

l) Events such as delay in availability of land do not constitute force majeure under the express mandatory provisions of the RE Detailed Procedure.

m) In view of the Order dated 29.9.2017 passed by this Commission in Petition No.145/MP/2017 which does not permit reserving the bay for a wind power developer/generator which is not ready for commissioning so as to avoid any under-utilization of bays in national interest. It is in the aforesaid context that the power to relax and for power to remove difficulties invoked by the Petitioner, is required to be considered.

n) The instant LTA has been operationalized on existing margins and there is no ATS linked to the said LTA. To deal with such cases, 2020 Sharing Regulations stipulates that transmission charges at the rate of 10% of transmission charge per MW for the State where such generating station is located:

#### **Rejoinder of the Petitioner to the Reply of CTUIL**

7. The Petitioner in its rejoinder dated 8.9.2020 to the reply filed by CTUIL has submitted as under:

a) The provisions under the TSA relating to Billing, Collection and Disbursement of Transmission Charges (Article 12) and Disbursement by CTU to ISTS Licensees (Article 13) that have been highlighted by the CTU in its reply to claim that there was allegedly an agreement between the Petitioner and CTU on provision of LC, admittedly relate to establishment of payment security with respect to PoC charges and are therefore not relevant to the case of the Petitioner.

b) The very basis of issuance of the said Default Notice is flawed and the stand of the CTU is not supported by the provisions of the regulations on which it seeks to rely upon. Accordingly, the Default Notice issued by the CTU and the related correspondence dated 11.07.2019 and 29.07.2020 in relation to opening of LC for PoC charges is liable to be quashed by this Commission.

c) It is only for the intervening period when the Petitioner has not been able to operationalize the LTA on account of the SCOD under the PPA being later than the LTA operationalization date, that the liability towards transmission charges (and not the PoC charges) may be casted upon the Petitioner. Accordingly, the Petitioner may be required to provide LC corresponding to transmission charges and not the PoC charges. The said position is in line with the orders of this Commission dated 05.02.2020 and 06.08.2019 in Petition Nos. 195/MP/2019 and 172/TT/2018. The Petitioner would not be liable for any amount beyond the monthly transmission charges for the assets in terms of the aforementioned Orders. The said position has also been admitted and agreed to by the CTU in its reply. Accordingly, the requirement indicated by the CTU to open the LC corresponding to the monthly average PoC charges is unwarranted and requires a revision, including by CTU's own admission.

d) Even during the course of hearing before this Commission on 11.08.2020, as also recorded in the ROP, the Petitioner submitted that LC may be provided commensurate with transmission charges or alternatively as per Regulation 13.7 of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2020, in the interim.

e) The claim of the CTU in its reply that the extension granted by SECI to the SCOD of the Project has no nexus with the rights and obligations undertaken by the Petitioner under the transmission agreements executed with CTU is completely erroneous.

f) The resultant mismatch between the date of grant of connectivity and LTA and SCOD under the PPA is not attributable to the Petitioner but to the Force Majeure and Change in Law events. Accordingly, it will be completely unjust and against equity to treat such mismatch between the dates as negligence on part of the Petitioner and attribute liability for payment of transmission charges on the Petitioner for the period

commencing from LTA operationalization date i.e. 30.11.2019 till the commissioning of the Project.

g) The instant open access has been granted on 'Existing Transmission Networks'. Accordingly, the existing transmission system, upon which the LTA has been granted to the Petitioner is already being utilized by the ISTS customers and PoC charges are being recovered.

h) Petitioner is not liable or in any way responsible for the inconsistency between the provisions of the PPA, LTAA, Transmission Agreement and TSA and cannot be penalized or be required to bear the burden of any transmission charges or losses beyond the Delivery Point in the present circumstances where the RFS and PPA have cast that obligation on the Buying Entity.

i) The construction of the dedicated transmission line and the pooling substation was also delayed on account of continuous resistance and the slew of cases filed by locals *inter alia* seeking higher compensation in relation to right of way over their land.

j) As of 25.03.2020 i.e. the date on which the first lockdown was imposed, with respect to the dedicated transmission line, 119 out of 128 foundations had been erected, 110 out of 128 towers had been erected and stringing for 22.07 kms out of a total of 33.23 kms had been completed. Based on the project schedule, all material except for 12 km of line conductor were supplied and stored at the Project site for dedicated transmission line prior to imposition of lockdown. However, material for the balance 12 km line conductor, though it was manufactured, could not be delivered on account of the lockdown, and such non-availability of conductor affected the stringing activities to be undertaken for the dedicated transmission line.

k) In view of the facts and circumstances of the present case, it is prayed that this Commission exercises its powers under Sections 33A and 33B of the Connectivity Regulations for relaxation of the 24 months' time-period specified in Clause 11.2 of the RE Connectivity Procedure for

construction of the dedicated transmission system and to restrain CTU from revoking the Petitioner's connectivity or invoking or encashing the Conn-BG submitted by the Petitioner under the Transmission Agreement.

### **Reply of SECI**

8. SECI in its reply vide affidavit dated 27.10.2020 has submitted as under:
- a) The Petitioner had requested SECI to extend the timeline for fulfilling the Financial Closure and conditions subsequent by a period of three (3) months on account reasons such as Rules framed under Tamil Nadu Combined Development and building Rules, 2019(Tamil Nadu Rules, 2019). Further, on 16.07.2019, the Petitioner requested for extension of scheduled commissioning date i.e. from 29.02.2020 to 30.08.2020 (6 months) on account of delay in Land Acquisition due to notification of Tamil Nadu Rules, 2019 etc.
  - b) The Petitioner had not sought for the above extension of time lines related to Conditions Subsequent and Scheduled Commissioning Date under Article 11 of the PPA dealing with scope of Force Majeure and/or Article 12 of the PPA providing for Change in Law.
  - c) On receiving requests for extension in Financial Closure and Commissioning of the power projects, SECI has duly written letters to MNRE, Government of India submitting proposals for extension of deadline for fulfillment of financial closure conditions and Commissioning date for setting up 2000 MW ISTS connected Wind Power Projects under Tranche-IV considering implementation of the projects as an important aspect for the power sector and public interest. Pending the decision of competent authority- MNRE, Government of India on the above proposals, SECI, by way of interim relief, has extended the timeline of Financial Closure and Conditions Subsequent, subject to final decision of the MNRE.
  - d) In view of the proposals submitted by SECI, the MNRE, Government of India by letter dated 22.10.2019 provided the course of

action for processing the requests of Wind Power Developers for extension in the scheduled commissioning date of the Wind Power Projects awarded under the schemes involving SECI namely Tranches I to Tranches-V Wind Schemes. By e-mails dated 23.10.2019 and 24.10.2019, SECI duly informed the Petitioner about the course of action approved by the competent authority (MNRE) by its letter dated 22.10.2019.

e) The Petitioner by its letter dated 05.11.2019 requested extension of 6 months for achieving the scheduled commissioning date i.e. from 29.02.2020 to 30.08.2020 on account of delay in Land Acquisition due to notification of Tamil Nadu Rules, 2019 etc. The said extension was again not sought under Article 11 and/or Article 12 of the PPA dealing with Force Majeure and Change in Law respectively.

f) The event based on which the Petitioner claimed extension is not covered under Article 11.3 dealing with scope and meaning of Force Majeure. The Petitioner has also not issued any force majeure notice in terms of Article 11.5 of the PPA.

g) SECI by its letter dated 12.05.2020, has duly extended the Scheduled Commissioning Date under the PPA for the period of lockdown plus thirty (30) days for normalization in consonance with the Office Memorandum dated 17.04.2020 of MNRE, Government of India.

h) SECI by its letter dated 08.09.2020/10.09.2020, has extended the Scheduled Commissioning Date under the PPA till 28.01.2021 as per the Office Memorandum dated 13.08.2020 of MNRE, Government of India.

i) The Office Memorandum dated 17.04.2020, 30.06.2020 and 13.08.2020 of the Government of India have recognized the disruption in supply chain on account of Covid-19 and the imposition of Lockdown by Government of India and has granted extension of time to the Renewable Power Developers to commission their projects. The issue as to whether such an event considered by the Government of India constitute a Force

Majeure event within the scope of Force Majeure provision contained in Article 11 of the PPA and as affecting the execution of the project by the Developer is a matter to be considered on case to case basis.

**Rejoinder of the Petitioner to the Reply of SECI**

9. The Petitioner in its rejoinder dated 6.11.2020 to the reply filed by SECI has submitted as under:

a) The grant of multiple extensions by SECI to the timelines under the PPA for satisfaction of conditions subsequent and financial closure (without making the Petitioner liable to pay extension charges) and for commissioning the Project, is admission on the part of SECI that such events were in fact beyond the control of the Petitioner. Further, the extension granted to the Petitioner by SECI is in alignment with the reliefs available for force majeure events under the PPA. Such events qualify as Force Majeure and Change in Law events both under the PPA and the TSA.

b) As per Article 3.1 of the PPA, the Petitioner was required to satisfy the conditions subsequent and achieve financial closure by 30.03.2019, unless such completion was affected by any force majeure event or if any of the activities was specifically waived in writing by SECI. As per Clause 3.2.1 of the PPA, in case of failure of the Petitioner to submit the documents in relation to satisfaction of conditions subsequent and financial closure, SECI is entitled to en-cash the performance bank guarantee submitted by the Petitioner and terminate the PPA. However, the said clause also provides that in alternative to such encashment and termination of PPA, an extension to the timeline can be considered, on the sole request of the Petitioner, on payment of Rs. 10,000/- per day per MW to SECI as extension charges.

c) The Petitioner vide its letter dated 19.03.2019 sought an extension to the timeline for satisfaction of conditions subsequent and financial closure. Such extension was sought on the basis that the Petitioner was not in a position to fulfill the condition regarding acquisition of 100% land. Vide its letter dated 29.03.2019, SECI extended the timeline, without

seeking extension charges, by a period of 3 months from 30.03.2019 i.e. up to 30.06.2019. Thereafter, vide its letter dated 24.05.2019, SECI extended the timeline, without seeking extension charges, up to the scheduled commissioning date of the Project. In extending the timeline for satisfaction of conditions subsequent and financial closure, without seeking extension charges, SECI has in fact provided the Petitioner with relief available under the PPA for when it is impacted by any force majeure event.

d) SECI has clearly admitted in its reply and in its letter dated 22.11.2019 that the timelines under the PPA were revised on account of the introduction of the TNCDB Rules which affected the land acquisition process. MNRE vide letter dated 22.10.2019 provided SECI with the course of action for processing requests of developers for extension in the scheduled commissioning date of the wind power projects awarded under the scheme involving SECI namely Tranches I to Tranches V. The said letter expressly suggested that extension in scheduled commissioning date of the Project may be granted where private land acquisition was affected due to TNCDB Rules.

#### **Additional Submissions by the Petitioner**

10. Petitioner in its additional affidavit dated 11.1.2022 has submitted as under:

a) MoP vide its Orders dated 23.11.2021 and 30.11.2021 on the subject of waiver of ISTS charges on transmission of electricity generated from solar and wind sources of energy has stated 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) MoP, under Section 107 of the Electricity Act has issued directions dated 15.01.2021 to this Commission to amend the 2020 Sharing Regulations to provide for the following:

(i) penalties for delay in COD of generating stations, or for delay in completing transmission system, or operationalizing the LTA shall invite penalties to be paid to CTU. The penalties shall be equitable; and shall not extend to compensating either the generating companies for power it could not dispatch because of delay in transmission or to compensate the transmission company for the delay in generation or the associated transmission.

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

(iii) Events of force majeure may be defined and provision included enabling the CTU to extend the COD of a generating station and the LTA start date for reasons of force majeure.

c) Petitioner is required to pay transmission charges and losses as prescribed under the LTA Agreement executed by it with Respondent No. 1. Clause 1(d) of the LTA Agreement specifically states that the transmission charges and losses shall be applicable *inter alia* as per the MoP Order dated 13.02.2018 issued by MoP or any amendments issued thereto. Given that the said MoP Order stands revised vide MoP Order dated 23.11.2021 and 30.11.2021, they will be applicable to the Petitioner's case. In line with the MoP Order dated 23.11.2021 and 30.11.2021, the LTA operationalization date ought to be aligned with the Final SCOD.

d) The Petitioner's Project was fully commissioned on 30.10.2021. CTUIL has raised a bill of supply dated 06.01.2022 upon the Petitioner for the period of November 2020 to October 2021 for an amount of Rs. 6,48,04,688. No such charges are payable by the Petitioner and the said bill, along with any and all demands raised by CTUIL is liable to be quashed in view of the MoP Orders dated 23.11.2021 and 30.11.2021.



### **Hearing dated 13.1.2022**

11. Commission vide RoP of hearing dated 13.1.2022 observed as under:

*“3. After hearing the learned senior counsel for the Petitioner, the Commission observed that the benefit of waiver can be availed only when the project is commissioned. The Commission further observed that as the Petitioner’s case apparently pertains to the liability of transmission charges for the period of mismatch in commissioning of the Project and the date of operationalization of LTA which is for the period prior to commissioning of the project, the same falls within the ambit of the Sharing Regulations/Connectivity Regulations. In this context, the Commission asked the learned senior counsel of the Petitioner to explain the applicability of various MoP circulars/orders cited by him to the present matter.”*

12. CTUIL vide affidavit dated 28.1.2022 submitted inter alia following information as sought by the Commission vide RoP of hearing dated 13.1.2022:

- i. SCOD of Generation Project as per PPA: 29.02.2020
- ii. Extended SCOD of Generation Project, if Any: 13.07.2021
- iii. Actual COD of Generation Project:
  - 28.03.2021 (60 MW);
  - 01.04.2021 (93 MW);
  - 05.07.2021 (39 MW);
  - 14.07.2021 (36 MW);
  - 21.08.2021 (12 MW);
  - 05.09.2021 (15 MW);
  - 14.10.2021 (12 MW);
  - 24.10.2021 (12 MW);
  - 31.10.2021 (21 MW)
- iv. Start date of Connectivity & LTA: 31.10.2019 & 30.11.2019
- v. Schedule for completion of ATS: Existing System
- vi. Status of LTA (operational/relinquished, in part or full): Operationalized w.e.f. 30.11.2019
- vii. Whether CTUIL raised bill during the period of mismatch between COD of Generation & ATS: Yes (Billed Amount Rs.6.48 Cr)

### **Hearing dated 8.2.2022**

13. During the hearing dated 8.2.2022, the Commission directed CTUIL to submit the following information on affidavit:

*“3. In response to a query of the Commission regarding the status of the project and billing, the learned counsel appearing on behalf of CTU submitted that the details of the project sought vide Record of Proceeding dated 13.1.2022 were filed vide affidavit dated 28.1.2022. She submitted that a bill for Rs 6.48 crore was raised on the Petitioner by CTUIL for the period of November 2020 to October 2021 as per the Central Electricity Regulatory Commission (Sharing of Inter-State transmission charges & losses) Regulation, 2020 (“2020 Sharing*

*Regulations”). She further submitted that bill prior to November 2020 has not been raised by CTUIL and the same will be raised soon.*

*5. The Commission directed CTUIL to submit the following information on affidavit by 25.2.2022:*

*a) Reason for not raising the bills on the Petitioner from the date of operationalization of LTA i.e. 30.11.2019 and raising the bills only for the period of November 2020 to October 2021 only in January 2022 after much delay, in contravention of the procedure laid down in the regulations for monthly billing.*

*b) Details of all cases where generation project has been delayed and is liable to pay transmission charges under the regulations along with following:*

*a. Name of the project.*

*b. SCOD of generation project as per PPA, actual date of COD of the generation project along with the capacity for which COD is declared.*

*c. Date from which LTA is granted and quantum for which LTA is granted.*

*d. Date from which LTA is effective.*

*e. Whether LTA start date is extended?*

*f. Whether LTA was granted on existing system or with ATS?*

*g. If LTA was granted with ATS, what were the element(s) of ATS?*

*h. When COD of ATS was declared? (In case of multiple elements in ATS, provide date of COD of each element.)*

*i. Whether bill(s) have been raised for mismatch period as per the regulations?*

*j. Details of bill(s) raised.*

*k. Reasons for not raising the bill(s) in cases where bills have not been raised.”*

14. In compliance of RoP of hearing dated 8.02.2022, CTUIL vide affidavit dated 4.03.2022 has submitted details of 36 cases where generation project has been delayed and is liable to pay transmission charges under the regulations. In response to Reasons for not raising the bills on the Petitioner from the date of operationalization of LTA i.e. 30.11.2019, CTUIL has submitted as under:

a) CTUIL vide its letter dated 05.11.2019 informed the Petitioner that the LTA shall stand operationalized from 30.11.2019.

b) The progress of the Petitioner’s generation project was further monitored even after LTA operationalization as the Petitioner had only achieved commissioning for a part of the total LTA quantum. The generation project was commissioned by the Petitioner in phases from

March 2021 to October 2021 as monitored in the Joint Coordination Committee Meeting of generation projects granted LTA in SR.

c) CTUIL has consistently maintained in all its correspondences and consultative processes that the Petitioner shall be liable for payment of transmission charges from the date of LTA operationalization/ effectiveness i.e. 30.11.2019.

d) Respondent CTUIL was reconciling the status of billing upon delayed generators. The reconciliation exercise was divided into two principal parts, namely the billing to be undertaken in terms of the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 and the billing to be undertaken in terms of CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010.

e) Respondent CTUIL has computed the Petitioner's liability towards transmission charges in terms of the provisions of the CERC Sharing Regulations, 2020 and has raised the bills on 06.01.2022. Further, the Respondent is also undertaking the computation and billing for the period governed by the provisions under CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. Respondent CTUIL has at all times been informing that the transmission charges are payable by the Petitioner from the date of LTA operationalization irrespective of the fact that the generation project may not have been commissioned. As such the delay on part of the Respondent CTUIL in raising monthly transmission charges bills is *bona fide* and the Respondent CTUIL undertakes that henceforth, it shall ensure strict compliance of provisions of CERC Regulations/Orders.

### **Hearing dated 9.3.2022**

15. Commission vide RoP of hearing dated 9.3.2022 reserved the order while observing as under:

*"2. The learned counsel for the Petitioner made the following submissions:*

*....*

*d. There is no delay in commissioning of the project by the Petitioner in terms of the extension granted by SECI and the applicable MoP order. Thus, it is not liable to bear the transmission charges in terms of the 2020 Sharing Regulations.*

e. In terms of the Hon'ble Supreme Court's judgment in the case of Hind Construction of Contract Vs. State of Maharashtra, if the government of India does not stipulate any penalty for delay by the renewable generator who has received valid extension from SECI, the CTUIL cannot claim such penalty contrary to the terms of the LTAA read with MoP order.

3. In response to the query of the Commission regarding the link between the MoP order and Regulation 13(7) of the 2020 Sharing Regulations, the learned counsel for the Petitioner submitted that the MoP order grants extension of COD to renewable energy generator and Regulation 13(7) of the 2020 Sharing Regulations imposes liability of transmission charges for the mismatch in the COD of the generating station and start date of LTAA. Therefore, if there is an extension of COD by the competent authority, the commencement and the period of the LTAA (i.e. granted by CTUIL) also gets extended. No liability for mismatch can arise in such circumstances.

4. In response to another query of the Commission regarding who will bear the transmission charges for the period of mismatch between the commissioning of the generation and start of LTA, the learned counsel for the Petitioner submitted that no one is liable to pay the transmission charges for the period of mismatch, as the transmission system was put into commercial operation in 2012 and capex is being recovered. As regards any agreement with CTU or transmission licensee and existence of "force majeure" clause, he submitted that there is a standard Transmission Service Agreement (TSA) dated 20.9.2018 entered with CTUIL in which "force majeure" clause has been incorporated and the Petitioner has invoked the same in the instant petition.

5. In response to another query of the Commission as to why the Petitioner has not premised his case and advanced its arguments on the provisions of "force majeure" clause, the learned counsel for the Petitioner submitted that it has invoked the "force majeure" clause in its petition. He further submitted that CTUIL has imposed the liability of transmission charges not on the basis of the TSA but as per the provisions of the 2020 Sharing Regulations.

6. Learned counsel for CTUIL referring to the LTA grant intimation letter dated 24.8.2018, submitted that the start date of LTA was 30.11.2019. Hence, the reliance placed by the Petitioner on the MoP order is misplaced as the LTAA has already been operationalized on 30.11.2019, much before the start of Covid-19 pandemic. Referring to the Minutes of the 25th Meeting of Southern Region Constituents regarding LTA and Connectivity Applications in Southern Region on 17.8.2018, learned counsel submitted that the grantee of the LTA was informed and was made fully aware of the fact that the transmission charges shall be applicable from the start date of LTA i.e. 30.11.2019. Further, referring to letters dated 5.11.2019 and 19.12.2019, she submitted that through various such correspondences the Petitioner had been informed about the liability of transmission charges which would ensue on LTA operationalization and that the liability of transmission charges was not contingent upon the commissioning of the generating project.

7. Learned counsel for CTUIL further submitted that the Petitioner on 11.2.2020 sent "force majeure" notice to CTUIL intimating that the delay in commissioning of the project was due to delay in acquisition of land for constructing the 300 MW project in Tamil Nadu. Therefore, the only question for determination is whether the delay in land acquisition can be regarded as a "force majeure" event? She submitted that the instant case has to be examined in the light of Regulation 13(7) of the 2020 Sharing Regulations and Commission's order dated 5.2.2020

*in Petition No.195/MP/2019 and order dated 6.8.2018 in Petition No.172/TT/2018. She submitted that the liability of the Petitioner to pay transmission charges is absolute and needs to be discharged in terms of 2010 and 2020 Sharing Regulations and the invocation of "force majeure" clause stands redundant.*

*8. In response, the learned counsel for the Petitioner submitted that the MoP order dated 15.1.2021 is applicable to all the renewable generating capacity commissioned on or before 30th June, 2023. The 2010 Sharing Regulations are not same as the 2020 Sharing Regulations as the methodology for computation of transmission charges is different.*

*9. Learned counsel for the CTUIL also submitted that it has been explicitly stated in MoP order dated 15.1.2021 that the said order shall be applied prospectively i.e. from the date of issue of the order. She further submitted that the principle of the 2010 Sharing Regulations and the 2020 Sharing Regulations is the same.*

*....."*

### **Written Submissions by the Petitioner**

16. Petitioner has filed its written submissions vide affidavit dated 28.03.2022 wherein the petitioner has reiterated the submissions already made in Petition. On arguments in support of relief and MoP Order dated 15.01.2021 Petitioner has stated as below:

(a) The LTA agreement, a standard-form statutory contract to which CTU is a party, had an express understanding that transmission charges would be leviable as per the changing statutory dispensations, and the liability to pay transmission charges was not frozen to law as on a particular date. Thus, on a reading of the MoP Order together with the LTAA, it is clear that no transmission charges for delay or otherwise can be levied on SREPL for the periods which are covered by the valid SCOD extension granted by SECI. The said period would be from the date of operationalization of the LTA i.e., 30.11.2019 to the Revised SCOD i.e., 13.07.2021.

(b) The primary prerequisite for attributing liability on a generator to pay transmission charges under Regulation 13(7) of the 2020 Sharing Regulations is that the said generator should have caused delay in achieving its commissioning. However, Regulation 13(7) does not stipulate the benchmark to compute such delay. In contrast, Regulations 13(3),

13(4) and 13(5) of the Sharing Regulations indicate timeline benchmarks of interconnecting entities, relative to which delay can be understood.

(c) The concepts of COD and SCOD are all contractual constructs under SREPL's LTAA and its PPA with SECI. Therefore, no other external benchmark ought to be resorted to in order to assess whether SREPL is delayed in the eyes of the law for the purposes of Regulation 13(7). If the parties themselves have voluntarily extended all contractual timelines up to 13.07.2021, that is the only date from which any liability related to delay in commissioning its Project can be attributed to the Petitioner. Indeed, SREPL is willing to bear all transmission charges for the period after the Revised SCOD till the Actual COD i.e. from 14.07.2021 to 30.10.2021.

(d) Furthermore, by incorporating reference to all amended Government of India order in the LTAA for the purposes of paying transmission charges, the CTU has made it clear that time is not of the essence under the LTAA. If the Government of India order i.e., the MoP Order does not stipulate any penalty for delays by a renewable generator who has received a valid extension from SECI, the CTU cannot claim any such penalty contrary to the terms of the LTAA. Petitioner has relied on Supreme Court Judgment in *M/s. Hind Construction Contracts v. State of Maharashtra* (1979) 2 SCC 70.

(e) Once the LTA related timelines have automatically been shifted by operation of the MoP Order read with the LTAA, the assessment of delay for the purposes of Regulation 13(7) ought to be with reference to the contractually altered timelines. Therefore, there is no doubt that the MoP Order operates to exempt the Petitioner from payment of transmission charges for the period from the date of operationalization of the LTA to the Revised SCOD. It is submitted that the MoP Order is applicable to all the renewable generating capacity commissioned on or before 30.06.2023, which would include the Petitioner's Project.

### **Analysis and Decision**



17. Petitioner is developing a 300 MW wind power project. Petitioner has been granted LTA for 300 MW on the existing transmission system with start date of LTA as 30.11.2019 as sought by the Petitioner. Long Term Access Agreement (LTAA) dated 20.9.2018 was entered into between Petitioner and CTUIL to avail Long term Access of transmission utilities for transfer of 300 MW power from the Wind Farm on the target region basis in NR. Petitioner executed PPA dated 4.9.2018 with SECI as per which original SCOD of the Project was 28.2.2020. Petitioner sought extension to the SCOD due to force majeure and Change in Law events and SECI vide multiple extensions extended and revised SCOD of the Project and the final SCOD of the Project has been extended by SECI until 13.7.2021 vide its letter dated 2.8.2021. Project has been fully commissioned on 30.10.2021. Petitioner is seeking extension of start date of LTA in view of extension of SCOD granted by SECI until 13.7.2021. However, the CTUIL has already operationalized the LTA on 30.11.2019. Therefore, the issue is with respect to liability of transmission charges for the period between the start date of LTA i.e. 30.11.2019 to 13.7.2021 i.e. SCOD as extended by SECI.

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

**Issue No. 1: What shall be the date of commencement of LTA of the Petitioner?**

**Issue No. 2: Whether the Petitioner can claim any relief on account of Force Majeure and Change in law faced by the Project as claimed by the Petitioner?**

**Issue No. 3: Whether the MOP orders dated 13.2.2018, 15.1.2021 and 30.11.2021 are applicable in the present case as claimed by Petitioner?**

**Issue No. 4: What shall be the liability of Petitioner for payment of transmission charges for period before COD of its Project?**