

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

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

19. Petitioner has prayed to defer the operationalization of connectivity and LTA and align the same with the revised SCOD under the PPA and to direct CTU to operationalize the connectivity and LTA in phases corresponding to the commissioned Project capacity. Petitioner has submitted that while it wanted to apply for a staggered LTA as per anticipated commissioning of the generation capacity, since there was no such provision under the LTA application, it had to apply for total LTA as on single date i.e. 30.11.2019. Petitioner has submitted that as per paragraph 3.17 of the RFS, the minimum capacity for acceptance of first part commissioning is 50 MW and the Petitioner has the option to commission the Project in parts and accordingly Petitioner should not be subjected to any penal charges under the terms and conditions of grant of connectivity and LTA. Petitioner has argued that from the combined reading of the provisions of Regulation 15B of the Connectivity Regulations and Section 28 of the Act, CTU is obliged to consider the details of the power purchase agreements with respect to date of commencement of supply and the quantum agreed to be supplied under the said power purchase agreements. Any deviation in the grant of LTA or the power purchase agreement would need immediate rectification to enable RLDC to schedule the power, as the two agreements need to be in harmony for RLDC to undertake scheduling and dispatch.

20. Respondent CTU has submitted that Connectivity and LTA has been granted to the Petitioner as per the start date requested by the Petitioner in the

application. Pursuant to grant of LTA with effect from 30.11.2019, the transmission capacity for the Petitioner has been reserved in line with the extant Regulations. The covenants agreed under the Transmission Agreement, the LTA Agreement and the TSA relate to the transmission system arrangement, its implementation and servicing through payment of transmission charges. None of the said agreements contain any reference whatsoever relating to the inter-se power supply arrangements between the generator and its beneficiaries. Further, none of the obligations under the Transmission Agreement, the LTA Agreement or the TSA are subjected to performance of obligations under the power supply agreements between the generator and its beneficiaries. Besides, realignment of date of operationalization of LTA as requested by the Petitioner would mean shifting of start date of LTA and shifting of burden of transmission charges for the period to other DICs of the ISTS, without they having any benefit of use of assets.

21. We have considered the submissions of Petitioner and Respondents. Petitioner executed the PPA on 4.9.2018 with SCOD of project as 29.02.2020 and signed LTA Agreement on 20.9.2018. We observe that as on the date of signing of LTA agreement with the start date of LTA as 30.11.2019, Petitioner was fully aware that its LTA start date is approximately three months prior to the SCOD of the Project. CTU has submitted that during 25th Meeting of Southern Region Constituents held on 17.8.2018, Petitioner was made aware that the transmission charges shall be applicable from the date of start of LTA, as sought by applicant, irrespective of the status of commissioning of generation project and the applicants, including the Petitioner had stated that they are aware of such liability towards payment of transmission charges. We observe that

mismatch between SCOD and start date of LTA was since the beginning and the same was as desired by the Petitioner.

22. Petitioner has submitted that CTU should operationalize the connectivity and LTA in phases corresponding to the commissioned Project capacity as per the terms of the RfS and PPA. We observe that Petitioner has entered into two sets of Agreements. One set of Agreements is for sale of power, namely, PPA with SECI and the other set of Agreements is for booking transmission capacity, namely, LTA Agreement. We have perused both the PPA and the LTA Agreements and the RfS.

23. RfS dated 5.02.2018 provides as under:

“3.17. Commissioning

The Commissioning of the Projects shall be carried out by the WPDs in line with the Procedure elaborated in the PPA document (Commissioning Procedure at Annexure-A and Appendix-A-1 are for reference). SECI may authorize any individual, committee, or organization to witness and validate the commissioning procedure on site. Commissioning certificates shall be issued by the State Nodal Agency or SECI after successful commissioning.

A. Part Commissioning

Part commissioning of the Project shall be carried out as mentioned below:

i) The minimum capacity for acceptance of first part commissioning shall be 50 MW or 50% of the allocated Project Capacity, whichever is lower. In case of inter-state transmission of power from the said project, minimum capacity for acceptance of first part commissioning shall be at least 50 MW. A project capacity of 100 MW or less can be commissioned in maximum two parts.

ii) The projects with capacity more than 100 MW can be commissioned in parts of at least 50 MW each, with last part being the balance capacity.

However, the Scheduled Commissioning Date will not get altered due to part commissioning. Irrespective of dates of part commissioning, the PPA will remain in force for a period of 25 years from the Scheduled Commissioning Date or from the date of full commissioning of the projects, whichever is earlier.”

24. PPA dated 4.9.2018 provides as under:

“Commercial Operation Date” shall mean the actual date of commissioning of the project as declared by the Commissioning Committee constituted by the State

Nodal Agency (SNA) In case of part commissioning, COD will be declared only for that part of project capacity;

25. We observe that RfS and PPA allows part commissioning of the project. However, nothing has been provided in RfS and PPA regarding Connectivity or LTA to be operationalized corresponding to such commissioned capacity. The PPA dated 4.09.2018 provides that responsibility of obtaining Connectivity and LTA is that of Petitioner and provides as under:

“ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 WPD's Obligations

4.1.1 The WPD undertakes to be responsible, at WPD's own cost and risk, for:

.

g) obtaining Long Term Access (LTA) and executing transmission service agreement with CTU/STU as the case may be, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.”

26. The LTA Agreement dated 20.9.2018 provides regarding the start date of LTA as under:

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

.

1.0

(a) The date of effectiveness of this LTA Agreement shall be as per intimation ref. no. C/CTU-Plg/LTA/SR/1200001496 dated 24.08.2018 issued by CTU vide letter ref no. C/CTU-Plg/LTA/SR/1200001496 dated 24.08.2018; enclosed as Attachment-I to this Agreement.”

27. The snapshot of Attachment-I mentioning the Start Date of LTA as 30.11.2019 is as below:

6 Details for Long Term Access (LTA)		
6a	Quantum (MW) for which LTA is granted	300 MW
7 Injection of Power (more than one only in case of single Drawl)		
	Entity-1	Spring Renewable Energy Pvt. Ltd.
	State/Region	Tamil Nadu / SR
	Quantum-1	300 MW
	Connectivity with the Grid	At 230 kV level through Spring Renewable – Pugalur 230kV S/c line (with minimum capacity of 300 MW at nominal voltage) along with terminal bays at Pugalur & generation switchyard
8 Drawl of Power (more than one only in case of single Injection)		
	Entity-1	Target
	State/Region	Northern Region
	Quantum-1	300 MW
	Connectivity with the Grid	Through ISTS network
9	Transmission System for LTA	Existing transmission system
9a	Date from which LTA is granted	30.11.2019
9b	Date upto which LTA is granted	29.11.2044

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.

32. The Petitioner has also submitted that it wanted to apply for a staggered LTA operationalization but had to opt for a single date on account of the fact that there was no such provision under the LTA application. We observe that Connectivity Regulations neither debar the applicant nor impose any such conditions, rather it provides flexibility to the applicant to apply for any quantum of LTA and from any start date as per applicant’s requirements. The Petitioner, in the present case, applied for LTA for the quantum and with a start date of LTA as per its own requirement and assessment. The Petitioner had applied for a LTA of 300 MW vide application dated 6.7.2018 with start date of LTA as 30.11.2019, which has been clearly recorded in the LTA agreement dated 20.9.2018 and accordingly, CTUIL has operationalized the LTA of 300 MW with effect from

30.11.2019. Therefore, the Petitioner's LTA stands operationalized on 30.11.2019.

33. Issue No.1 is answered accordingly and prayer (c) and prayer (d) of the Petitioner are disallowed.

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

34. Petitioner has submitted that owing to certain Change in Law and Force Majeure events, the completion of the Project was delayed. The Petitioner has claimed following events as Force Majeure and Change in Law events:

1. Enactment of TNCDB Rules in February 2019 post the cut-off date for Petitioner and delay in approval of applications filed for 67 locations under Rule 45 of the TNCDB Rules.
2. Delay in approval of Conversion of Agricultural Land to Non-Agricultural Land under Tamil Nadu Town and Country Planning Act, 1971 and
3. Delay in response from the concerned authorities on 72 locations applications under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961.

35. The Petitioner vide letter dated 19.3.2019 brought the occurrence of above events and circumstances to the notice of SECI and requested for an extension of the time for fulfilling of conditions subsequent and financial closure. SECI extended the deadline for compliance of financial closure and conditions subsequent for the Project up to 30.06.2019 and later up to 29.02.2020. Petitioner vide its letter dated 16.07.2019 sought an extension to the Original SCOD which SECI vide its letter dated 22.11.2019 extended and revised the SCOD of the Project to 28.08.2020 and later up to 13.7.2021. On 11.2.2020, Petitioner issued notice to CTU under provisions of TSA for Change in Law and

Force Majeure and sought deferment of LTA start date. The Petitioner has also claimed that it issued notice for Force Majeure under Article 14 of TSA signed under 2010 Sharing Regulations. Petitioner has claimed relief from any liability due to delay under the said TSA for reasons of alleged Force Majeure and Change in Law.

36. SECI has submitted that Petitioner had not sought extension of Financial Closure and SCOD under Article of Force Majeure. The event based on which the Petitioner claimed extension is not covered under Article 11.3 dealing with scope and meaning of Force Majeure. SECI has also submitted that Petitioner had not issued any force majeure notice in terms of Article 11.5 of the PPA and that SECI has not extended the SCOD of the Petitioner's project under the provisions of Force Majeure or Change in Law as has been stated by the Petitioner. SECI has taken action as approved by the MNRE vide letter dated 22.10.2019 for extending the date SCD of the Wind Power Projects awarded under the schemes involving SECI namely Tranche-I to Tranche-V Wind Schemes and in terms of the OM dated 17.04.2020 and 13.8.2020 of MNRE.

37. Petitioner has argued that SECI has extended its SCOD acknowledging Force majeure and Change in Law events which SECI has clearly denied and SECI has also highlighted that the Petitioner has not issued any force majeure notice in terms of Article 11.5 of the PPA.

38. We have considered the submissions of Petitioner and Respondents. The Petitioner has sought relief from liabilities on the ground of delay in commissioning of project due to alleged acknowledgment of Force Majeure and Change in Law by SECI. However, we note that SECI has denied that it has

extended the SCOD considering events as Force Majeure or Change in Law and that the Petitioner has not even issued any notice under article 11.5 of PPA for such events. Thus, in our view the Petitioner never invoked the provisions of Force Majeure.

39. With respect to Notice for Force Majeure under TSA, the TSA provides as under:

“14.4 Notification of Force Majeure Event

14.4.1 The Affected Party shall give notice to the other Party and the CTU of any event of Force Majeure as soon as practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as practicable after reinstatement of communications, but not later than one (1) working day after such reinstatement..”

40. As per above quoted Clause 14.4.1 of the TSA, the Petitioner is also required to give notice to CTU as well as other party (all DICs in this case) within 7 days after the party knew of the commencement of event of Force Majeure. However, the Petitioner neither issued any notice to any other parties nor did it do so within 7 days of the alleged event, as required under Clause 14.4.1 of the TSA. Thus, as the Petitioner did not comply with requirement of TSA under Clause 14.4.1.

41. Therefore, in view of the fact that the Petitioner never invoked the provisions of Force Majeure and considering our finding under Issue No.1 that there is no linkage between obligations under PPA and that under LTA Agreement, we are of the view that the Petitioner cannot claim any relief on account of Force Majeure. Issue No.2 is answered accordingly and prayer (e) of the Petitioner is rejected.

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 the Petitioner?

42. The Petitioner, referring to the MoP Orders dated 23.11.2021, 30.11.2021 and 15.1.2021 on the subject of waiver of ISTS charges on transmission of electricity generated from solar and wind sources of energy has prayed for relief from payment of transmission charges for the period of delay of the Project. The Petitioner has referred to a provision which states 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”*.

43. Petitioner has submitted that 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 Order dated 13.02.2018 issued by MoP or any amendments issued thereto. Since the said MoP Order stands revised vide MoP Order dated 23.11.2021 and 30.11.2021, these will be applicable to the Petitioner’s case.

44. Petitioner has submitted that the SCOD of the Project has been extended by SECI until 13.07.2021 and hence, 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.

45. We have considered the submissions of Petitioner. We have perused the MOP Orders and the LTA Agreement which the Petitioner is referring to.

46. Clause 1 (d) of the LTA agreement provides as under:

“(d) Transmission charges and losses shall be applicable as per order no.: 23/12/2016-R&R dated 13.02.2018 of Ministry of Power (MoP), Govt. of India and CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010. However, if due to any amendment to the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010/ Government of India order, 'LTC' shall be required to pay the transmission charges for ISTS network and/or if transmission losses shall be attributable to the 'LTC', then 'LTC' shall be required to pay the applicable transmission charges etc. and share transmission losses as per CERC norms.”

47. MOP Order dated 13.02.2018 is quoted below:

“Subject: Waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources of energy under para 6.4(6) of the revised Tariff Policy, 2016.

1.0 Para 6.4(6) of the revised Tariff Policy 2016 notified on 28.01.2016 provides that-

“In order to further encourage renewable sources of energy, no inter-State transmission charges and losses may be levied till such period as may be notified by the Central Government on transmission of the electricity generated from solar and wind sources of energy through the inter-state transmission system for sale.”

2.0 In view of the above provisions of Tariff Policy 2016, the Ministry of Power had earlier issued Order on 30th September, 2016 which was subsequently modified vide Order dated 14th June, 2017.

3.0 The waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources of energy was available for solar projects commissioned upto 31.12.2019 and for wind projects commissioned upto 31.03.2019. The waiver was available for a period of 25 years from the date of commissioning of such projects and was available only for the projects entering into Power Purchase Agreements (PPAs) for sale of electricity to the Distribution Companies for compliance of their renewable purchase obligation. Such waiver was available only to those solar and wind projects that are awarded through competitive bidding process.

4.0 In supersession of Ministry of Power's earlier order No 23/12/2016-R&R dated 30th September, 2016 and Order No 23/12/2016-R&R dated 14th June, 2017, it is hereby notified that –

i. For generation projects based on solar and wind resources, no interstate transmission charges and losses will be levied on transmission of the electricity through the inter-state transmission system for sale of power by such projects commissioned till 31st March 2022.

Provided that the above waiver will be available for a period of 25 years from the date of commissioning of such projects.

Provided further that the above waiver will be available for solar and wind projects entering into PPAs with all entities, including Distribution Companies, for sale of power from solar and wind power projects for compliance of their renewable purchase obligation.

Provided further that the above waiver will be allowed only to those solar and wind projects that are awarded through competitive bidding process in accordance with the guidelines issued by Central Government.

5.0 This Order, irrespective of the purchasing entity, shall be applied prospectively i.e. from the date of issue of Order.”

48. MOP Order dated 15.1.2021 is quoted below:

“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 LT A shall also get extended accordingly, and it will be deemed that the period of I STS waiver is extended by the said period.

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."

49. MOP Order dated 30.11.2021 is quoted below:

"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.”

50. 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.”

51. 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”.

52. 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.

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

59. Issue No.3 is answered accordingly.

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

60. The Petitioner has submitted that as per the provisions of Regulation 8(6) of the Sharing Regulations 2010, the PoC charges are attracted only after the commercial operation of the generator and Petitioner is exempted from payment of transmission charges from the COD of its generating station in terms of the 6th Amendment to the Sharing Regulations and the transmission charges shall be

recovered from the PoC Pool and not from the Petitioner. Accordingly, there is no provision applicable to the Petitioner that requires it to provide for a payment security mechanism as there is no liability of payment towards transmission charges on the Petitioner. The Petitioner has submitted that this position is in line with the orders of this Commission dated 05.02.2020 and 06.08.2019 in Petition No. 195/MP/2019 and Petition No. 172/TT/2018, respectively.

61. CTUIL has submitted that from the recitals to the LTA Agreement dated 20.09.2018, it is clear that if the conditions for waiver of transmission charges are not fulfilled by the Petitioner, then the Petitioner shall be liable to pay transmission charges as applicable under the Regulations. In the event of any delay in commissioning of the Petitioner's project and upon operationalization of the subject LTA, the liability of the Petitioner to pay transmission charges commences and continues till such time the Petitioner becomes eligible to claim waiver of transmission charges by fulfilling the required conditions.

62. We have considered submissions of Petitioner and Respondents. Regulation 7(1)(aa) the 2010 Sharing Regulations states as follows:

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

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

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

63. We observe that as per this Regulation, waiver from payment of transmission charges and losses is available for generation based on solar and wind power resources for a period of 25 years from the date of commercial

operation and is subject to the conditions that have to be met to claim such waiver. There is no provision for exemption from transmission charges and losses for generation based on solar or wind power resources before the date of commercial operation of such generation projects.

64. Regulation 8 (6) of 2010 Sharing Regulations provides as follows:

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer.

(6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.”

65. We observe that Regulation 8 (6) clearly states that till the generating station has achieved commercial operation, the responsibility to pay transmission charges shall be of the generator. Therefore, we do not agree with the submissions of the Petitioner that as per the provisions of Regulation 8(6) of the Sharing Regulations 2010, the Petitioner as generator has no liability for payment of transmission charges prior to the COD its generating station. We observe that LTA for 300 MW was operationalized from 30.11.2019, whereas the Petitioner has declared the COD of its project in 9 phases starting from 27.3.2021 to 30.10.2021 and in this regard, SECI has issued certificate dated 30.10.2021. Accordingly Petitioner shall be liable to pay transmission charges for the delay of its project in terms of the 2010 Sharing regulations and the 2020 Sharing regulations for the respective applicable period.

66. The liability of charges of Petitioner is divided in two time periods:

(a) Liability of Transmission charges from the date of operationalization of LTA i.e. 30.11.2019 to 31.10.2020 under 2010 Sharing Regulations; and

(b) Liability of Transmission charges from the effective date of 2020 Sharing Regulations i.e. 1.11.2020 to the date of commissioning of Project i.e. 30.10.2021.

Each period is dealt separately in subsequent paragraphs.

(a) Liability of Transmission charges from the date of operationalization of LTA i.e. 30.11.2019 to 31.10.2020 under 2010 Sharing Regulations

67. Petitioner has prayed that for period of delay, transmission charges may be levied in accordance with decisions of Commission in its Order dated 6.9.2019 in Petition No. 172/TT/2018 and Order dated 5.2.2020 in Petition No. 195/MP/2019.

68. The Commission has observed as under in the Order dated 6.9.2019 in Petition No. 172/TT/2018:

“83. The petitioner has submitted that Asset-III, i.e. the 400 kV D/C Tirunelveli Tuticorin line alongwith bus reactors would help in controlling the voltage at Tirunelveli and Kudankulam areas and the same was discussed and agreed in the 32nd SRPC meetings held on 22.8.2017 and 1.9.2017. The petitioner has submitted that the 400 kV D/C Tirunelveli PS-Tuticorin PS alongwith 2X125 MVAR Bus reactors at Tuticorin is utilized from 10.6.2018. It is observed that the same was discussed and agreed in the special meeting held on 1.9.2017 at SRPC, Bangalore. The relevant extract of the minutes of the meeting is hereunder:-

“VIII. Commissioning of Tirunelveli GIS and Tuticorin–Tirunelveli 2x400 kV D/C lines Sub-Group Deliberation: Powergrid informed that the system would be commissioned with reactors at Tirunelveli GIS. The line length is only 12 kms and thus reactors would help in controlling the voltage at Tirunelveli and Kudankulam areas. Powergrid informed that the 230 kV bays and 400/230 kV transformers may not be considered. Hence, the commissioning of this line along with 400 kV system of 400/230 kV Tirunelveli GIS with 2x125 MVAR reactors is recommended.”

84. Asset-IV, i.e. 2X500 MVA 400/230 kV transformers alongwith associated 220 kV bays and associated new 400/230 kV GIS Pooling station at Tirunelveli was put into commercial operation on 10.6.2018. It was built alongwith Asset-III for evacuation of power from the seven wind generators in the Tirunelveli area of Tamil Nadu. As per the 38th SCM, seven RE generators had applied for connectivity for about 1764 MW in Tirunelveli area of Tamil Nadu. The petitioner started operationalising the LTA after the COD of Asset-IV on 10.6.2018. It is observed that the start date of LTA for Mytrah Energy was February, 2016. However, Mytrah Energy was not ready with generation on the date of

commercial operation of Asset-IV, i.e.10.6.2018. Therefore, we are of the view that Mytrah Energy shall bear the transmission charges proportionate to the quantum of LTA granted to it, i.e. 75 MW from 10.6.2018 to the date of commissioning of its generation.

85. Besides the above said 75 MW of LTA granted to Mytrah Energy, it is observed that further LTA was granted to Mytrah Energy, Orange Sironj, GIREL and Betam Wind for 175 MW, 200 MW, 249.9 MW and 250.2 MW respectively. The start dates for these said LTAs are after the date of commercial operation of Asset-IV, i.e. 10.6.2018. **Therefore, we are of the view that these LTA grantees shall pay the transmission charges from the date of operationalization of the respective LTAs as per the start date of LTA till the commissioning of their respective generation. After the commissioning of the generation by these LTA grantees, the transmission charges of the Asset-IV shall be included in the POC computation”**

69. The Commission has further observed in the Order dated 5.2.2020 in Petition No. 195/MP/2019 as under:

“38. In the instant case, the Petitioner has submitted that COD for 50.2 MW capacity (Tranche-III Project) has already been declared by the Petitioner in November 2019 while COD for balance capacity of 200 MW is yet to be declared. Therefore, there would be no transmission charges and losses levied on the Petitioner for 50.20 MW if the conditions of Regulation 7(1)(aa) the 2010 Sharing Regulations are satisfied. CTU is directed to verify whether conditions for waiver of ISTS charges as per provisions of Regulation 7(1)(aa) the 2010 Sharing Regulations are met in case of Petitioner. For the capacity which has not been declared under commercial operation (200 MW), the Petitioner shall be liable to pay transmission charges for assets as directed in 172/TT/2018.”

70. As per above orders, transmission charges for specified elements were levied on the LTA grantee from the date of operationalization of the LTA till the COD of their respective generation capacity.

71. Regulation 8 of the 2010 Sharing Regulations provides as under:

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer.

(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region:

.....

(6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.”

72. As per Regulation 8 of the 2010 Sharing Regulations, in case transmission elements are identified for a LTA grantee, it is liable to pay transmission charges under Regulation 8(6) of 2010 Sharing regulations prior to COD. However, in case no transmission elements are identified for LTA, Regulation 8(5) provides for levying of “Withdrawal Charges at the average withdrawal rate of the target region”. We observe that for the LTA grantee under Petition No. 195/MP/2019, transmission element was identified by the CTUIL as submitted by the CTUIL in Petition No. 172/TT/2018. With reference to the entity covered in Petition No. 195/MP/2019, minutes of 25th meeting of SR constituents provides as follows:

“ CTU informed that following LTA application has been received with injection at Tirunelveli with NR & ER as target regions:

Sl. No.	Applicant	Location	Date of Application	Status of connectivity	LTA Sought (MW)	Date of Start of LTA
1.	Betam Wind Energy Private Limited	Tuticorin, Tamil Nadu	24.07.2018	Stage-II grantee	150.2 (ER target) & 100 (NR target)	31.07.2019

It was informed that, presently 2x500 MVA transformers are available at Tuticorin-II PS (erstwhile Tirunelveli PS GIS) and LTA of about 699.9 MW has already been granted at Tuticorin-II PS on the existing/under construction transmission system. Further, as per the Transmission Planning Criteria para-16.2 the ‘N-1’ criteria may not be applied to the immediate connectivity of wind/solar farms with the ISTS/Intra-STS grid i.e. the line connecting the farm to the grid and the step-up transformers at the grid station. Accordingly, system studies have been carried out considering 2x500 MVA transformers at Tuticorin-II PS for the LTA application of M/s Betam Wind Energy Private Limited for 250.2 MW with target region as NR & ER.

From the system Minutes of the 25th meeting of SR Constituents for Connectivity / LTA Applications 4 studies, it is observed that line loadings are generally in order with the existing/under construction transmission system for evacuation/transfer of power of 250.2 MW. In case of outage of the Transformer at Tuticorin-II GIS, suitable mechanism including SPS for backing down the corresponding generation on pro-rata basis of wind generators may be incorporated by the applicants at their own cost in consultation with POSOCO and SRPC. After

detailed deliberations, it was decided that LTA to M/s Betam Wind Energy Private Limited may be granted with existing/under construction transmission system.”

73. We observe that the transmission elements associated with a specific LTA are identified by the CTUIL either in the LTA intimation or otherwise in regional meetings where the LTA grants are discussed.

74. Keeping in view the directions by the Commission in Order dated 5.2.2020 in Petition No. 195/MP/2019 along with Order dated 6.8.2019 in Petition No. 172/TT/2018, CTUIL is required to identify the associated transmission elements in such cases where LTA was granted on “existing transmission system” as in the case of Petition No. 195/MP/2019 along with Petition No. 172/TT/2018, for the purpose of levying transmission charges for delay. In cases where no transmission elements can be identified, for such cases Withdrawal Charges at the average withdrawal rate of the target region shall be applicable for the period of delay as per Regulation 8(5) of 2010 Sharing regulations. For the period starting from the effective date of 2020 Sharing regulations, charges shall be levied as per Regulation 13 of the said regulations.

75. We observe that for the delayed period of the Petitioner’s project, CTUIL has not raised the bills towards transmission charges till October 2021. It was only on 6.1.2022, CTUIL raised Transmission Charges Bill of Rs.6.48 crore for the period from November 2020 to October 2021. The Commission vide RoP dated 8.02.2022 had sought from the CTU reasons for not raising the bills on the Petitioner from the date of operationalization of LTA and for raising the bill for period November 2020 to October 2021 only. CTU vide affidavit dated 4.03.2022 has submitted that the delay on its part is bona fide and it is in the process of computing the liability of Petitioner for the balance period and that it shall ensure strict compliance of provision of Regulations. We take note of above and direct

CTUIL to raise the bills for period 30.11.2019 to 31.10.2020 on the Petitioner as per the 2010 Sharing Regulations.

(b) Liability of Transmission charges from the effective date of 2020 Sharing Regulations i.e. 1.11.2020 to the date of commissioning of Project i.e. 30.10.2021.

76. During the pendency of the Petition, the Commission notified the 2020 Sharing Regulations with effect from 1.11.2020. Regulation 13 of the 2020 Sharing Regulations provides for the liability of generator which is delayed as under:

“13. Treatment of transmission charges and losses in specific cases

(7) Where Long Term Access is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed, the generating station shall, corresponding to the capacity that is delayed, pay transmission charges at the rate of 10% of transmission charge per MW for the State where such generating station is located:

Provided that the amount so received in a billing month, shall be reimbursed to the DICs in proportion to their share in the first bill in the following billing month.”

77. Thus, it is clear from the Regulation 13 that the Petitioner shall be liable to pay transmission charges corresponding to capacity that is delayed at the rate of 10% of transmission charge per MW for the State where such generating station is located. We observe that on 6.1.2022 CTUIL has raised bill for period November 2020 to October 2021 as per the 2020 Sharing Regulations and Petitioner is liable to pay these charges.

78. The Petitioner is directed to make payments of the bills raised by CTUIL in accordance with directions under this Order as per Regulations. Issue No.4 is answered accordingly and prayer (f) of the Petitioner is rejected.

79. We observe that as the Petitioner has already achieved the COD of its project for the full capacity and is availing the waiver of transmission charges, any specific direction on opening of LC is not required. The prayer (b) of the Petitioner is answered is accordingly.

80. The Commission vide RoP dated 8.02.2022 had sought the details from CTUIL of all the cases where generation project has been delayed and is liable to pay transmission charges and whether bills have been raised or not. 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. We observe that there are several other cases as well where CTUIL has not raised the bills. Therefore, we direct CTUIL to raise the bills without any delay strictly in compliance of the Regulations. CTUIL is directed to submit a compliance report with details of all such cases within 15 days of the date of this order.

81. Petition No. 525/MP/2020 is disposed of in terms of above.

Sd/	Sd/	Sd/	Sd/
(P. K. Singh) Member	(Arun Goyal) Member	(I. S. Jha) Member	(P.K. Pujari) Chairperson