

- Annexure-I, certifying the flow of power from the Project upon synchronization.**
7. Finally, the Commissioning Certificate, in line with Annexure-II, shall be issued by the State Nodal Agency, which shall **certify the commissioning of the Project capacity based on the number of turbines commissioned and energy flown into the grid.**

Documents to be submitted to SECI

- “
- ...
- e. Plant Layout along with the SLD, clearly mentioning the details of WTG size and capacity along with the individual WTG Serial Nos., their locations, feeder details, 230/220/33kV Pooling Sub Station and Grid Substation
- ...
- i. Snap shots of the plant from various angles, including but not limited to, WTGs, switchyards\switchgears, Power Transformers, **SCADA (screenshots with time stamped WMS data and Energy generation data)**, metering (Main, Check and Standby Meters as applicable) at delivery point etc.).
- ...
- k. **Relevant documents from SLDC/RLDC acknowledging successful data communication between plant end and SLDC/RLDC.**

Note:

- I. The WPDs may initiate synchronization of individual WTG with the grid, as per their project completion schedule, under intimation to PTC/SECI/SNA. The Commissioning of the Project shall be declared only upon synchronization of minimum cumulative capacity required to declare part commissioning of the Project under the RfS.
- II. It is re-iterated that the date of project commissioning shall be as per the dated indicated on the Commissioning Certificate issued by the SNA. Energy accounting of the Project shall commence from the date based on the declaration COD of the project in line with the provisions of the RfS and PPA.
- III. Wind Power Developers would be required to plan commissioning at least ten days ahead of the last permissible date for commissioning in accordance with MNRE guidelines/RfS. If not done so, whole responsibility for not meeting the deadline for commissioning rests solely with the WPD.

Important: The Commissioning Committee led by the SNA shall visit the Project site within 7 days from the date of intimation of proposed commissioning of the Project by the WPD. Such intimation shall be issued by the WPD only upon achieving required clearances from the concerned authorities for synchronization and commissioning of the Project. In case of the Committee not visiting the Project site within 7 days of the intimation of proposed commissioning of the Project by the WPD, the Project shall be considered as having been commissioned on the date as on 7 days after the issuance of the above intimation by the WPD, which shall be reflected in the Commissioning Committee.

22. From the above, the Commission observes that the ‘Commissioning Procedures’ *inter-alia* mandate that Commissioning Committee has to visit the Project site to witness the commissioning of the Project. The Commissioning Procedures also make it mandatory for the

Committee to visit the Project site within seven (7) days from the date of intimation of proposed commissioning of the Project by the Petitioner. However, the site visit by the Committee is dependent upon the Petitioner achieving required clearances from the concerned authorities for synchronization and commissioning of the Project. The Commissioning Procedures further mandates that in case of the Committee not visiting the Project site within seven (7) days of the intimation of proposed commissioning of the Project by the Petitioner, the Project will be considered as having been commissioned on the date as on seven (7) days after the issuance of the above intimation by the Petitioner.

23. Further, for being declared as commissioned, the Petitioner is required to submit list of documents including e.g. Plant Layout along with the SLD, clearly mentioning the details of WTG size and capacity along with the individual WTG Serial Nos., their locations, feeder details, 230/220/33kV Pooling Sub Station and Grid Substation; Snap shots of the plant from various angles, including but not limited to, WTGs, switchyards\switchgears, Power Transformers, SCADA (screenshots with time stamped WMS data and Energy generation data), metering (Main, Check and Standby Meters as applicable) at delivery point etc.; Relevant documents from SLDC/RLDC acknowledging successful data communication between plant end and SLDC/RLDC.
24. From the above, the Commission is of the view that the Petitioner was duty bound to comply with the Commissioning Procedure circulated by SECI vide email dated 04.08.2018 and the Commissioning Committee was to do the physical inspection of WTGs at site.
25. Further, the extracts of minutes of meeting of the Commissioning Committee regarding site visit on 03.01.2020 and 04.01.2020 (signed by SECI, Petitioner and GEDA) are as under:

The Minutes of Meeting of the Commissioning Committee (signed by officers of SECI, officer of Petitioner and officers of GEDA) recorded on 03.01.2020 and 04.01.2020 at the Project site at Village Ratadiya at Kutch District, State Gujarat, witnessing the Commissioning activities for 52 MW capacity (26 Nos. of WTGs of 2 MW each) of the Wind Project of the Petitioner, inter-alia, stating as under:

.....

6. Initially committee was called for commissioning on 9th December 2019, Committee was physically verified 17 WTG's. The rest of the WTG's were not shown by the WPD. Again the committee was called for inspection on 3rd & 4th January 2020 to witness the remaining WTG's. On 3rd January 2020 only additional two WTG'S were physically verified and rest of 7 WTG's were not shown by the WPD. As on 3rd January only 19

nos. of WTG's were physically verified out of total 26 nos. of WTG's. the details of 19 nos. of WTG's are enclosed as annexure-V.

7. The energy meters installed at PGCIL substation are common for Wind Power Projects of WPD under Tranche-1, 2, 3 & 4 wind schemes of SECI and also common for 75 MW wind power project under MSEDCL scheme. Due to this, the committee witnessed and recorded energy meter reading at 33 kV level at pooling substation. The details are given below:

.....

8. Based on the above, 52 MW (26 Nos. of WTGs of 2 MW Each) Wind Power Project of M/s. Adani Green Energy (MP) Limited (Project ID: WPD-ISTS-T2-AGEMPL-50GJ) may not be declared as commissioned as the committee could only be verified 19 nos. of WTGs out of 26 proposed WTG's as mentioned in para 02 above.

26. Email dated 08.02.2020 of the Petitioner to SECI regarding giving Notice prior to synchronization of 50 MW Wind Power Project of the Petitioner *inter-alia*, reads as under:

With regard to the subject captioned Project, we would like to inform you that we intend to Commission the above Project around 13-Feb-20. Kindly consider this letter as advance notice under Article- 5.1.1 of the PPA.

27. The minutes of meeting of the Commissioning Committee recorded on 19.02.2020 (signed by SECI, Petitioner, GEDA) regarding witnessing of commissioning of 50 MW capacity (25 Nos. WTGs of 2 MW each) Wind Power Project of the Petitioner, *inter-alia*, states as under:

2. Physical verification of the 25 Nos. of WTG's of 2 MW each installed at the Project site has been carried out by the Commissioning Committee on 19th February 2020.....

...

10. The committee on 19/02/2020 witnessed that 07 Nos. machines were in Production, 1 No. in startup, 2 Nos. in service while 5 Nos. in standby on the WTG SCADA at the pooling substation. Refer Annexure -VII.

11. WRLDC have confirmed the data validation of 10 WTGs. Same has been confirmed by WRLDC email dated 19/02/2020.

12. Subsequently, Commissioning cum COD certificate shall be issued upon data validation of all the 25 Nos. WTGs from WRLDC.

...

28. On 19.02.2020 the Petitioner sent an email to WRLDC, *inter-alia*, stating that

"Today we have confirmed SECI-II 10 nos. of WTG's telemetry data with Mr. Bijendar Sir. As on date total SECI-II 10 nos. of WTG's telemetry data is confirmed with WRLDC".

29. On 19.02.2020 itself, WRLDC validated telemetry data of 10WTG's as under:

'MW, MVar and wind speed of following 10 WTGs was validated today: 25,29,30,31,36,37,42,43,45,47'

30. On 27.02.2020 the Petitioner requested to WRLDC as under:

'In continue to trailing mail, Today we have confirmed SECI-II 09 nos. of WTG's telemetry data with Mr.Sardul Sir. As on date total SECI-II 19 nos. of WTGS's telemetry data is confirmed with WRLDC.'

31. On 27.02.2020 (the same day) E-mail from the WRLDC SCADA to the Petitioner, inter-alia, stating that

'Telemetry of 9 WTGs-nos 26,27,28,32,33,35,44,46 & 49 from Ratadiya SS is updating at WRLDC SCADA.'

32. On 05.03.2020 WRLDC SCADA confirmed to the Petitioner as under:

'Telemetry of 6 WTGs from 220/33 kV Ratadiya SS vide WTG no 34,39,40,41,48 & 50 is updating at WRLDC SCADA.'

33. On 06.03.2020 the Petitioner informed SECI regarding WTG data communication at WRLDC SCADA, inter-alia, stating as under:

"Please find the trailing mail received from WRLDC for data communication of balance of the WTGs dated on 5th March 2020 for our Wind Project under Tranche-II. As you are aware 10 WTGs was established on 13th Feb 2020 and balance communications have been established in phased manner. Now, that all the data are confirmed by WRLDC....

This is to kindly inform you that we complied all the requirement for issuance of COD for our Wind Project under Tranche-II.....

We are eagerly waiting for the CoD for power to be scheduled from tonight."

34. On 06.03.2020 itself, SECI issued Commissioning cum COD Certificate, inter-alia, stating as under:

...M/s. Adani Green Energy (MP) Limited (AGEMPL) has successfully commissioned the 50 MW (i.e. 25 Numbers of WTGs of 2.0 MW each) ISTS-connected Wind Power project... on 05.03.2020....

Commercial Operation Date (COD) of 50 MW ISTS- connected Wind Power Project is to be considered from dated 00:00 hrs of 07.03.2020.

This certificate has been issued on the basis of Minutes of Meeting recorded by commissioning committee on 19.02.2020 and M/s. AGEMPL's intimation dated

06.03.2020 regarding confirmation of data communication of all 25Nos. of WTGs from WRLDC.

35. From the various correspondences mentioned above, we observe that as the Commissioning Committee could verify only 19 nos. of WTGs out of 26 proposed WTGs as on 04.01.2020, the Commissioning Committee could not declare the Project as commissioned. It is further observed that the Petitioner had itself given advance notice prior to synchronization of 50 MW Wind Power Project on 08.02.2020 and informed that it intends to commission the Project around 13.02.2020. The Commissioning Committee further recorded on 19.02.2020 that only 07 Nos. WTGs were in production and WRLDC confirmed the data validation of 10 WTGs only. The Commissioning Committee specifically recorded that Commissioning-cum-COD certificate will be issued upon data validation of all the 25 Nos. WTGs from WRLDC. It is further observed from various correspondences exchanged between the Petitioner, WRLDC and SECI that the Telemetry of all WTGs from 220/33 kV Ratadiya SS was updated at WRLDC SCADA from 05.03.2020. The Petitioner on 06.03.2020 requested SECI for issuance of COD. On the same day, SECI issued Commissioning-cum-COD Certificate declaring commissioning of project from 05.03.2020 and Commercial Operation Date (COD) from dated 00:00 hrs of 07.03.2020. The Commission observes that the submission of the Petitioner that energy has flown into the grid on 03.01.2020 also does-not hold good since the telemetry integration was completed on 05.03.2020. Hence, the Commission is of the view that the Petitioner had complied with the Commissioning procedure only on 06.03.2020 and SECI has correctly issued Commissioning-cum-COD Certificate declaring commissioning of project on from 05.03.2020 and Commercial Operation Date (COD) from dated 00:00 hrs of 07.03.2020. Further, the amended commissioning procedure dated 16.04.2020 is not applicable for the Petitioner's power project which was commissioned on 05.03.2020.
36. Another issue raised by the Petitioner is about extension of the SCoD of the project to 05.03.2020 on account of alleged force majeure event(s). The Petitioner has submitted that there was delay in commissioning of the project from 03.01.2020 to 05.03.2020 on account of force majeure viz. delay in physical verification of commissioning during first and second visit by the Commissioning Committee due to Right of Way issues and agitation by the local villagers and delay in adoption of Tariff.

37. Relevant Articles of the PPA dated 29.12.2017 are as under:

4.5 Extensions of Time

4.5.1. *In the event that the WPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:*

a) any Buyer Event of Default; or

b) Force Majeure Events affecting Buyer/ Buying Entity(ies), or

c) Force Majeure Events affecting the WPD,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Article 4.5.6, for a reasonable period but not less than 'day for day' basis, to permit the WPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the WPD or SECI/Buying Entity(ies), or till such time such Event of Default is rectified by Buyer.

“ARTICLE 11: FORCE MAJEURE

11.3 Force Majeure

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared/notified by the competent state/central authority/agency (as applicable);

b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared/notified by the competent state/central authority/agency (as applicable); or

c) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

d) An event of Force Majeure identified under Buyer-Buying Entity(ies) PSA, thereby affecting delivery of power from WPD to Buying Entity(ies).

38. The Petitioner has placed on record , complaint letter dated 04.01.2020 addressed to the Police Sub-Inspector, Police Station, Dayapar. The extract of the letter is as under:

“This is to inform you with respect that, our 3 cars of our company were passing near village Paneli on dt. 3-1-2020, except employees of our company, officers of SECI were also present in the said vehicles. Some youngsters not allowed the vehicles of our company after 8.00 o'clock in night near Paneli village on said road and thereafter, said vehicles had to return. Persons who were there in the vehicles do not know about the persons stopped the vehicles. Above fact is for your knowledge.”

39. The Commission observes that SECI has placed on record, its letter dated 24.04.2020 to the Petitioner. The extracts of the letter are as under:

“ With reference to issues highlighted vide letter at Ref no. 1, 2 and 3, it is informed that vide letter dated 21.11.2019, SECI extended the SCD of the said Project till 03.01.2020. Considering all the reasons highlighted by M/s AGEMPL for the grant of extension and basis the guidelines issued by MNRE to grant extension of milestones in Wind Power Projects, an extension of 245 days from the original SCD (03.05.2019) of the Project was granted.

2. With reference to point 04, it is submitted that RoW issues do not qualify as Force Majeure.

3. For commissioning of your WTGs, SECI official was at your plant location from 09.12.2019 to 12.12.2019 and again on 03.01.2020 and 19.02.2020. During these visits, neither vehicle of SECI officials were stopped by any local person nor they had any interaction with any local public regarding the Project. SECI officials during these visits could witness the commissioning of only those projects which were physically shown by M/s AGEMPL. SECI official cannot certify readiness of any WTG or any RoW issues or local issues regarding WTGs which were not shown by M/s AGEMPL during the said visit.

*Also, copy of the FIR filed on 04.01.2020, as quoted in the letter, has not been enclosed in your letter / email dated 13.04.2020. **Document dated 04.01.2020 provided is the copy of the letter written to M/s AGEMPL to local police station is for information only.***

4. Further, as per commissioning procedure, WPDs are required to provide relevant documents from SLDC/ RLDC acknowledging successful data communication between plant end and SLDC/RLDC prior to commissioning. On 19.02.2020, SECI officials had witnessed that only 15 machines (WTGs) were integrated into Project level SCADA (07 in Production, 01 in Startup mode, 02 in service mode and 05 in standby mode). WRLDC also confirmed data validation for 10 WTGs only on 19.02.2020. Data for all the 25 WTGs were validated by WRLDC on 05.03.2020. From this, it can be construed that telemetry integration between Project and WRLDC, which is required for the commissioning of project, was not completed till 19.02.2020.

5. Points highlighted at point no. 05 are not very much attributable to concerned project and mere an observation made by M/s AGEMPL.

In view of the above, we regret to inform that extension in SCD from 03.01.2020 to 05.03.2020 for the said project, based on the documents submitted by M/s. AGEMPL, cannot be allowed.”

40. The Commission observes that Article 4.5 deals with the extension of time of the SCoD of the Project in case of occurrence of any Force Majeure event covered under Article 11.3 of the PPA. The Commission is of the view that the complaint letter dated 04.01.2020 seems to be the information to the Police authorities about some specific incident that occurred in the night (about 8:00 PM) in Paneli Village. However, the same cannot be said to be covered under Article 11 of the PPA. Needless-to-say, the same has been refuted by SECI vide its letter dated

24.04.2020. Hence, the Commission is of the view that no extension under Art. 4.5 of the PPA is admissible on the said ground.

41. The Commission further notes that the Petitioner has submitted that SECI has delayed in obtaining Order from the Commission for adoption of tariff and that in absence of the tariff adoption Order, no lender was willing to come forward to lend money to the Petitioner for the commencement of the Project. The Commission passed the Order on 03.12.2019 in Petition No.369/AT/2019 filed by SECI, adopting the tariff of the projects of WPDs including the Petitioner under Wind Tranche-II Scheme.

42. Article 3.1 of the PPA stipulates as under:

3.1 Satisfaction of conditions subsequent by the WPD

The WPD agrees and undertakes to duly perform and complete all of the following activities at WPD's own risk and cost within nine (9) months from the date of issuance of LoA, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by SECI:

....

b) The WPD shall make Project Financing arrangements and provide necessary certificates to SECI in this regard;

11.3 Force Majeure Exclusions

11.3.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

...

e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and

...

43. From the above, the Commission is of the view that Article 3.1 of the PPA specifically stipulates that the Petitioner has to fulfil the financial closure at its own risk and cost. Further, the said provision does not provide for any condition to be performed by SECI viz. adoption of tariff to enable the Petitioner to fulfil the financial closure. Also, it is pertinent to mention here that insufficiency of finances or funds is specifically excluded from the ambit of a Force Majeure event under Article 11.3 of the PPA. As such, the Commission is of the view that no extension under Art. 4.5 of the PPA is admissible on this ground also.

44. The issues are decided accordingly.

Issue No. 3: Whether SECI can be directed to the Respondent to refund the Liquidated Damages of Rs. 3,44,44,444 (Rs. Three Crores Forty Four Lacs Forty Four Thousand Four Hundred Forty Four Only) imposed upon the Petitioner?

45. In view of the findings of the Commission on Issue No. 1 and Issue No.2, no relief is made out under Issue No.3. Accordingly, Issue No.3 is also answered in the negative and against the Petitioner.

46. Accordingly, Petition no. 10/MP/2021 is disposed of.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)