

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 103/MP/2021 along with I.A No.71/2021

Petition No. 104/MP/2021 along with I.A No.72/2021

Petition No. 35/MP/2022 along with IA No. 19/2022

&

Petition No. 36/MP/2022 along with IA No. 20/2022

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 8.06.2022

Petition No. 103/MP/2021 along with I.A No.71/2021

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 along with statutory framework and the Tripartite Transmission Agreement dated 28.10.2018 executed between Power Grid Corporation of India Limited, ACME Solar Holdings Pvt. Ltd. and Fatehgarh-Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.1.2019 executed between ACME Solar Holdings Pvt. Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 3.6.2019 executed between Power Grid Corporation of India Ltd. and ACME Solar Holdings Pvt. Ltd. seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Deoghar Solar Power Pvt. Ltd., ACME Dhaulpur Powertech Pvt. Ltd. and align the same with the SCOD of the Projects as extended by SECI..

And

In the matter of:

1. ACME Deoghar Solar Power Private Limited,
Plot No. 152, Sector 44,
Gurugram, Haryana-122002

.....Petitioner No. 1

2. ACME Dhaulpur Powertech Private Limited,
104, Munish Plaza, 20 Ansari Road, Darya Ganj,
New Delhi- 110002

.....Petitioner No. 2

3. ACME Solar Holdings Limited,
Plot No. 152, Sector 44,
Gurugram, Haryana-122002

.....Petitioner No. 3

Versus

1. Power Grid Corporation of India Limited,
Saudamini, Plot No. 2,
Sector-29, Near IFFCO Chowk,
Gurgaon, Haryana-122001

.....Respondent No. 1

2. Solar Energy Corporation of India Limited,
1st Floor, D-3, A Wing,
Prius Platinum Building District Centre, Saket,
New Delhi-110017

.....Respondent No. 2

3. Fategharh Badhla Transmission Limited,
First floor 'Urjanidhi',
Barakhamba lane, Connaught Place,
New Delhi-110001

..... Respondent No. 3

Petition No. 104/MP/2021 along with I.A No.72/2021

In the matter of :

Petition under Section 79 of the Electricity Act, 2003 along with statutory framework and the Tripartite Transmission Agreement dated 25.09.2018 executed between Power Grid Corporation of India Limited, ACME Solar Holdings Pvt. Ltd. and Fategharh-Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.1.2019 executed between ACME Solar Holdings Pvt. Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 16.5.2019 executed between Power Grid Corporation of India Ltd. and ACME Solar Holdings Pvt. Ltd. seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Phalodi Solar Energy Pvt. Ltd., ACME Raisar Solar Energy Pvt. Ltd. and align the same with the SCOD of the Projects as extended by SECI.

And in the matter of :

1. ACME Phalodi Solar Energy Private Limited,
Office: 104, Munish Plaza,
20 Ansari Road, Darya Ganj,
New Delhi- 110 002

.....Petitioner No. 1

2. ACME Raisar Solar Energy Private Limited,
Office: 104, Munish Plaza,
20 Ansari Road, Darya Ganj,
New Delhi- 110 002

.....Petitioner No. 2

3. ACME Solar Holdings Private Limited,
Plot No. 152, Sector 44,
Gurugram, Haryana -122002

.....Petitioner No. 3

Versus

1. Power Grid Corporation of India Limited,
Saudamini, Plot No. 2,
Sector-29, Near IFFCO Chowk,
Gurgaon, Haryana- 122001

.....Respondent No. 1

2. Solar Energy Corporation of India Limited,
1st Floor, D-3, A Wing,
Prius Platinum Building District Centre, Saket,
New Delhi-110017

.....Respondent No. 2

3. Fategharh Badhla Transmission Limited,
First Floor, Urjanidhi,
1 Barakhamba Lane, Connaught Place
New Delhi-11001

.....Respondent No. 3

Petition No. 35/MP/2022 along with IA No. 19/2022

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 and the Power Purchase Agreement dated 6.12.2018 executed between ACME Phalodi Solar Energy Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 6.12.2018 executed between ACME ACME Raisar Solar Energy Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Tripartite Transmission Agreement dated 25.9.2018 executed between Power Grid Corporation of India Limited, ACME Solar Holdings Pvt. Ltd. and Fategharh Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.1.2019 executed between ACME Solar Holdings Pvt. Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 16.05.2019 executed between Power Grid Corporation of India Ltd. and ACME Solar Holdings Pvt. Ltd. seeking extension of Scheduled Commissioning Date of the Projects and seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Phalodi Solar Energy Pvt. Ltd. and ACME Raisar Solar Energy Pvt. Ltd. and align the same with the SCOD of the Projects.

And in the matter of :

1. ACME Phalodi Solar Energy Private Limited,
Office: 104, Munish Plaza,
20 Ansari Road, Darya Ganj,
New Delhi-110 002

.....Petitioner No. 1

2. ACME Raisar Solar Energy Private Limited,
Office: 104, Munish Plaza,
20 Ansari Road, Darya Ganj,
New Delhi-110 002

.....Petitioner No. 2

3. ACME Solar Holdings Private Limited,
Plot No. 152, Sector 44,
Gurugram, Haryana -122002

.....Petitioner No. 3

Versus

1. Solar Energy Corporation of India Limited,
1st Floor, D-3, A Wing,
Prius Platinum Building District Centre,
Saket, New Delhi –110017

.....Respondent No. 1

2. Central Transmission Utility of India Limited,
“Saudamini”, Plot No.2,
Sector-29, Near IFFCO Chowk,
Gurgaon-122001

.....Respondent No. 2

3. Fategharh Badhla Transmission Limited,
First floor 'Urjanidhi', 1,
Barakhamba lane, Connaught Place,
New Delhi-110001

.....Respondent No. 3

4. BSES Yamuna Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019

.....Respondent No. 4

5. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019

.....Respondent No. 5

6. Tata Power Delhi Distribution Limited,
Mumbai House, 21, Homi Modi Street,
Mumbai, Maharashtra –400001

.....Respondent No.6

7. Power Grid Corporation of India Limited,
Saudamini, Plot No.2,
Sector 29, Near IFFCO Chowk,
Gurgaon (Haryana) -122001

.....Respondent No. 7

Petition No. 36/MP/2022 along with IA No. 20/2022

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 and the Power Purchase Agreement dated 07.12.2018 executed between ACME Deoghar Solar Power Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 07.12.2018 executed between ACME Dhaulpur Powertech Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Tripartite Transmission Agreement dated 28.10.2018 executed between Power Grid Corporation of India Limited, ACME Solar

Holdings Pvt. Ltd and Fatehgarh Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.01.2019 executed between ACME Solar Holdings Pvt. Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 03.06.2019 executed between Power Grid Corporation of India Ltd. and ACME Solar Holdings Pvt. Ltd. seeking extension of Scheduled Commissioning Date of the Projects and seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Deoghar Solar Power Pvt. Ltd., ACME Dhaulpur Powertech Pvt. Ltd. and align the same with the SCOD of the Projects

And in the matter of:

1. ACME Deoghar Solar Power Private Limited,
Plot No. 152, Sector 44,
Gurugram, Haryana-122002

.....Petitioner No. 1

2. ACME Dhaulpur Powertech Private Limited,
104, Munish Plaza, 20 Ansari Road, Darya Ganj,
New Delhi- 110002

.....Petitioner No. 2

3. ACME Solar Holdings Private Limited,
Plot No. 152, Sector 44,
Gurugram, Haryana-122002

.....Petitioner No. 3

Versus

1. Solar Energy Corporation of India Limited,
1st Floor, D-3, A Wing,
Prius Platinum Building District Centre,
Saket, New Delhi –110017

....Respondent No. 1

2. Central Transmission Utility of India Limited,
“Saudamini”, Plot No.2,
Sector-29, Near IFFCO Chowk,
Gurgaon-122001

.....Respondent No. 2

3. Fatehgarh Bhadla Transmission Limited,
First floor 'Urjanidhi',
Barakhamba lane, Connaught Place,
New Delhi-110001

.....Respondent No. 3

4. Haryana Power Purchase Centre,
Sakti Bhawan, Sector-6,
Panchkula, Haryana- 134109

.....Respondent No. 4

5. North Bihar Power Distribution Co. Limited,
Third Floor, Vidyut Bhawan, Bailey Road,
Patna–800001

.....Respondent No. 5

6. South Bihar Power Distribution Co. Limited,
Second Floor, Vidyut Bhawan, Bailey Road,
Patna – 800001

.....Respondent No. 6

7. Government of Puducherry,
Goubert Avenue,
Puducherry -605001

.....Respondent No. 7

8. Power Grid Corporation of India Limited,
Saudamini, Plot No.2,
Sector 29, Near IFFCO Chowk,
Gurgaon (Haryana)-122001

.....Respondent No.8

Parties present:

Shri Sajan Poovayya, Senior Advocate, ACME
Shri Sanjay Sen, Senior Advocate, ACME
Shri M.G Ramachandran, Senior Advocate, SECI
Shri Vishrov Mukerjee, Advocate, ACME
Shri Girik Bhalla, Advocate, ACME
Ms. Priyanka Vyas, Advocate, ASHIL
Ms. Mandakini Ghosh, Advocate, ASHIL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Tanya Sareen, Advocate, SECI
Shri Hemant Singh, Advocate, FBTL
Shri Lakshyajit Singh Bagdwal, Advocate, FBTL
Shri Chetan Garg, Advocate, FBTL
Shri Buddy A Ranganadhan, Advocate, BYPL
Shri Hasan Murtaza, Advocate, BYPL
Ms. Neha Singh, SECI
Shri Manas Ranjan Mishra, SECI
Shri Piyush Gupta, SECI
Shri Kashish Bhambhani, CTUIL
Shri Yatin Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Rajneet Singh Rajput, CTUIL

ORDER

Petition No. 103/MP/2021 pertaining to ACME Deoghar Solar Power Pvt. Limited (herein after referred as “ACME Deoghar”) and ACME Dhaulpur Powertech Pvt. Limited (herein after referred as “ACME Dhaulpur”) and Petition No. 104/MP/2021 pertaining to ACME Phalodi Solar Energy Pvt. Limited (herein after referred as “ACME

Phalodi) and ACME Raisar Solar Energy Pvt. Limited (herein after referred as “ACME Raisar”) have been filed seeking declaration that the Petitioners are not liable to pay the transmission charges for the period of mismatch between the date of LTA operationalisation and the extended SCOD of the Petitioners’ projects by SECI due to force majeure events.

2. Subsequently, the Petitioners filed Petition No. 35/MP/2022 (related to ACME Phalodi and ACME Raisar) and Petition No. 36/MP/2022 (related to ACME Deoghar and ACME Dhaulpur) seeking directions to SECI to extend SCOD of the Petitioner’s projects up to 18.7.2023 and directions to CTUL to align the date of commencement of LTA with the revised SCOD of their projects as extended by SECI.

3. The Petitioners have made the following prayers in Petition No. 103/MP/2021:

- a) *Declare that the Petitioners are not liable to pay transmission charges/losses on account of extension of SCOD by SECI due to Force Majeure for delay in start date of LTA;*
- b) *Direct PGCIL to grant extension in the timelines under Tripartite Transmission Agreement dated 24.10.2018, Transmission Service Agreement dated 28.01.2019 and Long Term Access Agreement dated 03.06.2019 for a period of 327 days and 5 months in alignment with the period of extension granted by SECI for commissioning of the Project; or such further period as may be granted by SECI on account of continuing Force Majeure;*
- c) *As an interim measure, direct PGCIL to not take any coercive and precipitative action against the Petitioners under Tripartite Transmission Agreement dated 24.10.2018, Transmission Service Agreement dated 28.01.2019 and Long Term Access Agreement dated 03.06.2019; and*
- d) *Pass any such further order as this Hon’ble Commission may deem necessary in the interest of justice.*

4. The Petitioners have made the following prayers in Petition No. 104/MP/2021:

- a) *Declare that the Petitioners are not liable to pay transmission charges/losses on account of extension of SCOD by SECI due to Force Majeure for delay in start date of LTA;*

- b) *Direct PGCIL to grant extension in the timelines under Tripartite Transmission Agreement dated 25.09.2018, Transmission Service Agreement dated 28.01.2019 and Long Term Access Agreement dated 16.05.2019 for a period of 327 days and 5 months in alignment with the period of extension granted by SECI for commissioning of the Project; or such further period as may be granted by SECI on account of continuing Force Majeure;*
- c) *As an interim measure, direct PGCIL to not take any coercive and precipitative action against the Petitioners under Tripartite Transmission Agreement dated , Transmission Service Agreement dated 28.01.2019 and Long Term Access Agreement dated 16.05.2019; and*
- d) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

5. The Petitioners have made the following prayers in Petition No. 35/MP/2022 and Petition No. 36/MP/2022:

- a) *SECI to extend the SCOD of the Project up to 18.07.2023 considering the time required to construct the bays and DTL at the Fatehgarh Substation;*
- b) *PGCIL to extend the date of commencement of the LTA so that it is aligned with the revised SCOD i.e., 18.07.2023 and /or with further revised SCOD, if any; and*
- c) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

6. Petitioner vide IA 19/2022 in Petition No. 35/MP/2022 and IA No. 20/2022 in Petition No. 36/MP/2022 has prayed as follows:

- (a) *Stay operation of PGCIL/CTUIL's letters dated 01.04.2022 issued to the Petitioners intimating operationalization of the LTA from 02.04.2022;*
- (b) *Restrain PGCIL/CTUIL from levying charges upon the Petitioners;*
- (c) *Restrain the Respondents SECI and PGCIL/CTUIL from taking any coercive steps against the Petitioners.*
- (d) *Pass such further orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

7. ACME Deoghar and ACME Dhaulpur in Petition No. 103/MP/2021 and ACME Phalodi and ACME Raisar in Petition No. 104/MP/2021 are Special Purpose Vehicles

incorporated by ACME Solar Holdings Pvt. Limited (herein after referred as “ASHPL”/ “Petitioner No. 3”).

8. The issues raised in Petition No. 103/MP/2021 and Petition No. 104/MP/2021 are identical, except for dates of execution of the agreements and the commissioning schedule of the projects. Hence, pleadings related to Petition No. 103/MP/2021 are captured leading to analysis and decision in combined manner.

Submission of Petitioners in Petition No. 103/MP/2021

9. The Petitioners have mainly submitted as follows:

- a) The SCOD of the Projects stands extended by 481 days to 03.03.2022 on account of Force Majeure events being:
 - (i) Status quo orders passed by the Hon’ble Rajasthan High Court in relation to the land for the Fatehgarh S/s (Sub-station where connectivity was granted for the Projects); and
 - (ii) Outbreak of Covid-19 and resultant lockdown in China and India.
- b) Power Grid Corporation of India Limited (“PGCIL” / Respondent No. 1”) has refused to accept the extension of SCOD to 03.03.2022 for commencement of Long Term Access granted to the Petitioners.
- c) On 11.08.2018, ASHPL submitted Stage-I and Stage-II application to Power Grid Corp. of India Ltd. (“PGCIL”), the Central Transmission Utility (“CTU”), for grant of connectivity to Inter-State Transmission System (“ISTS”) for the Projects.
- d) On 28.09.2018, PGCIL, in its capacity as the CTU, granted ASHPL connectivity to the 400 kV Fatehgarh Substation ("Fatehgarh S/s") which is under implementation pursuant to tariff based competitive bidding process by Fatehgarh-Badla Transmission Limited (“FBTL”)
- e) On 23.10.2018, in compliance with obligations under RFS after declaration as successful bidder and award of the Project, ASHPL submitted

its application to PGCIL (as CTU) for grant of Long Term Access along with Bank Guarantees as required under the Connectivity Regulations.

f) ASHPL entered into Tripartite Transmission Agreements ("TTA") dated 24.10.2018 with PGCIL and FBTL for the said projects. In terms of the TTA, the scheduled commissioning date of the Fatehgarh S/s was 30.09.2019.

g) On 07.12.2018, ACME Deoghar and ACME Dhaulpur executed two Power Purchase Agreements for supply of 300 MW solar power each with SECI ("PPAs"). The provisions of the PPA between SECI and ACME Deoghar are Pari Materia with provisions of the PPA between SECI and ACME Dhaulpur. The Scheduled Commissioning Dates (SCDs) of the Projects was 24 months from the Effective Date of the PPA, Thus, SCD of the Projects was to be 08.11.2020.

h) On 17.01.2019, the Intimation for Grant of Long-Term Open Access for the Projects was communicated by PGCIL ("LTA Intimation").

i) In January 2019, Petitioners came to know about Orders passed by the High Court of Rajasthan in W.P No. 5707/2018, C.W.P No. 11551/2018 and C.W.P No. 11562/2018 directing maintenance of status quo on entire land required for the Fatehgarh S/s. Consequently, the location and commissioning date of the Fatehgarh S/s became uncertain. In order to take steps for land acquisition and planning of construction works including the dedicated transmission line, it was necessary for the petitioners to know the exact locations of the Fatehgarh S/s. There was no mention of theses status quo orders neither in the Minutes of the 14th and 15th Meeting of Northern Region Constituents wherein Petitioner's application was discussed nor the grant of connectivity by PGCIL.

j) On 04.01.2019, the Petitioners issued a Force Majeure Notices to SECI to draw its attention to the prevailing uncertainty and it was also informed that till the Status Quo Orders are not vacated, Petitioners would be unable to comply with their obligations under the PPAs and such event is a Force Majeure Event.

k) The Petitioner No. 3/ASHPL vide letter dated 4.1.2019 sought clarification from the Respondent No. 3/FBTL and PGCIL regarding the scheduled commissioning of the Fatehgarh S/s. In response, the Respondent No. 3 vide its letter dated 7.1.2019 informed that it is obligation Adani Renewable Energy Park Rajasthan Limited (AREPRL) to provide the land for substation at Fatehgarh. The same is yet to be handed over to FBTL by AREPRL as the matter is sub-judice before the High Court of Rajasthan. FBTL shall revert once the same is decided.

l) The coordinates for the Fatehgarh S/s were provided only on 19.04.2019 with considerable delay and immediately thereafter, the petitioners speeded up the land acquisition for the project. Further, ASHPL vide its letter dated 19.6.2019 requested SECI for an extension of 4 months for fulfilling condition of possession of 100% of land required. This request was reiterated by the Petitioners vide letters dated 04.07.2019 and 08.07.2019

m) SECI, vide its letter dated 01.11.2019 granted extension of four months for achieving Financial Closure and for land arrangement.

n) The Rajasthan High Court vacated the status quo orders vide its order dated 27.11.2019 (327 days from issuance of Force Majeure Notice and 356 days from the Effective date under the PPAs).

o) ASHPL vide its letter dated 09.12.2019 brought to the knowledge of SECI that the extension of 4-month as granted earlier was not commensurate with the period of the Force Majeure event and requested for an extension of 327 days for all timelines under the PPA, including SCOD.

p) There has also been a delay in the development of the associated transmission network as several Transmission Service Providers, including Power Grid Khetri Transmission System Limited and Power Grid Ajmer Phagi Transmission Limited vide their letters dated 26.03.2020 have written to ASHPL notifying Force Majeure Events and inter-alia seeking extension of time in commissioning elements of the transmission network. These

transmission service providers and the network form part of the TSA dated 28.01.2019. Pertinently, on 15.10.2019, Adani Transmission Limited wrote to ASHPL seeking extension of 59 days for SCOD of the Bikaner-Khetri Transmission Project, from December 2020 to February 2021.

q) On account of outbreak of Covid-19 and resultant lockdown in China, from 02.01.2020 to 10.01.2020, Chinese suppliers of Solar PV modules and inverters issued notices claiming Force Majeure from 31.12.2019 highlighting the adverse impact on Chinese industries, supply chain, availability of manpower etc.

r) The outbreak of Coronavirus (COVID-19) and resultant lockdown gravely affected the execution of the Projects. After ascertaining the extent of the impact on its suppliers (Chinese and domestic) and consequent impact on development and commissioning the Projects, Petitioners issued Force Majeure Notice to SECI and PGCIL vide dated 21.2.2020 and 26.2.2020 respectively.

s) From 04.03.2020 to 17.03.2020, Chinese suppliers wrote to ASHPL notifying adverse impact of Covid-19 in China, and in particular to manufacturing ability and supply chain. The Chinese suppliers reiterated their inability to supply equipment to ASHPL. Further, Indian Suppliers also issued Force Majeure Notices dated 10.2.2020, 26.3.2020 and 27.3.2020 regarding outbreak of Covid-19 and lockdown in China and India, stating that they are affected as raw material for production of equipment is sourced from other parts of world including China.

t) On 17.04.2020, Ministry of New and Renewable Energy (MNRE) issued Office Memorandum (O.M.) declaring that the lockdown period shall be considered as Force majeure Event and extension equivalent to Lockdown period plus 30 days be granted to the renewable energy projects.

u) Since force majeure events resulted a situation where commissioning of Projects by SCOD (08.11.2020) or extended period of 30 months, became

impossible, the Petitioners issued Notice to SECI dated 04.05.2020 terminating the PPAs.

v) Thereafter, on 05.05.2020, Petitioners filed Petitions No. 483/MP/2020 and 484/MP/2020 inter alia seeking relief qua termination of PPA and resulting termination of LTA Agreement dated 3.06.2019 and 16.05.2019 respectively and TSA dated 28.01.2019. The Commission vide its order dated 14.05.2020 granted interim reliefs to the Petitioners by directing SECI and PGCIL not to take any coercive measure and the matter is pending adjudication.

w) In response to the Petitioner request for extension of timelines due to Status Quo Orders, SECI vide its letter dated 15.5.2020 granted extension of 327 days in achieving timelines in respect of Financial Closure and Scheduled Commercial operation Date. Accordingly, the time line for achieving financial closure extended from 08.03.2020 to 30.09.2020. Similarly, Scheduled Commercial Operation Date got extended from 08.11.2020 to 01.10.2021 .

x) Pursuant to the MNRE OM dated 17.04.2020, SECI granted extension in achieving timelines in respect of Land Acquisition & Financial Closure and Scheduled Commercial operation Date. Accordingly, the time line for achieving Land Acquisition and Financial Closure got extended from 30.09.2020 to 23.12.2020. Scheduled Commercial Operation Date got extended from 01.10.2021 to 24.12.2021.

y) Consequently, the time line for achieving Land Acquisition and Financial Closure got extended to 6.1.2021 and Scheduled Commercial Operation Date also got extended from to 07.01.2022. SECI further extended the timelines to pass on 5 months extension on account of lockdown and revised its earlier extension under PPA, revised Financial Closure and Scheduled Commercial Operation Date to 02.03.2021 and 03.03.2022 respectively.

z) ACME vide letter dated 21.09.2020 requested PGCIL to revise and align the timelines under TSA and LTAA with the revised SCOD timelines as

approved by SECI. This was on the basis that the original timelines under the TSA and LTAA were predicated upon the SCOD of the Projects.

aa) Meanwhile, Writ Appeals No. 51/2020, No. 52/2020 and No. 223/2020 were filed before the Division bench (challenging the Judgment dated 27.11.2019 issued in Civil Writ Petition bearing No. 11551, 11562 and 5707 of 2018) of the High Court of Rajasthan whereby the High Court vide its order dated 08.09.2020 directed parties to maintain the status quo qua land on which the Fatehgarh-I substation is to be constructed. Thus, the said Order has again resulted in ambiguity/uncertainty over the location and timeline of completion of Fatehgarh-I substation and adversely affected the Projects certainty and activities including land acquisition, etc. The said Status Quo Order dated 08.09.2020 is beyond ACME's reasonable control and not attributable to ACME and qualifies as Force Majeure under the PPAs and Article 14 of the TSA. Accordingly, on 30.10.2020, ACME issued Force Majeure notices to PGCIL and SECI.

bb) On 16.12.2020, PGCIL issued letter to ACME extending the start date of the LTA by 5 months from 26.10.2020 to 26.03.2021, or commissioning of ISTS for LTA whichever is later. The said extension of 5 months was provided to give effect to MoP Order dated 27.07.2020.

cc) On account of Force Majeure Events namely, status quo orders by the Rajasthan High Court and outbreak of Covid-19 and resultant lockdown in China and India, SECI has granted extension of SCOD but PGCIL has neither granted extension for the complete period nor taken note of the extension of SCOD of the Projects.

dd) As per Regulation 13(1)(c) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 ("**Sharing Regulations, 2020**"), Solar Power Projects awarded through competitive bidding process having commercial operation declared during period 13.02.2018 to 31.12.2022, are not liable to pay transmission charges and losses. Further, in terms of Regulation 13(3) onwards, liability of a generating station to pay transmission charges arises

only if there is delay in commissioning by COD. As per SECI's letter dated 08.09.2020, the revised Scheduled Commercial Operation Date is 03.03.2022. Accordingly, as long as the Projects are commissioned on or before 03.03.2022, no liability can be imposed on the Petitioners as per the Sharing Regulations 2020. However, since PGCIL has not extended the start date of LTA to 17.02.2022, it appears that PGCIL intends to claim transmission charges/losses from the Petitioners.

ee) Sharing Regulations, 2020 do not envisage a situation where a delay in commissioning of the power project occurs on account of force majeure events. While the Sharing Regulations 2020 provide that the entity (generation/ transmission) whose commissioning is delayed, will pay the transmission charges to the entity which has commissioned its assets, there is no clarification on the liability to bear such transmission charges in the event the delay has occurred on account of force majeure events.

ff) on 15.01.2021, in order to address the anomaly and lacuna, Ministry of Power ("MoP"), issued directions to the Commission under Section 107 of the Electricity Act, 2003 qua the Sharing Regulations 2020 by inter-alia, enabling grant of extension in the commencement and period of LTA in case the COD of the renewable generating station is extended by competent authority on the grounds of force majeure.

gg) In terms of Clause 11.2 of the Revised Detailed Procedure dated 20.2.2021, a Stage-II Connectivity grantee covered under Clause 9.2.1 is required to complete the dedicated transmission line and generator pooling substation "on or before scheduled date of commercial operation of the generating project or extended/delayed commissioning permitted by the Renewable Energy Implementing Agency or the distribution licensee or the authorized agency on behalf of distribution licensee. In the present case, the project commercial operation date has been extended by Renewable Energy Implementing Agency, i.e., SECI under the PPA due to force majeure event. Thus, as per the revised procedure, the petitioners are allowed to complete dedicated transmission infrastructure by 3.3.2022 and no penalty or charges

be imposed by PGCIL for delay in start of LTA in the form of transmission charges.

hh) The Commission is empowered to pass orders to relax/remove the difficulty of implementing provisions of Sharing Regulations 2020 which impose liability of transmission charges/losses where extension has been granted in SCOD on account of Force Majeure Events. Since the SCOD of the Project has been revised by SECI, the time period to complete the dedicated transmission line and for commencement of LTA should be extended to correspond with the new generation schedule.

Hearing dated 4.6.2021

10. The Commission admitted the Petition No.103/MP/2021 and Petition No. 104/MP/2021.

Submissions of the Petitioners vide Affidavit dated 13.7.2021

11. Petitioners vide affidavit dated 13.7.2021 have submitted as follows:

a. Vide judgment dated 29.06.2021, Hon'ble High Court of Rajasthan has partly allowed the writ appeals and held allotment of 1452.13 bighas relating to public utilities which was allotted to AREPRL stands cancelled. The State Government was directed to conduct a survey of the lands allotted and if any land comprises of public utilities, such allotment will also be cancelled. Allotment of land to AREPRL in Village Nedan shall also be reviewed keeping in view the factors mentioned in the judgment. The entire process was to be completed within 6 weeks from receipt of certified copy of the Order.

b. In light of the aforesaid judgment, the status of the Fatehgarh Sub-station land including allotment per se is uncertain. The cancellation of the allotment will have a material impact on commissioning of the Fatehgarh Sub-station. PGCIL (as CTU) may be asked to clarify on the status. It is expected that there will be further delay due to the High Court judgment and suitable extension may be required.

c. As per the Minutes of Meeting issued on 24.05.2021 of the 17th Joint-Coordination Committee Meeting the associated transmission system is expected to be commissioned progressively from May, 2021.

d. As regards land, 100% of the land required for the Projects is in possession of the Petitioners. The same has been confirmed by SECI vide letters dated 07.06.2021 which states that milestones under the PPA regarding Financial Closure and Land Arrangements was achieved on 18.09.2019 and 12.02.2021 respectively for ACME Dhaulpur and 02.03.2021 and 02.03.2021 respectively for ACME Deoghar.

e. As regard construction of bays at Fatehgarh-I ISTS sub-station in accordance with the Stage-II Connectivity intimation by CTU, FBTL was requested vide emails dated 05.06.2021 and 25.06.2021 and letter dated 01.07.2021 to provide encumbrance free access and physical possession of site at 400 kV Fatehgarh-I ISTS Sub-Station to ASHPL to initiate the execution of the works for construction of bays. FBTL was also requested to provide the soil test reports of the Fatehgarh-I ISTS Sub-station already carried out at the Sub-Station location. However, as on date FBTL is yet to provide encumbrance free access and physical possession of site at 400 kV Fatehgarh-I ISTS Sub-Station; and the soil tests report. Once the land is handed over, 10 to 12 months will be required for completing the bay construction activity.

Submissions of Respondent PGCIL/CTUIL vide Affidavit dated 15.7.2021

12. PGCIL vide affidavit dated 15.7.2021 has submitted as follows :

a) It was within the knowledge of all the parties that LTA shall become operational either from its required start date i.e. 26.10.2020 or from the date the associated transmission system was commissioned, whichever is later.

b) The only obligation under the TSA which was undertaken to be performed by the Petitioners was with respect to payment of transmission charges as per the bills raised upon it by Respondent No.1. However, as submitted above, since the Petitioners' projects were exempted from payment

of transmission charges if they were commissioned prior to 30.6.2025, the force majeure provision in the TSA was of no consequence.

c) Considering the uncertainty in the location and commissioning of the Fatehgarh sub-station, Respondent No.3 vide letter dated 7.1.2019 informed Petitioner that the required land was yet to be handed over to it by the Solar Park Developer (namely, Adani Renewable Energy Park Rajasthan Ltd.) as there were stay Orders on the land by the Hon'ble Rajasthan High Court.

d) In the 21st Meeting of Northern Region constituents regarding connectivity and LTA held on 27.3.2019, Respondent No.3 confirmed that the construction of Fatehgarh sub-station is likely to be completed by March, 2020. As such, Petitioner No.3 confirmed that modification for LTA/connectivity is not required for its generation projects and the granted connectivity/LTA at the Fatehgarh sub-station can be retained. Therefore, any uncertainty surrounding the connectivity thus stood resolved.

e) Petitioner No.3 signed the LTA Agreements dated 3.6.2019 and 16.5.2019 with CTUIL. The Recitals of the LTA agreements shows that by signing the LTA Agreements, the Petitioners had affirmed that there was no issue surviving as regards the sub-station at Fatehgarh and the implementation of the associated transmission system as per the connectivity and LTA grants. As such, the signing “under protest” by the Petitioners was of no consequence.

f) Petitioner No.3 undertook to make available to Respondent No.1, a payment security mechanism in the form of a construction phase bank guarantee which could be encashed by Respondent No.1 on the happening of the specified events, including on account of adverse progress on the part of the Petitioners as observed in the Joint Coordination Committee Meetings. The said right of encashment was absolute and not conditioned upon any other eventuality; there was also no force majeure situation agreed under the LTA Agreement. As stated above, similar provisions were also agreed under the TTAs where once again, there was no agreed force majeure clause.

g) The Petitioners vide its letter dated 26.2.2020 issued force majeure notices and notified CTUIL about the occurrence of a force majeure event in view of outbreak of Covid-19 affecting progress of the project due to lack of project supplies. The said notices were issued under clause 14 of the TSAs even when no force majeure clause was agreed either under the TSAs or under the LTA Agreements. As such, the said force majeure notices are of no consequence.

h) Petitioners decided to terminate the PPAs with Respondent No.2 citing the outbreak of Covid-19 and the nationwide lockdown imposed by the Government of India as the ostensible reason.

i) As per the regulatory scheme, the force majeure events that had been pleaded to occur under the PPAs with Respondent No.2 for supply of power could not be read into the agreements signed with Respondent No.1 for transmission of power and had no bearing on the consequences of exit under the Transmission Agreements.

j) Delay in development of transmission system had been taken up regularly with the concerned transmission system developers before the CEA and with participation of relevant stakeholders. Further, in a Meeting of 8th Working Group held on 21.4.2020, representative of Respondent No.3 had informed that the Fatehgarh-Bhadla transmission system was expected to be completed by October, 2020. However, the representative of the Petitioners had informed that their projects were likely to be delayed by one year.

k) MoP vide its letter dated 27.7.2020 granted an extension of 5 months in respect of SCOD of transmission projects which were under construction as on the date of lockdown i.e. 25.3.2020 and consequently, also extended by 5 months the start date of LTA granted to a generator by Respondent No.1 based on completion of a transmission line whose SCOD had been extended by 5 months. In furtherance thereof and since the transmission system associated with the Petitioners' projects had been under implementation as on 25.3.2020, Respondent No.1 vide its letter dated 16.12.2020, extended the start date of the Petitioners' subject LTA by 5 months so that the LTA was now to be

operationalized on i.e. 26.3.2021 or the commissioning of the associated transmission system, whichever was later.

l) The SCOD of the Petitioners' projects has no bearing on the grant of LTA in as much as the entire consideration for such grant is the availability of the transmission system from the start date requested by the applicant. There is also no provision to keep the LTA in abeyance either in the Connectivity Regulations read with the Detailed Procedure(s) framed thereunder or in the Transmission Agreements.

m) The Commission has clarified and observed that the provision for "no transmission charges for the use of ISTS network" for solar and wind power based generation projects is applicable only when the power is evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station. As such, transmission charges for delay in commissioning of solar and wind power generators are payable by such generators on the same line as the liability for payment by the thermal and hydro generating stations. That being so, the liability for payment of transmission charges is to ensue on the Petitioner for the period of delay in commissioning its power project when the associated transmission system is ready or the LTA start date has been reached, whichever is earlier.

n) Regarding the contention of the Petitioners that it is not liable to pay transmission charges under Regulation 13(3) of Sharing Regulations, 2020 as the liability therein arises only in cases where there is a delay attributable to the Petitioners, it is submitted that the provisions of Regulation 13(3) do not contemplate whether the delay has been caused by the generator or for any other reason. On the contrary, they simply provide that in case the associated transmission system has achieved its COD (which is not earlier than its SCOD) before the COD of generating station, then the latter shall pay transmission charges.

o) The directions dated 15.1.2021 issued by the MoP under Section 107 of the Electricity Act, 2003 to extend the LTA commencement date is not in

consonance with the prevailing regulatory regime notified by the Commission. As such, CTUIL is obligated to administer grants of Stage-II connectivity and LTA in terms of the applicable provisions of the Regulations/Procedures notified by the Commission, unless the aforesaid Order is duly recognized and incorporated in the said Regulations/Procedures.

IA 71/2021 in Petition No. 103/MP/2021

13. The Petitioners vide the IA No. 71/2021 in Petition No. 103/MP/2021 have mainly submitted as follows:

a) PGCIL vide its letter dated 12.08.2021 seeking levy of transmission charged w.e.f. 01.09.2021 is premature and contrary to the Sharing Regulations 2020. Notwithstanding the COD of the ISTS for LTA, as long as the Projects are commissioned by the SCOD (at present 03.03.2022, but likely to be extended), it is not liable to pay any charges. Therefore, there exists a prima-facie case in favour of the Petitioners against the levy of any transmission charges/losses by PGCIL vide letter dated 12.08.2021.

b) Delay in commissioning the Projects is on account of force majeure conditions beyond the reasonable control of the Petitioners. While SECI has granted extension in SCOD of the projects, PGCIL has neither granted extension for the complete period nor taken note of the extension in SCOD granted by SECI. On the contrary, by way of letter dated 12.08.2021, PGCIL has stated that it intends to levy transmission charges. Such action of PGCIL is in contravention of the CERC Sharing Regulations 2020.

c) On 19.07.2021, FBTL allowed petitioner to commence activities for construction of bay at FBTL sub-station. There was stay on the land on which the 400kV Fatehgarh-1 substation is to be constructed, due to which the Petitioners could not commence the bay construction activity. It generally takes 12 to 14 months from access to sub-station land for completing the 400kV bay construction activity and commissioning of the Projects.

d) The additional time required for construction of the bays at the substation is a direct consequence of the non-availability of land which is a

Force Majeure Event. Therefore, operationalising the LTA and levying transmission charges/losses on the Petitioners w.e.f. 01.09.2021 is tantamount to penalising the Petitioners for a Force Majeure event.

e) The Project implementation may further get impacted by the Supreme Court Order dated 19.04.2021 as construction of overhead transmission lines are not permitted and all existing and future transmission lines falling the Potential habitat have to be undergrounded subject to being technically feasible.

f) It is not clear whether construction of overhead lines, where approval under Section 68 of the Electricity Act, 2003 has been granted, will be permitted or not. Such delays may further impact the instant Projects.

14. The Petitioners vide I.A No. 71/IA 2021 in Petition No. 103/ MP/2021 have made following prayers:

- a) *Stay operation of PGCIL's letters dated 12.08.2021 issued in respect of ACME Deoghar and ACME Dhaulpur;*
- b) *Injunct PGCIL from operationalizing the LTA w.e.f. 01.09.2021;*
- c) *Direct PGCIL not to impose any transmission charges / losses pending final adjudication of the Petition;*
- d) *Injunct PGCIL from taking any coercive action against the Petitioners;*
- e) *List and hear the captioned application seeking interim directions at the earliest; and*
- f) *Pass any such further order as this Hon'ble Commission may deem necessary in the interest of justice.*

IA 72/2021 in Petition No. 104/MP/2021

15. Similar prayers have been made by the Petitioners in IA No. 72/2021 in Petition No. 104/MP/2021.

Rejoinder by the Petitioners to the submissions of PGCIL/CTUIL

16. The Petitioner vide affidavit dated 9.11.2021 has submitted as follows:

- a) Since SECI has granted extension of SCOD for the said events, PGCIL should also operationalize the LTA from the date when Project SCOD is

attained. The delay in the Project is directly attributable to and linked to the Force Majeure events impacting the transmission system

b) Though PGCIL (at the 19th JCC Meeting for generation Projects in the Northern Region) intimated that LTA would be operationalized w.e.f. 01.11.2021, but PGCIL itself has not commissioned the required evacuation infrastructure. Rather, PGCIL's transmission service providers have also invoked force majeure seeking extension for construction of the associated transmission system on several occasions. Therefore, till the associated transmission system is not ready, PGCIL should not be permitted to operationalize the LTA

c) On 24.02.2020, PGCIL allocated Bay No. 407 (Main Line Bay) and Bay No. 408 (Tie bay) to ASHPL for connectivity at 400kV Fatehgarh Pooling Station. However, due to the status quo Order dated 25.02.2020 passed by the Division Bench of the Hon'ble Rajasthan High Court, ASHPL could not initiate design and construction of bays at Fatehgarh-I substation. The Division Bench of the Hon'ble Rajasthan High Court vide Order dated 08.09.2020 extended the status quo as directed vide Order dated 25.02.2020. Therefore, the force majeure in respect of Fatehgarh S/s land continued even after SECI granted extension of SCOD and Project timelines vide letter dated 08.09.2020. On 29.06.2021, the Division Bench of Hon'ble Rajasthan High Court in Spl. Appl. Writ No. 51/2020, No. 52/2020 and No. 223/2020 vacated the earlier status quo orders dated 25.02.2020 and 08.09.2020. Therefore, the Force Majeure Event on account of status quo Orders of the Hon'ble Rajasthan High Court continued from the date of grant of Stage-II connectivity till 19.07.2021 i.e., when the sub-station land was finally handed over to the Petitioners.

d) In terms of Article 11.3.1 of the PPAs between Petitioners and SECI, delay in commissioning of the Fatehgarh S/s qualifies as Force Majeure event under the PPAs.

e) PPA and the Transmission Arrangement are associated agreements forming part of the same transaction and operating collectively. The entire transmission scheme envisaged under the agreements is interconnected and must be operational for the successful supply of power from the Project to the beneficiaries through the Transmission Licensee. Neither the PPA nor the Transmission Arrangement (Connectivity Agreement, TSA and LTAA) have an independent standing. Pertinently, grant of connectivity without LTA or commencement of LTA without connectivity are meaningless. Accordingly, the Connectivity Agreement, TSA and LTAA are associated documents forming part of the same transaction (i.e., establishing connectivity and evacuation of power under the PPA) and thus, are interlinked. The Transmission Arrangement is for the common purpose, i.e., supply of power from the Project through ISTS to the beneficiary Discoms.

f) ASHPL was granted access to the substation land only on 19.07.2021. It was not in a position to commence designing and construction of bays and complete the dedicated transmission line for connecting the Project to the grid substation. The period for completion of DTL and bays (24 months) ought to commence from 19.07.2021.

g) The Petitioners are bound by the directions of the SC GIB Order dated 19.4.2021 because the Fatehgarh-I Sub Station is within potential habitat of the GIB. As a result of the SC GIB Order dated 19.04.2021, it is impossible for the Petitioners to resume planning and construction of the dedicated transmission system of the Project till the necessary modalities and compliances stipulated by the SC GIB Order are completed. The actual impact on the project timelines can be assessed only after the approval process and notification of conduct guidelines by the SC Committee. Therefore, the SC GIB Order qualifies as a Force Majeure Event under the PPA dated 07.12.2018. Article 11.3.1(d) of the PPA read with Article 7.3.1 (e) of the PSA provides that any event that affects supply of power by the Petitioners constitutes a Force Majeure.

h) Till there is clarity on construction of the Project DTL due the SC GIB Order, the Petitioners are precluded from undertaking construction of the Project DTL. In such a scenario, if PGCIL operationalises the LTA and start levying transmission charges it would be tantamount to punishing the Petitioners for failing to do an impossible act. It is trite that a party cannot be compelled to do an impossible act. Therefore, it is prayed that this Commission direct PGCIL not to operationalise the LTA till there is requisite clarity with respect to undergrounding of transmission lines and applicability of the SC GIB Order

i) The SCOD of the Project is likely to be extended beyond 03.03.2022 to 18.07.2023 (as sought by ASHPL vide letter dated 08.10.2021) due to the uncertainty caused by the SC GIB Order.

j) Clause 11.2 of the Revised Detailed Procedure provides that a Stage-II Connectivity grantee (such as ASHPL) covered under Clause 9.2.1 is required to complete the dedicated transmission line and generator pooling substation on or before scheduled date of commercial operation of the generating project or extended/delayed commissioning permitted by the Renewable Energy Implementing Agency (i.e. SECI). Herein, the SCOD has been extended by SECI due to force majeure event in terms of the PPA. Thus, as per the revised procedure, the Petitioners are allowed to complete the DTL by 03.03.2022 without levy of any penalty or transmission charges by PGCIL.

k) Under Regulation 28 of the CERC Sharing Regulations 2020, this Commission has the power to issue a general or specific order to remove difficulty or align inconsistent provisions of the CERC Sharing Regulations 2020.

l) PGCIL's contention that SCOD of the Petitioners' Projects does not have any bearing on the grant of LTA is erroneous. The co-relation between SCOD of the Project and operationalisation of the LTA (commissioning of the associated transmission line) on account of force majeure has been addressed by Ministry of Power in its directions dated 15.01.2021 issued to this Commission under Section 107 of the Electricity Act, 2003. The MoP

direction has *inter alia* allowed grant of extension in the commencement and period of LTA in case the COD of the renewable generating station is extended by competent authority (SECI in the present case) on the grounds of force majeure.

Submissions of Respondent No. 3, FBTL vide Affidavit dated 27.10.2021

17. Respondent No. 3, FBTL vide affidavit dated 27.10.2021 has submitted as follows:

- a) The project got delayed due to following Force Majeure events of Re-routing of Fatehgarh–Bhadla line due to GIB Arc, Defence Aviation conditional NoC, Hon’ble High Court of Rajasthan Status Quo order dated 11.05.2018 in Civil Writ Petition No. 5707/2018, CoVID-19 Pandemic and Hon’ble High Court of Rajasthan Status Quo order dated 08.09.2020 in Spl. App. Writ No. 51/2020.
- b) Despite being faced by above mentioned FM events, the Respondent No. 3 has completed the establishment of its scope of project i.e. Fatehgarh-I sub-station and associated ISTS. Accordingly, it has declared the deemed CoD on 31.07.2021.
- c) The transmission system of Respondent No.3 is being put to use by making it part of ISTS/Grid and DICs are availing the benefit of the same with effect from 08.08.2021.

Additional Submissions by the Petitioners vide Affidavit dated 16.11.2021

18. Petitioners vide affidavit dated 16.11.2021 have submitted as follows:

- a) Powergrid Khetri Transmission System Ltd (PKTSL) vide its letter dated 11.11.2021 informed ASHPL that all its assets have been commissioned on 04.10.2021.
- b) On 12.11.2021, the Minutes of the Meeting held on 10.11.2021 by Central Transmission Utility of India Limited (“CTU”) for operationalization of LTAs in the Bhadla / Fatehgarh / Bikaner complex were released. With respect to Projects of Petitioners, it was stated that the Projects of the Petitioners were

granted access to the Fatehgarh Pooling Sub-station for construction of 400kV bays on 19.07.2021 and only preliminary works for construction of the connectivity bays had started. Therefore, the generation is not expected to be commissioned in near future. During the said meeting, it was indicated that the associated transmission system was likely to be commissioned by December 2021 and that the LTA would be operationalized by December, 2021.

Submissions of Respondent PGCIL/CTUIL vide Affidavit dated 16.11.2021

19. PGCIL/CTUIL vide its affidavit dated 16.11.2021 has submitted as follows:

a) It is evident from Hon'ble Supreme Court of India that the Order recognizes that laying of underground cable at high voltage would require technical evaluation on a case-to-case basis and an omnibus conclusion cannot be reached laying down a uniform method. In addition, wherever there are issues relating to feasibility, the matter shall be referred to the Committee comprising members from MNRE, WII, the Corbett Foundation with all relevant material and particulars. The Committee shall assess the matter and arrive at a conclusion as to whether the underground power line is feasible or not.

b) The details regarding and provisions under which the extension of operationalization of LTA has been granted to the Petitioners as well as in other cases by the CTU are as under:

- i. Owing to the unprecedented outbreak of COVID-19 pandemic, the Ministry of Power had issued directions regarding extension to TSP/ Transmission Licensees for completion of under construction inter-state transmission projects. In this regard, a meeting was convened by Central Electricity Authority on 21.09.2020 on consultative basis based on the MoP order dated 27.07.2020 to discuss the revised SCoD of various transmission projects (with associated LTAs) which were under construction as on Covid-19 lockdown, with participation of CTU, TSPs, associated LTTCs, POWERGRID & SECI. In the aforesaid meeting, SCOD of concerned transmission projects were extended by 5(five) months. Further, the start date of LTAs granted based on such

transmission projects whose SCOD was so extended by 5(five) months, were also extended by 5(five) months. Revised LTA intimations were also issued to the petitioner's.

- ii. Subsequently, upon outbreak of second wave of COVID-19 pandemic the Ministry of Power issued further directions regarding extension to TSP / Transmission Licensees for completion of under construction inter-state transmission projects. In this regard, a meeting was held on 02.07.2021 on consultative basis based on the MoP order dated 12.06.2021 amongst CEA, CTU, TSPs, associated LTTCs, POWERGRID & SECI to deliberate over the issue of SCOD revision in view of the MoP OM dated 12.06.2021 regarding extension to TSP/Transmission Licensees for completion of under construction inter-state transmission project by 3 (three) months. Further, the start date of LTAs granted based on such transmission projects whose SCOD was so extended by 3(three) months, were also extended by 3(three) months.
- iii. Under Section 38 of the Electricity Act, 2003, the CTU is required to discharge functions of coordination relating to inter-state transmission system in consultation with concerned stakeholders including the Central Government, Central Electricity Authority, licensees and generating companies. The aforesaid extension in LTA start dates were undertaken as per the directions of Ministry of Power and consequent extension in the SCODs of the transmission system/elements, with which the said LTAs were granted. This function was discharged in a consultative and transparent manner and after due deliberations with the stakeholders.
- iv. CTU has been discharging the coordination function (by holding quarterly joint-coordination committee meetings on regional basis) in order to minimize the mismatches between the commissioning of generation projects and associated transmission system. In the present case also, it was in light of the unprecedented event of COVID19 and the subsequent coordination between CTU, CEA and concerned stakeholders was undertaken as per the mandate of Ministry of Power.

Submissions of Petitioners vide Affidavit dated 24.12.2021

20. The Petitioners vide Affidavit dated 24.12.2021 have submitted as follows:

a. Even though the SCOD of the Projects was extended to 18.05.2022 by SECI, PGCIL has refused to extend the commencement of Long Term Access granted to ASHPL and align it with the revised SCOD.

b. On 23.11.2021, MoP vide Order dated 23.11.2021, issued under Para 6.4(6) of the Tariff Policy, 2016, *inter alia* stating that for solar Projects commissioned up to 30.06.2025, the waiver of inter-state transmission charges would be applicable. Subsequently, on 30.11.2021, MoP amended the Order dated 23.11.2021 and clarified that solar projects which are eligible for waiver of interstate transmission charges and have been granted extension by MNRE or Competent Authority due to force majeure shall get the benefit of waiver of inter-state transmission charges if the Projects are commissioned before 30.06.2025 as under:

“(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.”

c. On 03.12.2021, the Competent Authority and Renewable Energy Implementing Agency (“REIA”) i.e., SECI granted extension of SCOD for the Project from 03.03.2022 to 18.05.2022. Therefore, given that the Petitioners are directly covered by the MoP Orders dated 23.11.2021 and 30.11.2021, this Commission ought to direct PGCIL / CTU to align the LTA commencement dated with the revised SCOD and not operationalise the LTA till 18.05.2022.

d. The Order dated 23.11.2021 and 30.11.2021 have been passed by MoP in exercise of the powers conferred under Section 3(3) of the Electricity Act, 2003 read with Para 6.4(6) of the Tariff Policy, 2016. Since the Tariff Policy 2016 is a statutory document, therefore the tariff policy and all order issued thereunder will be binding on all concerned i.e., the Petitioners and PGCIL.

e. The Petitioners are bound by the directions of the SC GIB Order because the Project and proposed transmission lines connecting it to the Fatehgarh S/s fall within the Potential GIB habitat as identified in SC GIB Order. With the passing of the SC GIB Order, it is impossible for the Petitioners to resume planning and construction of the dedicated transmission system of the Project till the necessary modalities and compliances stipulated by the SC GIB Order are completed. The SC GIB Order qualifies as a Force Majeure Event under the PPA. Article 11.3.1(d) of the PPA read with Article 7.3.1 (e) of the PSA which provides that any event that affects supply of power by the Petitioners constitutes a Force Majeure.

Submission of CTUIL vide Affidavit dated 28.1.2022

21. PGCIL/ CTUIL vide Affidavit dated 28.1.2022 in Petition No. 103/MP/2021 has submitted as follows:

Petition No.	103/MP/2021	104/MP/2021
SCOD of Generation Project as per PPA	08.11.2020	08.11.2020
Extended SCOD of Generation Project, if any	18.05.2022	04.05.2022
Actual COD of Generation Project	Yet to be commissioned	Yet to be commissioned
Start date of Connectivity	26.10.2020	19.10.2020
LTA start date as per LTAA & LTA on existing system or through augmentation	26.10.2020/Through Augmentation	19.10.2020/Through Augmentation
LTA extended, if any	26.06.2021	19.06.2021
Schedule for completion of ATS	31.08.2021	31.08.2021
Actual COD of ATS	Yet to be commissioned	Yet to be commissioned
Status of LTA (operational/ relinquished, in part or full)	To be operationalized*	To be operationalized
Whether CTUIL raised bill during the period of mismatch between COD of Generation & ATS	NA	NA

****200MW LTA was relinquished by applicant w.e.f. 03.03.2022 on account of change in region for which fresh LTA 1200003297 was granted. Start date of 200MW LTA is 03.03.2022 for which ATS is yet to be commissioned.***

22. PGCIL/CTUIL has submitted that the major elements of Transmission system required for LTA are as under:

Transmission System in Rajasthan for LTA application at Fatehgarh			
Sr. No.	Elements	Implementing Agency	Actual COD
1	Establishment of 765/400kV, 3X1500MVA, pooling station at suitable location near Fatehgarh in Jaisalmer Distt (Fatehgarh-II PS)	POWERGRID	ICT-I: 01.09.2021 ICT-II: 08.10.2021 ICT-III: 11.11.2021
2	Establishment of 765/400kV, 2x1500MVA pooling station at suitable location near Phalodi/ Bhadla in Jodhpur (Bhadla-II PS)	POWERGRID	05.09.2021
3	Establishment of 765/400kV, 2x1500 MVA S/s at suitable location near Khetri.	POWERGRID Khetri Transmission System Limited	04.10.2021
4	LILO of both circuits of Fatehgarh (TBCB) – Bhadla (PG) 765 kV D/c line (operating at 400kV) at Fatehgarh-II PS so as establish Fatehgarh (TBCB)-Fatehgarh-II 765kV D/c line (to be operated at 400kV) and Fatehgarh-II – Bhadla (PG) 765kV D/c line	POWERGRID	LILO in Portion of ckt-I: 10.08.2021 LILo in Portion of ckt-II: 29.11.2021 LILo Out Portion: Yet to be commissioned
5	Charging of Fatehgarh-II PS – Bhadla section at 765kV level	POWERGRID	Yet to be commissioned
6	LILo of both ckts of 765kV Ajmer – Bikaner D/c line at Bhadla-II PS	POWERGRID	05.09.2021
7	Bhadla-II PS – Bhadla (PG) 400kV D/c Line (Twin HTLS)	POWERGRID	Ckt-I: 05.09.2021 Ckt-II: 05.12.2021
8	Bikaner(PG) – Khetri 765kV D/c line	Bikaner Khetri Transmission Limited	04.09.2021 (Deemed DOCO)
9	Khetri – Jhatikara 765kV D/c line	POWERGRID Khetri Transmission System Limited	04.10.2021
10	Khetri – Sikar (PG) 400kV D/c line (twin AL 59)	POWERGRID Khetri Transmission System Limited	04.10.2021
11	Augmentation with 1x1000MVA,765/400kV transformer (3rd) at Bhiwani (PG)	POWERGRID	18.11.2021
12	Ajmer (PG) – Phagi 765kV D/c line	POWERGRID Ajmer Phagi Transmission Limited	06.05.2021

Petition No. 35/MP/2022 and Petition No. 36/MP/2022

23. Petitioners of Petition No. 103/MP/2021 have filed Petition No. 36/MP/2022 covering linked issues and hence the same is clubbed together with Petition No.

103/MP/2022. Similarly, Petitioners of Petition No. 104/MP/2021 have filed Petition No. 35/MP/2022 covering linked issues and hence the same is clubbed together with Petition No. 104/MP/2022. The pleadings of Petition No. 36/MP/2022 and the pleadings of Petition No. 35/MP/2022 are similar, only dates for projects are different. Therefore, the pleadings have been covered under Petition No. 36/MP/2022.

Submissions of Petitioners

24. Petitioners in Petition No. 36/MP/2022 have mainly submitted as follows:

- a) In terms of Stage-II Connectivity dated 28.09.2018, ASHPL was granted a period of 24 months from the date of intimation of bay allocation to complete the bay and DTL. While the bays were allocated to ASHPL on 24.02.2020, physical access to the land for design and construction of the bays were granted to ASHPL only on 19.07.2021. The location of the Fatehgarh S/s was essential for the present Project and due to uncertainty over the commissioning date of the Fatehgarh S/s, the Project implementation was adversely impacted. Therefore, the period for completion of DTL and bays (24 months) ought to commence on 19.07.2021 and Petitioners should have been granted time till 18.07.2023 for completion and commissioning of the Project.
- b) The Order dated 19.04.2021 passed by the Hon'ble Supreme Court in I.A. No. 85618 of 2020 in Writ Petition (Civil) No. 838 of 2019 - *M.K. Ranjitsinh & Ors. v. Union of India & Ors* ("SC GIB Order") in terms of which all existing and future overhead low and high voltage power lines in the Priority and Potential habitats of Great-Indian Bustard shall be undergrounded leads to resultant uncertainty. The Petitioners are impacted since the project falls in the Potential habit of GIB.
- c) Since uncertainty over land for the sub-station was beyond the control of ASHPL and was a consequence of the status quo Orders passed by Hon'ble Rajasthan High Court, SECI should consider the same as an extension of the previous force majeure event for which SCOD had already been revised vide letters dated 08.09.2020 and 03.12.2021. Accordingly, it is prayed that this Commission may direct SECI to extend the SCOD of the

Project up to 18.07.2023 after considering the 24 months required for construction of bays from the date of grant of access to the Fatehgarh S/s. This is without prejudice to the Petitioners' claim for extension on account of the SC GIB Order and the Petitioners' reserve all rights in this regard.

d) Petitioners have reiterated the issues raised in Petition No. 103/MP/2021 referring to various MOP Orders dealing with waiver of ISTS charges seeking alignment of LTA with SCOD.

Hearing dated 9.2.2022

25. Petition No. 103/MP/2021, Petition No. 104/MP/2021, Petition No. 35/MP/2022 and Petition No. 36/MP/2022 were heard together on 9.2.2022, whereby Commission directed to implead all buying utilities/ beneficiaries in Petition No. 35/MP/2022 and Petition No. 36/MP/2022.

Submissions of PGCIL vide affidavit dated 8.2.2022

26. PGCIL vide affidavit dated 8.2.2022 in Petition No. 36/MP/2022 has mainly reiterated its submissions filed in Petition No. 103/MP/2021 and has submitted as follows:

a. As per the regulatory scheme, the force majeure events that had been pleaded to occur under the PPAs with Respondent No.1 for supply of power could not be read into the agreements signed with Respondent No.2 for transmission of power and had no bearing on the consequences of exit under the Transmission Agreements;

b. The force majeure events pleaded in the Petition, their admissibility apart, were not of a nature that were to render the performance of obligations under various agreements a permanent impossibility;

c. There being no force majeure clause agreed either under the TTAs (regarding connectivity) and LTA Agreements (regarding use of ISTS), the effect of such force majeure in so far as the Transmission Agreements were

concerned was that there had been an exit from the projects and as such, the consequences of payment of compensation for stranded capacity were necessarily to ensue and for which Respondent No.2 was entitled under the Transmission Agreements as also the Connectivity Regulations/Detailed Procedure to encash the bank guarantees furnished by the Petitioners.

d. On 15.1.2021, 23.11.2021 and 30.11.2021, the MoP has issued an Office Order regarding waiver of transmission charges. The above Office Order extending the LTA commencement date was not in consonance with the prevailing regulatory regime notified by this Hon'ble Commission. As such, Respondent No.2 was obligated to administer grants of Stage-II connectivity and LTA in terms of the applicable provisions of the Regulations/Procedures notified by this Hon'ble Commission, unless the aforesaid Order was duly recognized and incorporated in the said Regulations/Procedures.

e. All other elements of transmission system associated with above LTAs except LILO out portion of both the circuits of Fatehgarh (TBCB)–Bhadla (PG) 765kV D/c line (to be operated at 400kV) at Fatehgarh-II PS and charging of Fatehgarh-II PS–Bhadla (PG) D/c section (after LILO) at its rated voltage i.e. 765kV have been commissioned. As such, the Petitioners' LTAs are liable to be operationalized upon commissioning of above remaining element of the associated transmission system.

f. The Petitioners has stated that the LTA ought not to be operationalized w.e.f. 1.9.2021 because access to land for construction of bays at the connectivity sub-station had been made available to the Petitioners only in July, 2021 and the implementing agency had also extended the project SCODs. However, it may be mentioned here that bay details were provided to the Petitioners vide letter dated 13.9.2019 of Respondent No.2 which were subsequently revised on 24.2.2020 based on the Petitioner's letter dated 22.1.2020 in order to avoid and reduce multiple future line crossings.

g. In so far as completion of dedicated system is concerned, the following provision in the Revised Detailed Procedure notified by this Hon'ble Commission is relevant:

“11.2(C) In case of Applicants which have been granted Stage-II Connectivity under Clause 9.2.2 but are subsequently covered under Clause 9.3.1, the last date for completion of dedicated transmission line(s) and generator pooling station(s) shall be the SCOD of the project or as extended or delayed commissioning permitted by the Renewable Energy Implementing Agency or the distribution licensee or the authorized agency on behalf of distribution licensee, as the case may be.”

h. Since the project SCOD has presently been extended by Respondent No.1 till 18.5.2022, the last date for completion of the dedicated system by Petitioners comes to be 18.5.2022.

Submissions of CTUIL vide Affidavit dated 7.3.2022

27. CTUIL vide affidavit dated 7.3.2022 in Petition No. 36/MP/2022 has submitted that as some of the elements of Transmission System mentioned in the Long Term Access (LTA) grant has not been commissioned, the said grant of LTA has not been operationalized as on date. The Respondent undertakes that upon operationalization of LTA, CTU shall raise the bills as per applicable Regulations and CERC Orders.

Submissions of SECI vide Affidavits dated 7.3.2022 and 7.4.2022

28. SECI has filed its replies vide affidavits dated 7.3.2022 and 7.4.2022 and has also filed its written submission dated 6.5.2022. SECI has mainly submitted as under:

a) The Petitioners had satisfied the conditions subsequent including the financial closure and also acquired the land for the construction of the power project, by 19.07.2021. The Conditions Subsequent including financial closure were fulfilled by ACME Dhaulpur on 18.09.2019 and ACME Deoghar on 12.02.2021. The Land Arrangements as per Article 4.1 (i) of the PPAs were fulfilled by ACME Dhaulpur and ACME Deoghar on 02.03.2021. Therefore, the extension of 24 months sought by the Petitioners for construction and commissioning of the project from 19.07.2021 till 18.07.2023 is contrary to the provisions of the PPAs which allows 24 months from the Effective Date (and as further extended) for undertaking various activities including fulfillment of Conditions Subsequent, acquisition of land etc. besides the construction and commissioning of the power project

b) Vide letters dated 12.04.2022, ACME Deoghar and ACME Dhaulpur requested for extension of Scheduled Commissioning Date by an additional period of 281 days i.e. till 23.02.2023 on account of delay due to status quo order passed by Division Bench of the Rajasthan High Court. In pursuance of the representation dated 12.04.2022 of Petitioners, on 28.04.2022, SECI granted extension of 261 days for Status Quo Orders passed by Division Bench of the Rajasthan High Court and revised the Scheduled Commissioning Date to 03.02.2023.

c) The only other aspect alleged by the Petitioner as effecting the implementation of the power project is the implications of the Order dated 19.04.2021 passed by the Supreme Court of India in I.A. No. 85618 of 2020 in Writ Petition (Civil) No. 838 of 2019, M.K. Ranjitsinh and Others. vs Union of India and Others. The Order of the Supreme Court cannot be considered as a force majeure event in so far as the construction and commissioning activities of the power project in accordance with obligation assumed under the PPAs. The said Order did not prevent the Petitioners from undertaking such construction and commissioning of the power project as envisaged in Article 11 of the PPAs.

d) Further, no notice of force majeure as per Article 11.5 of PPAs was given by the Petitioners in regard to any impact of the said Order preventing the Petitioners from undertaking the construction and commissioning of the power projects. As stated in the said provision, the issue of such notice is a pre-condition for claiming relief under Article 11 of the PPA.

e) SECI vide its email dated 12.01.2022, sought information from the Petitioners, inter-alia, as to whether Petitioners have approached the Committee constituted by the Supreme Court for any decision with regard to the overhead line. The Petitioners by email dated 13.01.2022 stated that the Petitioners have not approached the Committee till date. In the absence of Petitioners having taken action in terms of Order dated 19.04.2021, the Petitioners cannot plead that it is impossible for Petitioners to construct dedicated transmission line until compliances as specified in Order of the Supreme Court are complied with.

f) Further, on 03.02.2022, MNRE, Government of India has issued an Office Memorandum providing that in cases where RE Implementing Agencies is the intermediary procurer and for which the transmission infrastructure lies wholly or partly in the priority or potential area, the project land has been procured and the project commissioning is delayed due to non-completion of project transmission infrastructure on account of the order of the Supreme Court, the Scheduled Date of Commissioning is extended to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE.

g) SECI vide its email dated 04.02.2022 informed the Petitioners about the above Office Memorandum of MNRE, Government of India. Further, vide emails dated 20.03.2022 and 22.03.2022, SECI informed that extension request in terms of Office Memorandum dated 03.02.2022 will be processed only after submission of undertaking in the format provided by SECI along with its email dated 20.03.2022. However, the Petitioners have not provided the requisite undertaking till date.

h) In the facts and circumstances mentioned above, the Petitioners have sufficient time till 03.02.2023 for construction and commissioning of the power project and subject to the undertaking being given by ACME Deoghar and ACME Dhaulpur in terms of Office Memorandum dated 03.02.2022 of MNRE. The Scheduled Commissioning Date will be further extended 'to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE'

IA 20/2022 in Petition No. 36/MP/2022

29. Petitioner has filed IA 20/2022 in Petition No. 36/MP/2022 and IA 19/2022 in Petition No. 35/MP/2022. The issues raised are similar in both the IAs. Hence, only the pleadings of IA 20/2022 are included here.

30. Petitioner has mainly submitted as follows:

a. ASHPL was granted Stage-II Connectivity on 28.09.2018 at 400kV Fatehgarh Pooling sub-station (400kV Fatehgarh-I S/s) by PGCIL. On 24.02.2020, PGCIL allocated bay no. 407 (Main Line Bay) and 408 (Tie bay) to ASHPL for connectivity at 400kV Fatehgarh Pooling Station. However, due to the status quo Order dated 25.02.2020 passed by the Division Bench of the Hon'ble Rajasthan High Court, ASHPL could not initiate design and construction of bays at Fatehgarh-I substation. On 19.07.2021, FBTL granted access to the Petitioners to the land required for construction of the Fatehgarh S/s.

b. The Force Majeure Event on account of status quo Orders of the Hon'ble Rajasthan High Court continued from the date of grant of Stage-II connectivity till 19.07.2021 i.e., when the sub-station land was finally handed over to the Petitioners.

c. The Project has also been adversely impacted by passing of the Order dated 19.04.2021 by Hon'ble Supreme Court of India in IA No. 85618 of 2020 in WP (C) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. v. Union of India & Ors. ("SC GIB Order"), which has prohibited setting up of overhead transmission lines in Priority and Potential GIB habitat. Since the Project of the Petitioners is situated in the Potential GIB habitat, it is not possible for the Petitioners to resume planning and construction of the dedicated transmission system of the Project till the necessary modalities and compliances stipulated by the SC GIB Order are completed.

d. Due to the continuing uncertainty over undergrounding of transmission lines, it is not possible for the Petitioners to go ahead with the construction of the connectivity bays, DTL and other transmission elements for evacuation of power in terms of Tripartite Transmission Agreement for Connectivity dated 24.10.2018. Further, the Petitioners are unable to proceed with the Project as there is uncertainty regarding technicalities involved in undergrounding cables including the uncertainty on timeframe within which the transmission lines are to be undergrounded.

e. On 01.04.2022, CTUIL intimated Petitioner No. 3/ASHPL that:

- (i) The transmission system associated with the LTA granted to ASHPL for evacuation of power from the Projects to firm beneficiary in Northern Region was commissioned on 01.4.2022. Accordingly, LTA granted to ASHPL would be effective from 02.04.2022.
- (ii) ASHPL shall be liable to bear all commercial and operational liabilities corresponding to the quantum of LTA from the effective date.
- (iii) In furtherance of the operationalization of the LTA, ASHPL has been requested to establish a payment security mechanism.

f. Further, on account of various Force Majeure events including SC GIB order, the Petitioners would be unable to achieve the revised SCOD i.e. 18.05.2022 for the Projects. Till the time the Hon'ble Supreme Court decides the applications of various stakeholders in the GIB matter, the Petitioners cannot be expected to construct transmission line and commission the projects which fall under potential GIB habitat.

g. Irreparable loss will be caused to the Petitioners, if the Petitioners undertake commissioning of the Projects by undergrounding the transmission lines and such decision is later reversed or modified by the Hon'ble Supreme Court. If at a later date the Hon'ble Supreme Court modifies its Orders and grants exemption from undergrounding transmission lines in Potential GIB habitat, the Procurers may refuse to extend the timelines required for undergrounding, and reimburse the additional cost and the Petitioners project may become technically un-feasible considering the unforeseen technical challenges as stated above.

h. The Petitioner have:

- (i) Achieved Financial Closure on 12.02.2021 (by Petitioner No.1) and on 18.09.2019 (by Petitioner No.2).
- (ii) Complied with the land arrangements by 12.02.2021 (for ACME Deoghar) and by 02.03.2021 (for ACME Dhaulpur) and have acquired a total of 2,224 acres of land to set up the Projects.

i. No prejudice would be caused to PGCIL/CTUIL and SECI, if relief sought herein is granted. In the event, the Petitioners fail in the present Application, the Petitioners will in any case be liable to pay the transmission charges to PGCIL from the date of operationalisation of LTA along with interest. Further, the Petitioners have also submitted Performance Bank Guarantees to SECI which are valid till November 2022 and hence, no harm would be caused to SECI if the relief as prayed for is granted. However, on the contrary, if exemption is granted by the Hon'ble Supreme Court and despite that the Petitioners undertake undergrounding, there would be no way for the Petitioners to avail extension in timelines due to undergrounding, unforeseeable challenges in undergrounding, O&M challenges, availability of HV cables and also to recover costs incurred towards such undergrounding. It will also result in overburdening the already stress distribution licensees. It would be in comity of law to await the final decision by the Hon'ble Supreme Court in this regard.

j. In view of the above, it is prayed as follows:

- (i) Stay operation of PGCIL/CTUIL's letters dated 01.04.2022 issued to the Petitioners intimating operationalization of the LTA from 02.04.2022;
- (ii) Restrain PGCIL/CTUIL from levying charges upon the Petitioners;
- (iii) Restrain the Respondents SECI and PGCIL/CTUIL from taking any coercive steps against the Petitioners.
- (iv) Pass such further orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

Final Hearing dated 12.4.2022 & 13.4.2022

31. During the hearings dated 12.4.2022 and 13.4.2022, the Commission reserved the order. During the final hearing, following has been recorded in the ROP:

"7. Learned senior counsel for the Petitioner submitted that CTUIL vide its letter dated 1.4.2021 intimated to the Petitioner that the LTA will be operationalized w.e.f 2.4.2022. Accordingly, Petitioner has filed IAs bearing Diary No. 139/2022 and 140/2022 in Petition No. 36/MP/2022 and Petition No. 35/MP/2022 respectively inter-alia seeking directions to restrain PGCIL/ CTUIL from taking any coercive steps against the Petitioners by operationalising the LTA and stay the opening of Payment Security Mechanism. Accordingly, requested the Commission for grant of interim protection.

8. The Commission observed that the issue of GIB and alignment of LTA on account of revised SCOD of the Project are independent and are required to be dealt separately.

...

10. During the hearing on 13.4.2022, the learned senior counsel for the Petitioners made the following submissions:

a. The instant petitions pertain to extension of SCOD of the projects till 18.7.2023 and alignment of LTA to the revised SCOD of the projects.

b. The SCOD of the Projects be extended up to 18.7.2023 on account of force majeure events namely (i) status quo orders by Hon'ble Rajasthan High Court and (ii) outbreak of Covid-19 and including time required for construction of 400 kV bay for connecting the Project to Fatehgarh Sub-station.

c. PGCIL despite being aware of the status quo orders passed by the Hon'ble High Court of Rajasthan in respect of land meant for construction of the Fatehgarh Sub-station did not inform the Petitioner.

d. While the bays were allocated to the Petitioner on 24.2.2020, physical access to the land for design and construction of the bays were granted to Petitioner only on 19.7.2021. Therefore, the period for completion of dedicated transmission line (DTL) and bays (24 months) ought to commence from 19.7.2021 and Petitioners should be granted time till 18.7.2023 for completion and commissioning of the Project.

e. On 11.5.2018, the Hon'ble High Court of Rajasthan in W.P No. 5707 of 2018, passed orders to maintain status quo with respect to the land intended for construction of the Fatehgarh Sub-station. On 27.11.2019, the status quo orders passed by the Rajasthan High Court were vacated by the Hon'ble Single Judge after 327 days. However, Appeals were filed before the Division bench of the Rajasthan High Court, challenging the Judgment dated 27.11.2019.

.....

14. The learned senior counsel for the Petitioners made the following submissions:

a. On 1.4.2022, CTUIL intimated that LTA granted to the Petitioner would be effective from 2.4.2022 and Petitioner shall be liable to bear all commercial and operational liabilities corresponding to the quantum of LTA from the effective date. Further, the Petitioner will establish a payment security mechanism.

b. MNRE by way of its office memorandum dated 4.4.2022 requested MoP to take up the issue of extension of operationalisation of Petitioner's LTA in light of MoP direction dated 15.1.2021 issued to the Commission under Section 107 of the Electricity Act, 2003.

c. PGCIL/ CTUIL may not recover the transmission charges for the period of mismatch.

Analysis and Decision

32. Petition No. 103/MP/2021 pertaining to ACME Deoghar and ACME Dhaulpur and Petition No. 104/MP/2021 pertaining to ACME Phalodi and ACME Raisar have been filed seeking declaration that the Petitioners are not liable to pay the transmission charges for the period of mismatch between the date of LTA operationalisation and the extended SCOD of the Petitioners' projects by SECI due to claimed force majeure events. The Petitioners filed Petition No. 36/MP/2022 (related to ACME Deoghar and ACME Dhaulpur covered in the Petition No. 103/MP/2021) and Petition No. 35/MP/2022 (related to ACME Phalodi and ACME Raisar covered in the Petition No. 104/MP/2021) seeking directions to SECI to extend SCOD of the Petitioner's projects up to 18.7.2023 and directions to PGCIL to align the date of commencement of LTA with SCOD of their projects as extended by SECI.

33. The Petitioners have submitted that the Projects of the Petitioner fall within the potential habitat of Great Indian Bustard (GIB) and there are certain difficulties in implementation of the Projects in terms of Hon'ble Supreme Court order dated 19.4.2021 in I.A No. 85618 of 2020 in WP.838 of 2019. Hon'ble Supreme Court observed that laying of high voltage underground power lines would require technical evaluation and expertise to assess the feasibility and accordingly constituted a committee for assessing the feasibility of laying such underground power lines.

34. The Petitioners have submitted that Interlocutory Applications (IAs) seeking modification of the order dated 19.4.2021 were filed by the Union of India through MNRE, State of Rajasthan, Solar Power and Renewable developers. The Hon'ble

Order in Petition No. 103/MP/2021 along with I. A No. 71/2021
And Batch matters.

Supreme Court vide its order dated 31.3.2022 in the IAs has directed State of Rajasthan to file its compliance affidavit along with the status report regarding various aspects of implementation of its order dated 19.4.2021 within 3 weeks. The Court has also directed the committee constituted in accordance with the order dated 19.4.2021 to file a report on the progress made with respect to undergrounding of power lines. There is a likelihood that order dated 19.4.2021 may be modified by the Hon'ble Supreme Court and the same has a direct bearing on the instant petitions. Therefore, the Petitioners requested the Commission to keep the instant petitions in abeyance till directions are issued in IAs by the Hon'ble Supreme Court.

35. The Petitioners have further submitted that CTUIL vide its letter dated 1.4.2021 intimated to the Petitioners that the LTA will be operationalized w.e.f 2.4.2022. Accordingly, Petitioners have filed IA No. 19/2022 and IA No. 20/2022 in Petition No. 36/MP/2022 and Petition No. 35/MP/2022, respectively inter-alia seeking directions to restrain PGCIL/ CTUIL from taking any coercive steps against the Petitioners by operationalising the LTA and stay the opening of the Payment Security Mechanism. Accordingly, the Petitioner have prayed the Commission for grant of interim protection.

36. The Petitioners have submitted that in view of the Hon'ble Supreme Court order dated 19.4.2021 in GIB area, it is not possible to construct an overhead transmission line in the GIB potential area. Further, the sub-station land was made available to the Petitioners after considerable delay.

37. Respondent PGCIL has submitted as follows:

- a. the issue of DTL now stands addressed by the Commission in terms of clause 11.2 (c) of Revised Procedure for Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System, according to which the last date for completion of the DTL shall be the SCOD of the project or as extended by the Renewable Energy Implementing Agency.
- b. MoP notification dated 15.1.2021 granting extension of commencement and period of LTA in case COD of the generation project is extended by competent authority on the grounds of *force majeure*, is not in consonance with the Regulations and Detailed Procedure notified by the Commission.
- c. As regards the land for the Fatehgarh sub-station, the status quo orders was passed by Rajasthan on 11.5.2018 whereas the Petitioner applied for grant of connectivity to ISTS for the Projects on 19.7.2018 and 28.7.2018. The entire details of the project site, land, area etc. was provided in the bidding document and as an investor, the due diligence was required to be conducted by the Petitioner.
- d. The Petitioner raised the issue with regard to the location of sub-station and officially took note of status quo orders passed by the Rajasthan High Court. The Petitioner requested to change the location of the sub-station to Badla. A meeting took place under the chairmanship of Secretary, MNRE on 20.3.2019 wherein Fatehgarh-Bhadla Transmission Limited (FBTL), Respondent No.3, informed that the pooling station will be completed by March, 2020.
- e. In the 21st JCC meeting of Northern Region Constituents, the Petitioner withdrew the request for change in the location of sub-station and confirmed that the modification for LTA/ Connectivity was not required for its generation projects. The Petitioner even after being aware of the status quo order of High Court, took a conscious decision to not to change the location of sub-station.
- f. As the issues surrounding the projects were being resolved, the Petitioners began the process of acquiring lands for the projects. In the minutes of the 10th JCC Meeting of Northern Region Constituents held on 25.3.2019, it was recorded that entire land for the projects was to be acquired by

8.10.2019.

38. Respondent SECI has submitted that SECI has already granted the extension of SCOD of the Project by 556 days at the request of Petitioners due to (i) Covid-19 Pandemic and (ii) land at Fatehgarh Sub-station being not available due stay order by Rajasthan High Court. The said extension is expiring on 4.5.2022. As regards GIB issue, MNRE has issued office memorandum dated 3.2.2022 wherein renewable energy implementing agencies (including SECI) are directed to extend SCOD of all renewable projects which are situated in GIB habitat to a date which is 30 days after the date of passing final order by Supreme Court. Accordingly, SECI vide email dated 20.3.2022 has requested the Petitioners to submit an undertaking to substantiate their claim for extension of time in terms of Office Memorandum dated 3.2.2022. The Petitioners are yet to provide the requisite undertaking. Petitioners have sufficient time till 03.02.2023 for construction and commissioning of the power project. Subject to the undertaking being given by ACME Deoghar and ACME Dhaulpur in terms of Office Memorandum dated 03.02.2022 of MNRE, the Scheduled Commissioning Date will be further extended 'to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE'.

39. We have considered the submissions of Petitioners and Respondents. The following issues arise for our consideration:

Issue No. 1: Whether the date of commencement of long term access can be aligned with revised SCoD of Projects of Petitioners?

Issue No. 2: Whether the Petitioner can claim any relief on account of Force Majeure as claimed by the Petitioner?

Issue No. 3: Whether the Petitioner is entitled to get exemption from the payment of transmission charges in terms of MOP Orders on waiver?

Issue No. 4: Whether the Petitioner is entitled for extension of SCoD of its Projects up to 18.7.2023?

The above issues are being dealt in the succeeding paragraphs.

Issue No. 1: Whether the date of commencement of long term access can be aligned with revised SCoD of Projects of Petitioners?

40. The Petitioner is seeking extension in the date of commencement of LTA to coincide with its revised SCOD of the Projects citing Force Majeure events. The Petitioner has submitted that as per Regulation 13(3) of the Sharing Regulations, 2020, liability of a generating station to pay transmission charges arises only if there is delay in commissioning by COD. As per SECI's letter dated 08.09.2020, the revised Scheduled Commercial Operation Date of the Projects is 03.03.2022. Accordingly, as long as the Projects are commissioned on or before 03.03.2022, no liability can be imposed on the Petitioners as per the Sharing Regulations 2020.

41. The Petitioner has submitted that in terms of Clause 11.2 of the Revised Detailed Procedure dated 20.2.2021, a Stage-II Connectivity grantee covered under Clause 9.2.1 is required to complete the dedicated transmission line and generator pooling substation up to its revised SCOD. Thus, as per the revised procedure, the Petitioners are allowed to complete dedicated transmission infrastructure by 3.3.2022 and therefore no penalty or charges can be imposed by PGCIL for delay in start of LTA in the form of transmission charges.

42. The Petitioner has also contended that PPA and the Transmission Arrangement are associated agreements forming part of the same transaction and operating collectively. The entire transmission scheme envisaged under the agreements is

interconnected and must be operational for the successful supply of power from the Project to the beneficiaries through the Transmission Licensee. Neither the PPA nor the Transmission Arrangement (Connectivity Agreement, TSA and LTAA) have an independent standing and therefore, grant of connectivity without LTA or commencement of LTA without connectivity are meaningless. Accordingly, the Connectivity Agreement, TSA and LTAA are associated documents forming part of the same transaction (i.e., establishing connectivity and evacuation of power under the PPA) and thus, are interlinked. The Transmission Arrangement is for the common purpose, i.e., supply of power from the Project through ISTS to the beneficiary Discoms.

43. Respondent CTUIL has contended that there is no provision in the Connectivity Regulations, the Detailed Procedure or the Transmission Agreements for extension of LTA commencement date. The extension of SCOD of the Petitioners' Projects has no bearing on the grant of LTA. The consideration for grant of LTA is availability of the transmission system from the start date requested by the LTA Applicant. The Petitioners' request for deferral of LTA commencement date tantamount to offloading its liabilities on other Designated ISTS Customers ("DIC") and the same is not permissible.

44. CTUIL has further submitted that exemption from payment of transmission charges for solar power developers triggers only when power is evacuated through transmission system to the beneficiaries. However, in the event of delay in commissioning of solar power projects, such solar power developers are liable to make the payment of transmission charges from the time the associated transmission system is ready or from the LTA start date till commissioning of their projects.

45. We have considered the submissions of Petitioner and Respondents. The main argument of Petitioner is that LTA commencement date must be aligned with SCOD, as revised from time to time. In this context, it is important to peruse the LTA Application, Intimation of Grant of LTA and the LTA Agreement and see whether any clause therein has link with SCOD or revised SCOD from to time of projects.

46. The LTA Application made by the Petitioner is as follows:


Application for Grant of LTA <small>Application No. 1200001737</small>		FORMAT- LTA-2	
Name of Applicant (Organization)	ACME Solar Holdings Limited		
Address for Correspondence	Plot No. 152,,Sector-44,Gurgaon , Haryana , India		
Contact Details			
Prime Contact Person	: Sidharth Malik		
Designation	: Senior Manager		
Phone No.(Landline)	: 01247117000		
Phone No.(Mobile)	: 9891759725		
Fax	: 01247117001		
E-Mail	: sidharth.malik@acme.in		
Alternate Contact Person	: Gursharan Singh Jassal		
Designation	: AVP		
Phone No.(Landline)	:		
Phone No.(Mobile)	: 9911002391		
Fax	:		
E-Mail	: gursharan.jassal@acme.in		
Nature of the Applicant	Generator (other than captive)		
Details for Long Term Access (LTA)			
Quantum (MW) for which LTA required	: 300		
Date from which LTA required	: Oct 26, 2020		
Date upto which LTA required	: Oct 25, 2045		
Injection of Power			
Entity	State/Region	Quantum	Connectivity with the Grid
ACME Solar Holdings Limited	Rajasthan / NR	300	400 KV line at 400 KV Pooling Station at Fatehgarh
Drawal of Power			
Entity	State/Region	Quantum	Connectivity with the Grid
Target Northern Region	Haryana / NR	300	Various ISTS Lines

47. Thus, it is clearly seen that the LTA Application only provides for quantum for which LTA is required, Date from which LTA is required and date up to which LTA is required. There is nothing related to SCOD or revised SCOD of the project.

48. The Intimation of Grant of LTA issued by CTU dated 17.1.2019 is as follows:

FORMAT-LT

POWER GRID CORPORATION OF INDIA LTD.
Intimation for Grant of Long -term Access (LTA)

- 1 **Intimation No.** : C/CTU/N/07/1200001737
Date : 17/01/2019
- 2 **Ref. Application No.** : 1200001737
Date : 23/10/2018
- 3 **Name of the Applicant** : ACME Solar Holdings Limited
- 4 **Address for Correspondence** : Plot No. 152, Sector-44 Gurgaon
- 5 **Nature of the Applicant**
Normal Generator (other than captive) : Generator (Solar)
Captive Generator
Bulk Consumer
Electricity Trader
Distribution Licensee
Others
- 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 : ACME Solar Holdings Limited
State/Region : Rajasthan / NR
Quantum-1 : 300 MW
Connectivity with the Grid : 400 kV Pooling Station at Fatehgarh
(being implemented by Fatehgarh Bhadla Transmission Ltd. under TBCB)
- 8 **Drawl of Power (more than one only in case of single Injection)**
Entity-1 : Target
State/Region : Haryana / NR
Quantum-1 : 300 MW
Connectivity with the Grid : Interconnection of ISTS network with STU network
- 9 **Transmission System for LTA** : As per **Annexure-I**
- 9a **Date from which LTA is granted** : 26/10/2020 or commissioning of ISTS for LTA as per **Annexure-I**, whichever is later
- 9b **Date upto which LTA is granted** : 25/10/2045
- 9c **Implementing Agency for transmission system required for LTA** : CTU(POWERGRID) and to be decided through TI see,  101737

Tr. System in Rajasthan for LTA applications at Fatehgarh – Proposed

1. Establishment of 765/400kV, 3X1500MVA, pooling station at suitable location near Fatehgarh in Jaisalmer Distt (Fatehgarh-II PS)
2. Establishment of 765/400kV, 2x1500MVA pooling station at suitable location near Phalodi/ Bhadla in Jodhpur (Bhadla-II PS)
3. Establishment of 765/400kV, 2x1500 MVA S/s at suitable location near Khetri.
4. LILO of both circuits of Fatehgarh (TBCB) – Bhadla (PG) 765 kV D/c line (operating at 400kV) at Fatehgarh-II PS so as establish Fatehgarh (TBCB)- Fatehgarh-II 765kV D/c line (to be operated at 400kV) and Fatehgarh-II – Bhadla (PG) 765kV D/c line
5. Charging of Fatehgarh-II PS – Bhadla section at 765kV level
6. LILO of both ckts of 765kV Ajmer – Bikaner D/c line at Bhadla-II PS
7. Bhadla-II PS – Bhadla (PG) 400kV D/c Line (Twin HTLS)
8. Bikaner(PG) – Khetri 765kV D/c line
9. Khetri – Jhatikara 765kV D/c line
10. Khetri – Sikar (PG) 400kV D/c line (twin HTLS)
11. Augmentation with 765/400kV, 1x1500MVA transformer (3rd) at Moga S/s
12. Augmentation with 1x1000MVA, 765/400kV transformer (3rd) at Bhiwani (PG)
13. Ajmer (PG) – Phagi 765kV D/c line
14. Required Reactive Compensation

49. Thus, the Intimation of Grant of LTA again does not provide anything relating to SCOD or revised SCOD of the project.

50. We have also perused the LTA Agreement dated 3.6.2019 which provides as follows:

“1.0

*a) The date of effectiveness of this LTA Agreement shall be as per intimation ref. no. **C/CTU/N/07/1200001737 dated 17.01.2019** issued by CTU vide letter ref no. **C/CTU/N/07/1200001737 dated 17.01.2019** in accordance with the relevant CERC Regulations. A copy of the same is enclosed as **Attachment-I** to this Agreement.*

51. The intimation of Grant of LTA attached as a part of LTA Agreement as quoted in paragraph 48 provides date of start of LTA as 26.10.2020 or commissioning of transmission system, whichever is later. There is no mention of SCOD or revised SCOD of the project by SECI in the LTA Agreement. We note that

the LTA Agreement has no clause with respect to date from which supply under PPA, either anticipated or revised. The start date of LTA is solely based on the Petitioner's assessment, requirement and request and as agreed by the Petitioner.

52. The Commission in a similar issue in its order dated 23.5.2022 in Petition No. 525/MP/2020 has observed as follows :

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. "

53. A perusal of above extract of the order dated 23.5.2022 in Petition No. 525/MP/2020 makes it clear that it is the responsibility of an LTA applicant to seek the start date of LTA as per its assessment and the LTA Agreement does not provide for any matching with SCOD of project subsequent to the grant of LTA.

54. The Petitioner has contended that the entire transmission scheme envisaged under the agreements is interconnected and must be operational for the successful supply of power from the Project to the beneficiaries through the Transmission

Licensee. In our view, there are two parts in the entire transaction: (a) power and (b) transmission. The Petitioner has entered into a PPA for sale of power from a specific date. The Petitioner has separately entered into an agreement for access to the transmission system as per its own assessment of start date and quantum of supply of power. The transmission licensee constructs the transmission system based on the requirement given by the LTA Applicant. Once the transmission licensee has constructed the transmission system, it is entitled to get its tariff as determined or adopted by Commission. Now, if the project of the LTA Applicant gets delayed for some reasons and the SCOD of the project is extended, it cannot become the reason for transmission licensee not to get its entitled tariff.

55. The related question is if the LTA Applicant whose project has got delayed or SCOD of whose project has got extended does not pay the transmission charges for such delayed or extended period, then who would pay the transmission charges as the transmission licensee remains entitled for tariff. It cannot be the case that the beneficiaries who are not deriving any benefit of such transmission system due to non-achievement of COD of the project of the LTA Applicant are fastened with such liabilities in view of Hon'ble Supreme Court judgment dated 3.3.2016 in Civil Appeal No. 9193 and Civil Appeal No. 9302 of 2012. The relevant portion of Hon'ble Supreme Court judgment dated 3.3.2016 is as follows:

"11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition "transmission lines" given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant.

As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including

respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.

12. We are apprised at the bar that meanwhile during the pendency of these appeals, in compliance of the interim order, after hearing all the concerned parties, C.E.R.C. has decided the matter on 30-06-2015, and transmission line has been now declared successfully charged w.e.f. 01-09-2011 and the commercial operation has started on said date. However, the order dated 30-06- 2015 passed by CERC is stated to be operative subject to decision of this Court in the present appeals, due to the interim order passed by this court.

13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs"

56. During the hearing on 13.4.2022, the Commission specifically sought submissions of the Petitioner on the issue of 'who should pay the transmission charges for such transmission system which was sought for by the LTA Applicant but has remained unused due to the delay of projects of such Applicant (due to any reasons)'. The learned counsel of the Petitioners submitted that he has no answer and sought time to file response. It is worthwhile to note and take on record that the learned counsel of the Petitioners has not filed any response with answer to the specific question.

57. Further, the Commission in its order dated 5.2.2020 in Petition No. 195/MP/2019 has observed as under:

"30. The Petitioner has prayed for shifting of date of operationalization of LTA. However, once LTA is granted from a specific date, CTU reserves the transmission capacity for such Applicant from that date subject to provisions of Regulations. In case there are new applications for the same corridor on which such an Applicant is granted LTA, CTU has to plan new corridor to accommodate request of the new Applicants. Shifting such dates as per PPA dates would put the burden of transmission charges for the period from which capacity was allocated to a certain LTA grantee to other DICs of ISTS. An LTA Applicant has to seek LTA keeping in view the commercial implications of such LTA grant. In the instant case the Petitioner, being fully aware of its SCOD, signed LTA Agreement for a date prior to its SCOD. Therefore, the

Petitioner's request for aligning date of start of LTA with SCOD of the project under provisions of "Power to relax" or "Power to remove difficulty" cannot be agreed to. Hence, the prayer of Petitioner is rejected.

58. The Commission in the above extract of the order dated 5.2.2020 in Petition No. 195/MP/2019 has observed that any shifting of commencement of LTA as per PPA dates would put the burden of transmission charges on other DICs of ISTS for the period from which capacity was allocated to the LTA Applicant till the shifted commencement date of LTA.

59. Regulation 13 of the 2020 Sharing Regulations provides for the liability of generator which is delayed as under

"(3) Where COD of a generating station or unit(s) thereof is delayed and the Associated Transmission System has achieved COD, which is not earlier than its SCOD, the generating station shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to Long Term Access granted for the generating station or unit(s) thereof, which have not achieved COD:

Provided that Yearly Transmission Charges in respect of Associated Transmission System shall be included for determination of transmission charges of DICs in accordance with Regulations 5 to 8 of these regulations upon the generating station or unit(s) thereof achieving COD

60. CTUIL has submitted that projects of the Petitioners have been granted LTA with Associated Transmission System (ATS) and hence, the Petitioners are covered under Regulation 13(3) of Sharing Regulations, 2020. It is clear from the above Regulation that in the event the generating station is delayed and the Associated Transmission System has achieved COD, the generating station shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to Long Term Access granted for the generating station.

61. We observe that the Petitioner has also mixed up the maximum time provided to construct the dedicated transmission line (under detailed procedure for Connectivity dated 15.5.2018) as a part of Connectivity with its liabilities under LTA.

The Petitioner has submitted that since it is allowed 24 months to construct the dedicated line, no penalties can be levied on it, including that under LTA during this period. In this regard we observe that maximum time allowed to construct the dedicated line is part of the Connectivity and has no bearing on date of start of LTA sought by the Petitioner. In many cases, LTA Applicants seek date of Connectivity much before the start date of LTA for the purpose of drawing start-up power. The provision of 24 months for dedicated line is the time after which Stage-II Connectivity is liable to be revoked and has no bearing on its liabilities with respect to LTA. Further, the detailed Procedure dated 15.5.2018 has been amended vide Order dated 20.2.2021 where the said clause of 24 months have been amended to provide that dedicated line may be completed till SCOD of the project. Hence, the submissions and arguments of the Petitioner is misplaced and does not hold any water.

62. The Petitioner submitted that CTUIL vide its letter dated 1.4.2021 intimated to the Petitioner that the LTA will be operationalized w.e.f 2.4.2022. Accordingly, Petitioner has filed IA No.19/2022 and IA No. 20/2022 in Petition No. 36/MP/2022 and Petition No. 35/MP/2022 respectively inter-alia seeking directions to restrain PGCIL/CTUIL from taking any coercive steps against the Petitioners by operationalising the LTA and stay the opening of Payment Security Mechanism. Accordingly, the Petitioner prayed the Commission for grant of interim protection.

63. In view of forgoing discussions, the prayer of the Petitioner in the present petitions to align LTA commencement date with SCOD as revised from time to time stand rejected. Consequently, the prayers of the Petitioner in IA No. 19/2022 and IA No. 20/2022 seeking directions to restrain CTUIL from operationalizing the LTA or taking coercive measures are also rejected.

64. Issue No.1 is answered accordingly.

Issue No. 2: Whether the Petitioner can claim any relief on account of Force Majeure as claimed by the Petitioner?

65. The Petitioners have submitted that they have issued notices dated 26.02.2020 to PGCIL under Article 14 of the Transmission Service Agreement (“TSA”) dated 28.01.2019 citing outbreak of Covid-19 and the consequent lockdown as force majeure which has impacted Project construction. Further, the High Court of Rajasthan vide its order dated 08.09.2020 directed parties to maintain the status quo qua land on which the Fatehgarh-I substation is to be constructed. The Petitioners have submitted that the said Status Quo Order dated 08.09.2020 is beyond ACME’s reasonable control and not attributable to ACME and qualifies as Force Majeure under the PPAs and Article 14 of the TSA. Accordingly, on 30.10.2020, ACME issued Force Majeure notices to PGCIL and SECI.

66. The Petitioner has further submitted that Sharing Regulations, 2020 do not envisage a situation where a delay in commissioning of the power project occurs on account of force majeure events. While the Sharing Regulations 2020 provide that the entity (generation/transmission) whose commissioning is delayed, will pay the transmission charges to the entity which has commissioned its assets, there is no clarification on the liability to bear such transmission charges in the event the delay has occurred on account of force majeure events.

67. CTUIL has submitted that as the TSA is yet come into force there is no occasion for reliance on Article 14 to plead force majeure. Further, no clause qua force majeure is provided under the Connectivity Agreement or the Long Term

Access Agreement dated 16.05.2019 ("LTAA"). Therefore, the notices issued by the Petitioners are without any basis.

68. 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 Force Majeure. We observe that LTA Agreement entered into by the Petitioner with PGCIL/CTUIL has no provision of 'Force Majeure' or 'Notice for Force Majeure'.

69. We observe that the Petitioner has issued two notices invoking Force Majeure dated 26.2.2020 and 30.10.2020. The said Notices are marked to PGCIL/CTUIL citing various reasons for Force Majeure.

70. 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.."

71. 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 has not issued any notice to any other parties, as required under Clause 14.4.1 of the TSA. Thus, as the Petitioner has not complied with requirement of TSA under Clause 14.4.1. Hence, without going into merits of whether the events were

Force Majeure or not and whether any relief could be admissible for same, the claims are rejected due to non-compliance of Article 14.4.1 of TSA.

72. 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.

73. Issue No.2 is answered accordingly.

Issue No. 3: Whether the Petitioner is entitled to get exemption from the payment of transmission charges in terms of MOP Orders on waiver?

74. The Petitioners, referring to the Ministry of Power (MoP) Orders dated 15.1.2021, 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 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”*.

75. The 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 15.1.2021, 23.11.2021 and 30.11.2021, the LTA operationalization date ought to be aligned with the Final SCOD.

76. CTUIL/PGCIL has submitted that on 15.1.2021, 23.11.2021, 30.11.2021, the MoP has issued an Office Order regarding waiver of transmission charges. The above Office Order extending the LTA commencement date was not in consonance with the prevailing regulatory regime notified by this Hon'ble Commission. As such, CTUIL is obligated to administer grants of Stage-II connectivity and LTA in terms of the applicable provisions of the Regulations/Procedures notified by the Commission, unless the aforesaid Order is duly recognized and incorporated in the said Regulations/Procedures.

77. We have considered the submissions of Petitioner and respondents. We have perused the MOP Orders which the Petitioner is referring to.

78. 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."

79. 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.”

80. The above quoted MOP Orders have already been dealt with by this Commission in a similar case in Petition No. 525/MP/2020. The Commission in its order dated 23.5.2022 in Petition No. 525/MP/2020 has observed as follows :

“

51. 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.”

52. 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”.

53. 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 LT A 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."

81. As analysed in the above extracted order dated 23.5.2022 in Petition No. 525/MP/2020, it has been clearly held by the Commission that waiver of transmission charges, if any, in terms of above quoted Orders apply after COD of the generating station and does not provide any exemption from payment of charges before COD.

82. Issue No.3 is answered accordingly.

Issue No 4: Whether the Petitioner is entitled for extension of SCoD of its Projects up to 18.7.2023?

83. The petitioner has sought extension of SCOD of their projects till 18.7.2023 on account of force majeure events, namely (i) status quo orders by Hon'ble Rajasthan High Court and (ii) outbreak of Covid-19 and including time required for construction of 400 kV bay for connecting the Project to Fatehgarh Sub-station.

84. The Petitioners have also submitted that their projects have also been adversely impacted by the order dated 19.4.2021 by Hon'ble Supreme Court of India in in WP (C) No. 838 of 2019 i.e M.K. Ranjitsinh & Ors. Vs. Union of India & Ors. (GIB Order), which has prohibited laying of overhead transmission lines in Priority and Potential GIB habitat areas.

85. The Petitioner in Petition No. 36/MP/2022 has submitted that ASHPL was granted access to the substation land only on 19.07.2021 and therefore, it was not in a position to commence designing and construction of bays and complete the dedicated transmission line for connecting the Project to the grid substation as construction of 400KV bay typically requires 24 month and includes various activities ranging from soil testing, designing to commissioning etc. Therefore, the delay is not attributable to ASHPL. Further, as per the grant of Stage-II Connectivity dated 28.09.2018 and Regulation 11.2 of the Detailed Procedure, ASHPL was to be granted 24 months to complete the bay and DTL from the date of bay intimation, While the bays were allocated to ASHPL on 24.02.2020, physical access to the land for design and construction of the bays were granted to ASHPL on 19.07.2021. Since the Petitioners were granted access to the land on 19.07.2021 by FBTL for commencing bay construction at Fatehgarh sub-station, therefore, the actual date of intimation for bay allocation should be taken as 19.07.2021. Accordingly, the Petitioners should be granted at least 24 months from 19.07.2021 for design & construction of Bays and DTL. Therefore, the Petitioners should be granted time till 18.07.2023 for construction of the DTL and accordingly the SCOD should be to be revised to 18.07.2023.

86. With regard to the order on GIB of Hon'ble Supreme Court, SECI has submitted that the said order of Hon'ble Supreme Court cannot be considered as a force majeure

event in so far as the construction and commissioning activities of the power project in accordance with obligation assumed under the PPAs. The said Order did not prevent the Petitioners from undertaking such construction and commissioning of the power project as envisaged in Article 11 of the PPAs. Further, no notice of force majeure as per Article 11.5 of PPAs was given by the Petitioners in regard to any impact of the said Order in preventing the Petitioners from undertaking the construction and commissioning of the power projects. SECI vide its email dated 12.01.2022 sought information from the Petitioners, inter-alia, as to whether Petitioners have approached the Committee constituted by the Hon'ble Supreme Court for any decision with regard to the overhead line. The Petitioners by email dated 13.01.2022 stated that the Petitioners have not approached the Committee till date. Therefore, in absence of Petitioners having taken action in terms of Order dated 19.04.2021, the Petitioners cannot plead that it is impossible for Petitioners to construct dedicated transmission line until compliances as specified in Order of Hon'ble Supreme Court are complied with.

87. SECI has further submitted that on 03.02.2022, MNRE, Government of India has issued an Office Memorandum providing that in cases where RE Implementing Agencies is the intermediary procurer and for which the transmission infrastructure lies wholly or partly in the priority or potential GIB area, the project land has been procured and the project commissioning is delayed due to non-completion of project transmission infrastructure on account of the order of the Supreme Court, the Scheduled Date of Commissioning is extended to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE.

88. SECI has submitted that vide its email dated 04.02.2022 it has informed the Petitioners about the above Office Memorandum of MNRE, Government of India.

Further, vide emails dated 20.03.2022 and 22.03.2022, SECI has informed that extension request in terms of Office Memorandum dated 03.02.2022 will be processed only after submission of undertaking in the format provided by SECI along with its email dated 20.03.2022. However, the Petitioners have not yet provided the requisite undertaking till date.

89. SECI has also submitted that in the facts and circumstances mentioned above, the Petitioners have sufficient time till 03.02.2023 for construction and commissioning of the power project. Further, subject to the undertaking been given by ACME Deoghar and ACME Dhaulpur in terms of the Office Memorandum dated 03.02.2022 of MNRE, the Scheduled Commissioning Date will be further extended 'to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE'.

90. We have considered the submissions of the parties. We observe that SECI vide letter dated 28.4.2022 has already extended the SCoD of ACME Deoghar Solar Power Pvt. Ltd. and ACME Dhaulpur Powertech Pvt. Ltd. till 3.2.2023. We also note that subject to the undertaking been given by ACME Deoghar and ACME Dhaulpur in terms of the Office Memorandum dated 03.02.2022 of MNRE, SECI is willing to consider further extension of the Scheduled Commissioning Date 'to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE'.

91. The Petitioner while seeking 24 months extension in SCOD from 19.7.2021 till 18.7.2023 is on the basis of Clause 11. 2 of Detailed Procedure for the grant of connectivity to projects based on renewable sources to inter-state transmission system dated 15.5.2018 which provided as under:

11.2 The Stage-II Connectivity grantees shall be required to complete the dedicated transmission line(s) and pooling sub-station(s) within 24 months from the date of intimation of bay allocation at existing or new / under-construction ISTS sub-station. If

the grantee fails to complete the dedicated transmission line within the stipulated period, the Conn-BG of the grantee shall be encashed and Stage-II connectivity shall be revoked. The payment received in terms of these provisions shall be adjusted in the POC pool.

92. As per the above quoted Clause 11. 2 of Detailed Procedure, a Stage-II connectivity grantee is under the obligation to complete dedicated transmission line and pooling sub-stations within 24 months from the date of intimation of bay-allocation. We have already observed in paragraph 61 above that the said clause provided maximum time after which Stage-II was liable to be revoked. It cannot become basis to claim a right under other agreements such as PPA.

93. On, 20.2.2021, the Commission revised the Detailed Procedure for “Grant of Connectivity to Projects based on Renewable Sources to inter-State Transmission System (“Revised Detailed Procedure”) which was effective from 20.2.2021. The Clause 11.2 of the Revised Detailed Procedure, provides as follows:

11. Monitoring of progress of renewable projects after grant of Stage-II Connectivity

...

11.2 (A) Stage-II Connectivity grantees shall be required to complete the dedicated transmission line(s) and generator pooling sub-station(s) on or before:

(a) the scheduled date of commercial operation of the generation project, for cases covered under Clause 9.2.1, as intimated at the time of making application for grant of Stage-II Connectivity or as extended or delayed commissioning permitted by the Renewable Energy Implementing Agency or the distribution licensee or the authorized agency on behalf of distribution licensee, as the case may be....”

94. As per the Clause 11.2 of the Revised Detailed Procedure dated 20.2.2021 as extracted above, the Petitioner can complete the dedicated transmission line till SCOD of its project. Hence, the prayer of Petitioner to grant it 24 months from 19.7.2021 under Clause 11.2 of the superseded Detailed Procedure has become infructuous.

95. We observe that SECI has already extended the SCoD of the generating stations as under:

<i>Sr. No.</i>	<i>Name of SPV (Scheme: Capacity)</i>	<i>SCoD as per PPA</i>	<i>Revised SCoD</i>
1.	ACME Raisar Solar Energy Pvt. Ltd. (ISTS-1: 300 MW)	25.10.2020	20.01.2023
2.	ACME Phalodi Solar Energy Pvt. Ltd. (ISTS-1: 300 MW)	25.10.2020	20.01.2023
3.	ACME Deoghar Solar Power Pvt. Ltd. (ISTS-II: 300 MW)	08.11.2020	03.02.2023
4.	ACME Dhaulpur Powertech Pvt. Ltd. (ISTS-II: 300 MW)	08.11.2020	03.02.2023

96. Further, SECI has submitted that the Scheduled Commissioning Date will be further extended 'to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE' subject to furnishing of undertaking by petitioners.

97. Issue No.4 is answered accordingly.

98. Petitions No 103/MP/2021 along with IA No. 71/2021, Petition No. 104/MP/2021 along with IA No. 72/2021, Petition No. 35/MP/2022 along with IA No. 19/2022 and Petition No. 36/MP/2022 along with IA No. 20/2022 are disposed of in term of above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member

Sd/
(P. K. Pujari)
Chairperson