

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. : **628/MP/2020**

Subject : Petition under Section 79(1)(c), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 seeking directions to Power Grid Corporation of India Limited to extend the Long-Term Access start date and extend the deadline for completion of the dedicated transmission line and pooling sub-station.

Date of Hearing : 12.4.2022

Coram : Shri P. K. Pujari, Chairperson
Shri I.S Jha, Member
Shri I. S. Jha, Member
Shri P. K. Singh, Member

Petitioner : Azure Power India Private Limited and 3 Ors. (Azure Power)

Respondents : Power Grid Corporation of India Limited (PGCIL)

Parties present : Shri Buddy Ranganadhan, Advocate, Azure Power
Shri Shashwat Kumar, Advocate, Azure Power
Shri Rahul Chouhan, Advocate, Azure Power
Shri Amitanshu Saxena, Advocate, Azure Power
Ms. Suparna Srivastava, Advocate, CTUIL
Mr. Tushar Mathur, Advocate, CTUIL
Ms. Soumya Singh, Advocate, CTUIL
Shri Kashish Bhambani, CTUIL
Shri V. Srinivas, CTUIL
Shri Yatin Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Rajneet Singh Rajput, CTUIL

Record of Proceedings

The matter was called out for virtual hearing.

2. Learned counsel for the Petitioners submitted that the present petition has been filed seeking direction to PGCIL to extend the Long-term Access ('LTA') start date and to align it with the Scheduled Commercial Operation Dates ('SCODs') of the Projects of the Petitioners. The gist of the submissions made by the learned counsel for the Petitioners are as follows:

a. The Ministry of Power's has notified the Electricity (Transmission System Planning, Development and Recovery of Inter-state Transmission Charges) Rules, 2021 ("2021 Rules") on 1.10.2021. Rule 5 of the 2021 provides for



“Recovery of Inter-State Transmission charges” and Rule 5(12) further provides that the Central Government may, if it is satisfied, waive Inter-State Transmission System (ISTS) charges and losses for notified sources of energy for a specified duration.

b. Pursuant to the 2021 Rules, Central Government in accordance with para 6.4(6) of the 2016 Tariff Policy and Rule 5(12) of the 2021 Rules issued orders dated 23.11.2021 and 30.11.2021 which provides for waiver of ISTS transmission charges and losses for solar power and wind power.

c. The MoP order dated 30.11.2021 further provides that a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders is granted an 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.

d. The LTA of the Petitioners was operationalised on 25.9.2021 (400 MW), 20.11.2021 (200 MW), 1.9.2021 (300 MW) and 1.9.2021 (250 MW) respectively. Thus, if there is any mismatch between date of LTA and COD of the project after 1.10.2021, then the ISTS charges is to be waived for that period of mismatch.

3. The Commission observed that the MoP order dated 30.11.2021 is applicable after the COD of the renewable generation and whether the Petitioner has generated the electricity for claiming the benefit of waiver in terms of MoP order.

4. In response to a query of the Commission regarding the rule/ provision under which LTA extension has been sought , the learned counsel for the Petitioner submitted that the Petitioner is seeking extension of LTA under the 2021 Rules. He further submitted that as per the LTAA dated 20.11.2018 entered into between the Petitioner and PGCIL, any amendment to the 2010 Sharing Regulations or MoP order dated 13.2.2018 will be applicable to the parties to the LTAA.

5. In response to another query of the Commission regarding the linkage between the commencement of LTA and payment of transmission charges for the mismatch period, the learned counsel for the Petitioner referring to the provisions of Regulation 13(3), 13(7) and 13(9) of the 2020 Sharing Regulations submitted that there cannot be a situation where transmission charges are to be paid even though LTA granted is not operationalised. He further submitted that the Petitioner will place an answer to the query raised by the Commission in the written submission to be filed by the Petitioner.

6. The learned counsel for the Petitioners further submitted that Cause 14 of the Transmission Service Agreement (TSA) entered into between the Petitioner and CTUIL on 20.11.2018 provides for *force majeure* clause.

7. The learned counsel for CTUIL made the following submissions:

a. Rule 5 of the 2021 Rules provides the mechanism for recovery of inter-state transmission charges. The scope and application of the 2021 Rules is different from the mechanism under which the transmission charges are to be paid by a renewable energy generator as provided in the 2020 Sharing



Regulations. Therefore, the reliance placed by the Petitioner on 2021 Rules is misplaced and does not apply in the instant case.

b. She submitted that Regulation 13(1)(c) of the 2020 Sharing Regulations provides for waiver of transmission charges and losses for generation based on solar or wind power resources for period of 25 years from the date of commercial operation i.e date from which the power flow from the renewable energy project commences. Therefore, the intention of legislature is clear that only on supply of power, waiver for transmission charges and losses is applicable. The COD of the project has to be achieved along with the fulfilment of the three conditions as provided in Regulation 13(1)(c) of the 2020 Sharing Regulations.

c. She submitted that MoP order dated 23.11.2021 is not applicable in the instant case as it is applicable prospectively i.e from the date of issue of order and the LTA in the instant case was operationalised prior to the issuance of MoP order.

d. On the aspect of liability of transmission charges for the use of ISTS network by the renewable energy generator, the Commission in separate orders dated 5.2.2020 in Petition No. 195/MP/2019 and Petition No. 303/MP/2015 has held that there is no provision for exemption of transmission charges and losses for generation based on solar or wind power resources before the COD of such generation projects.

e. As per the Commission's orders dated 5.2.2020 in Petition No. 195/MP/2019, order dated 6.11.2018 in Petition No. 261/MP/2017 and order dated 6.7.2017 in Petition No. 103/MP/2017, the COD is the relevant date for availing the benefit of waiver of transmission charges and losses. There is no nexus between the delay in SCOD of the RE project and the liability to pay the transmission charges. Therefore, the MoP orders and 2021 Rules as relied by the Petitioner is not applicable in the instant case.

8. The Commission directed parties to file its written submissions by 15.5.2022 with a copy to the other and observed that if the same is not received within the specified timeline, the order will be issued based on the information already on record.

9. Subject to above, the Commission reserved its order in the petition

By order of the Commission

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(V. Sreenivas)
Joint Chief (Legal)

