquishing the Petitioner's right by CTUIL, it is submitted that the delay on the part of CTUIL to revoke the connectivity cannot be said to waive a right. It is further submitted that the Petitioner is only attempting to take advantage of its own wrong. Reliance in this regard must be placed on the judgment dated 08.12.2016, passed by the Supreme Court in All India Power Engineer Federation and Ors. v.

Sasan Power Limited and Ors. (2017) 1 SCC 487 wherein it has been held that one cannot waive a non-existent right.

- f) In the Additional Affidavit dated 27.08.2024 filed by the Petitioner, it has been alleged that the Petitioner had executed sale deeds/General Power of Attorney ('GPA') deeds for 25 locations. However, as on 27.08.2024, the Petitioner failed to furnish the specific details/dates on which these sale deeds/GPA deeds were executed. It is not discernible whether such investment has been made prior to or post PPA termination.
- g) The application of the concept of proof of loss would arise in cases where there is a contract and a breach thereof. As stated hereinabove, the encashment of bank guarantee arises out of subordinate legislation in the form of Regulations framed by this Commission under Section 79 of the Electricity Act, 2003, and not on account of any contract. Therefore, in the present case, there cannot be any application of the principles of proof of legal injury/ loss, etc.
- h) It needs to be emphasized that the purpose of a bank guarantee is to ensure the commitment and seriousness of the project developers. If the applicants are allowed to not comply with the conditions for the grant of connectivity without any deterrent in the form of encashment of bank guarantee, then the applicants would apply for connectivity at various sub-stations at their sweet will and will not comply with the conditions which will severely affect and undermine the transmission planning by CTUIL. The very purpose and spirit of providing for bank guarantee will be frustrated.

### **Submission of the Petitioner**

- 14. Petitioner vide written submission dated 20.01.2025 has reiterated its earlier submissions and has additionally submitted as below:
  - a) Petitioner's 160 MW Connectivity, which has been unduly revoked, has till date not been allocated to a third party/ entity. Therefore, at this juncture, no third-party rights have been created. No party will be put to prejudice if the Petitioner is allowed to retain and utilise its 160 MW Connectivity. However, if the Petitioner's Connectivity is not restored, the same could lead to failure in the execution of the Project and would make the entire investment made by the Petitioner futile, and the Petitioner will not be able to utilise the land procured for the project. Even if the Petitioner applied afresh for connectivity, there is no capacity left for any nearest available substation as per the

planned augmentation available on the CTUIL's website. The same is also evident from CTUIL's compliance Affidavit dated 09.01.2025 filed before this Commission.

- b) It is evident that this Commission, in the case of SolarOne, granted relaxation based on the substantial investment that the company had already made in the project, recognizing the significant financial commitment involved. Similarly, the Petitioner, in this case, has already made substantial investments towards the development of their project. In view thereof, it can be reasonably said that the Petitioner is similarly placed to Solar One in terms of the investments made, and thus, a similar dispensation ought to be accorded to the Petitioner by this Commission.
- c) In terms of Regulation 41 and Regulation 42 of the GNA Regulations, in case any regulation causes hardship to a party or works injustice to him, or application thereof leads to unjust results, this Commission has wide powers to relax any provision of the regulations and to remove difficulties arising in giving effect to the provisions of the regulations.

### **Analysis and Decision**

- 15. We have considered the submissions of the Petitioner and Respondents and perused the facts available on record.
- 16. The Petitioner has submitted that CTUIL, on 16.02.2023, granted Stage-II Connectivity for the 160 MW capacity at Gadag-II Pooling Station in terms of the 2009 Connectivity Regulations. Subsequently, after the effectiveness of the GNA Regulations, the Petitioner opted for the transition from the 2009 Connectivity Regulations to the GNA Regulations, and on 09.10.2023, CTUIL granted in-principal Connectivity to the Petitioner under the GNA Regulations for its 160 MW capacity at Gadag-II PS with a tentative start date of 30.09.2025.
- 17. The Petitioner had submitted that it did not submit the Conn-BG3 under the *bona fide* assumption that the issue of transition cases where the LOA is cancelled/annulled for reasons not attributable to the developer is subjudice before the Commission and that the Petitioner had already submitted the Conn-BG1 and Conn-BG2 of Rs.50 lakh and Rs.3 crores, respectively.
- 18. The petitioner has submitted that CTUIL, vide its communication dated 08.08.2024, revoked the grant of connectivity for its 160 MW Project due to failure to submit Conn-





BG3 promptly in accordance with the GNA Regulations. The Petitioner, by way of the present Petition, is challenging the revocation of 160 MW Connectivity at Gadag—II.

19. CTUIL has submitted that the Petitioner, vide letter dated 03.05.2023, requested the transition of its Connectivity for 160 MW from the 2009 Connectivity Regulations to the GNA Regulations. CTUIL, vide letter dated 09.10.2023, communicated the in-principle grant of connectivity in terms of Regulation 37.2 of GNA Regulations and intimated the Petitioner about the submission of applicable Conn-BGs (Conn-BG I of Rs 0.5 crores, Conn-BG II of Rs. 3 crores and Conn-BG III of Rs. 3.2 crores) within two months from the date of issuance of the letter, failing which the application for Connectivity shall be closed and application fee shall be forfeited. The Petitioner was well aware of the regulatory action that would be taken if it failed to comply with the conditions mandated in the in-principle grant issued by CTUIL. CTUIL submitted that since the Petitioner had failed to submit the Conn-BG3 within the stipulated time frame in terms of the GNA Regulations, the in-principle grant of connectivity to the Petitioner for 160 MW at Gadag II PS was revoked, and consequently, Conn BG1 has been invoked.
20. Considering the submissions of the Petitioner and the Respondent, the following issues arise for our consideration:

**Issue No. 1: Whether the Petitioner has complied with the Regulatory provisions for the transition of its Connectivity of 160 MW at Gadag-II from the 2009 Connectivity Regulations to the GNA Regulations? Whether the Petitioner is eligible for re-instating its Connectivity of 160 MW at Gadag-II?**

**Issue No. 2: Does the request for the conversion of Connectivity from the LOA/PPA route to the Land / Land BG route merit consideration of the commission?**

**Issue No. 3: Whether any direction is required to be issued to CTU to return INR 50 lacs to the Petitioner in lieu of the Conn-BG1?**

The above issues are dealt with in the succeeding paragraphs.

**Issue No. 1: Whether the Petitioner has complied with the Regulatory provisions for the transition of its Connectivity of 160 MW at Gadag-II from the 2009 Connectivity Regulations to the GNA Regulations? Whether the Petitioner is eligible for re-instating its Connectivity of 160 MW at Gadag-II?**

21. The Petitioner was granted Stage-II Connectivity under the 2009 Connectivity Regulations vide CTUIL's communication dated 16.02.2023. The Petitioner, on



17.03.2023, submitted Conn-BG 1 and Conn-BG 2, amounting to Rs. 50,00,000 and Rs. 3,00,00,000, respectively, to CTUIL under the 2009 Connectivity Regulations.

22. Vide letter dated 03.05.2023, the Petitioner requested to transition its Connectivity for 160 MW from the 2009 Connectivity Regulations to the GNA Regulations. CTUIL vide letter dated 09.10.2023, communicated the in-principle grant of connectivity in terms of Regulation 37.2 of GNA Regulations and intimated the Petitioner about the requirement of submission of the applicable Conn-BGs (Conn-BG1 of Rs 0.5 crores, Conn-BG 2 of Rs. 3 crores and Conn-BG3 of Rs. 3.2 crores) within two months, from the date of issuance of the letter, i.e., by 19.12.2023.

23. Regulation 37.2 of the GNA Regulations provides as under:

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

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

.....

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

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

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

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

***(h) In case the entity fails to furnish Conn-BG1, Conn-BG2 and Conn-BG3 as intimated by the Nodal Agency in terms of clause (d) of this Regulation,***

***(i) the Connectivity granted to the entity under the Connectivity Regulations, 2009 shall be revoked by the Nodal Agency and***

*(ii) Conn-BG1 furnished, if any, under the Connectivity Regulations, 2009 shall be encashed and*

*(iii) Conn-BG2 furnished, if any under the Connectivity Regulations, 2009, shall be returned:*

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

As per the above provision, the entity that has opted for the transition of its Connectivity from the 2009 Connectivity Regulations to the GNA Regulations shall have to submit the Conn-BG1, Conn-BG2, and Conn-BG3, as intimated by the Nodal Agency, within two months of intimation of the Nodal Agency. If the entity fails to submit the Conn-BGs within the stipulated timelines, the Connectivity granted to the entity under the 2009 Connectivity Regulations shall be revoked by the Nodal Agency.

24. We have also perused the CTUIL`s letter dated 09.10.2023, intimating the in-principle grant of Connectivity for the 160 MW in terms of the GNA Regulations. The relevant extract of the CTUIL letter dated 09.10.2023 is as under:

*“Sub: In-principle grant of Connectivity for 160 MW to M/s Halvad Renewables Pvt. Ltd. at Gadag-II PS- Reg.*

...

*With reference to followings, please find attached In-principle grant of Connectivity for 160 MW to M/s Halvad Renewables Pvt. Ltd. at Gadag-II PS*

*1. Stage-II Connectivity application, no. 0251100008 (for 160 MW) dated 07.09.2022, and subsequent request, vide letter dated 03.05.2023 for transition of Connectivity for 160 MW from Connectivity Regulation 2009 to GNA Regulations 2022.*

*2. Minutes of the 21st CMETS-SR meetings, held on 18.08.2023, wherein your application was discussed and agreed for grant of connectivity for 160 MW, as per regulation 37.2 under CERC GNA Regulation 2022.*

***You are required to submit applicable Conn-BGs within two months, from the date of issuance of this letter, failing which the application for Connectivity shall be closed and application fee shall be forfeited.***

.....

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INTIMATION FOR IN-PRINCIPLE GRANT OF CONNECTIVITY UNDER REGULATIONS 7.1 and 7.2			
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<i>C Bank Guarantees to be submitted</i>			
<i>i</i>	<i>Amount of Conn-BG1</i>	<i>:</i>	<i>Rs. 50 lakhs</i>
<i>ii</i>	<i>Amount of Conn-BG2</i>	<i>:</i>	<i>Rs. 3.0 Cr.</i>
<i>iii</i>	<i>Amount of Conn-BG3 @2 lakh/MW</i>	<i>:</i>	<i>Rs. 3.2 Cr.</i>

.....”

Perusal of the above letter reveals that CTUIL, while issuing an in-principle grant of Connectivity for 160 MW, specified that the Conn-BGs were to be submitted within two months from the date of issuance of the letter, failing which the application for Connectivity shall be closed.



25. We note that out of Conn-BG1, Conn-BG2, and Conn-BG3, specified in the CTUIL letter dated 9.10.2023, the Petitioner was required to submit only Conn-BG3, as Conn-BG1 and Conn-BG2 had already been submitted by the Petitioner under the 2009 Connectivity Regulations. The Petitioner did not submit the requisite Conn-BG3 within the stipulated timeline.
26. We disagree with the Petitioner's action of non-submission of Conn- BG3 because there were some ongoing cases or that there was any regulatory uncertainty. The GNA Regulations clearly provide the submission requirement of Conn-BGs for the transition of Connectivity from the 2009 Connectivity Regulations to the GNA Regulations and the liable consequences in case of failing to submit the requisite Conn-BGs within the stipulated timeline.
27. We also note that the Petitioner's Connectivity was liable for revocation on 9.12.2023, i.e., on completion of two months for the CTUIL intimation letter dated 9.10.2023, whereas the CTUIL revoked the Petitioner's Connectivity on 08.08.2024. On being asked the reasons for such delay on the part of CTUIL in revoking the in-principle Connectivity, CTUIL submitted that during the transition phase, CTUIL was handling around 1400 Conn BGs and more than 500 applications of various developers, which were being scrutinized and the same has led to the inadvertent delay in revoking the Connectivity. We are of the view that delays on the part of CTUIL in revoking the Connectivity do not absolve the Petitioner from not meeting its compliances under the Regulations. We observe that the actions to be taken by the Nodal Agency under the Regulations, including that of revocation of Connectivity and the invocation of the Conn-BG(s), as applicable, should be carried out strictly as per the timeline prescribed in the Regulations.
28. Considering the above discussion, we observe that the Petitioner has not complied with the regulatory provisions for transitioning its 160MW Connectivity from the 2009 Connectivity Regulations to the GNA Regulations by not submitting the Conn-BG3 within the stipulated timeline. Thus, in terms of Regulation 37.2 of the GNA Regulations, the Petitioner's Connectivity is liable for revocation. We uphold the action of the CTUIL to revoke the in-principle grant of Connectivity on account of the non-submission of Conn-BG3 within the stipulated time.
29. Accordingly, we decline the Petitioner's request to reinstate the connectivity of 160 MW at Gadag – II S/s.
30. The issue is answered accordingly.

**Issue No. 2: Whether the request for conversion of Connectivity from the LOA/PPA route to the Land / Land BG route merits consideration of the Commission?**

31. The Petitioner has submitted that it has made substantial investments amounting to Rs. 53 crores (approx.) for GO, Land, S/s, and studies for the implementation of its 160 MW Wind Project at Koppal and has entered into/in the advanced stage of formalizing EPC and OEM agreements. The Petitioner also submitted that it could furnish the requisite land documents (50 % of the total project requirement) and/or Bank Guarantee in lieu of the land documents to retain the 160 MW Connectivity at Gadag-II. The Petitioner has submitted that it was also in the process of securing power supply agreements with certain commercial and industrial customers.
32. The Petitioner, has further submitted that in light of the LoA being cancelled with SECI, it is also entitled to seek the conversion of 160 connectivity from the LOA/PPA route to the Land / Land BG route and that it is similarly placed to SolarOne in Petition Nos. 291/MP/2023 and 292/MP/2023 in terms of the investments made, and thus, a similar dispensation ought to be accorded to the Petitioner by this Commission. The Petitioner has also submitted that the Commission has notified the second amendment to the GNA Regulations to protect the rights and interests of the project developers like the Petitioner, whose LOA/PPA has been cancelled for reasons not attributable to the Petitioner to convert its connectivity either in full or in part from LOA/PPA route to Land /Land BG route. In terms of Regulation 41 and Regulation 42 of the GNA Regulations, this Commission has wide powers to relax any provision of the regulations and to remove difficulties arising in giving effect to the provisions of the regulations.
33. Per contra, the CTUIL has submitted that the LoA was cancelled by SECI, vide letter dated 27.12.2023. However, this fact was not disclosed by the Petitioner in any of the Joint Coordination Committee ('JCC') Meetings of the Southern Region dated 17.01.2024, 10.05.2024, and 31.07.2024 until the issuance of the communication dated 14.08.2024.
34. We are of the considered view that the Petitioner did not comply with the provisions of the GNA Regulations and failed to submit the Conn-BG3 within the stipulated time in terms of the GNA Regulations due to which the Connectivity was rightly revoked by the CTUIL as decided in Issue No.1. Once the Connectivity has been revoked, it is not relevant to discuss the progress made by the Petitioner and the issue of conversion of Connectivity from the LOA route to any other route.



35. The issue is answered accordingly.

**Issue No. 3: Whether any direction is required to be issued to CTUIL to return Rs. 50 lakh to the Petitioner in lieu of the Conn-BG1?**

36. The Petitioner has submitted that it has been given to understand that CTUIL has invoked and encashed the Conn-BG1. The Petitioner has prayed for a direction to CTUIL to return Rs. 50 lakh to the Petitioner in lieu of the Conn-BG1 if the same has indeed been encashed.

37. CTUIL, on the other hand, has averred that since the Petitioner had failed to submit the Conn-BG3 within the stipulated time frame, the in-principle grant of the connectivity to the Petitioner for the 160 MW at Gadag II PS was revoked, and consequently, Conn BG1 has been invoked.

38. We have considered the submissions of the Petitioner and the Respondent.

39. Let us pursue the provisions of Clause (h) of Regulation 37.2 of the GNA Regulations:

***“(h) In case the entity fails to furnish Conn-BG1, Conn-BG2 and Conn-BG3 as intimated by the Nodal Agency in terms of clause (d) of this Regulation,***

***(i) the Connectivity granted to the entity under the Connectivity Regulations, 2009 shall be revoked by the Nodal Agency and***

***(ii) Conn-BG1 furnished, if any, under the Connectivity Regulations, 2009 shall be encashed and***

***(iii) Conn-BG2 furnished, if any under the Connectivity Regulations, 2009, shall be returned:***

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

As per the above provisions, if the entity fails to submit the Conn-BGs within the stipulated timelines, the Connectivity granted to the entity under the 2009 Connectivity Regulations shall be revoked by the Nodal Agency.

40. We note that Conn-BG1 has been invoked by CTUIL due to the non-submission of Conn-BG3 by the Petitioner. Since the Petitioner did not comply with the provisions of the above-quoted regulation, its prayer for returning Rs. 50 lakh (in lieu of Conn-BG1) is not sustainable and accordingly, CTUIL has rightly encashed the same in terms of the GNA Regulations. The issue is answered accordingly.



41. The Petitioner, vide IA No. 70/2024, also prayed for the issuance of interim reliefs, which were declined by the Commission vide ROP for the hearing held on 28.8.2024. As the issues raised under this Petition have already been addressed under this Order, the issue of interim relief no longer survives.
42. Petition No. 282/MP/2024, along with IA No. 70/2024, is disposed of in terms of the above.

Sd/  
**(Harish Dudani)**  
**Member**

Sd/  
**(Ramesh Babu V.)**  
**Member**

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

