

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No: 583/MP/2020
along with
I.A's No. 68/IA/2021 and 76/IA/2021**

**Coram:
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date: 29.8.2022

In the matter of

Petition under Sections 79(1) (b), 79(1) (c) and 79(1) (f) of the Electricity Act, 2003 and other applicable permissions, approvals and legal and regulatory provisions.

And in the matter of

Saurya Urja Company of Rajasthan Limited,
701-703, 7th Floor, Kailash Tower,
Tonk Road, JAIPUR – 302 015.

...Petitioner

Versus.

1. Power Grid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Gurgaon – 122 001,
Haryana.
2. Solar Energy Corporation of India,
1st Floor, Prius Building,
D-3, District Centre, Saket,
New Delhi – 110 017.
3. Clean Solar Power (Bhadla) Private Limited.
Plot No. 201, Third Floor;
Okhla Industrial State phase-III,
New Delhi-110020, India.
4. SB Energy Four Private Limited
5th Floor, World Mark-2,
Asset Area-8 Hospitality District,
Aerocity, NH-8, Delhi-110037.
5. Central Transmission Utility of India Limited,
Plot No-2, Sector-29,
Gurugram, Haryana-122001.

...Respondents

Parties Present:

Shri Arijit Maitra, Advocate, SUCL
Ms. Suparna Srivastava, Advocate, PGCIL/CTUIL
Shri Tushar Mathur, Advocate, PGCIL/CTUIL
Ms. Soumya Singh, Advocate, PGCIL/CTUIL
Shri Aniket Prasoon, Advocate, CSPBPL
Ms. Shweta Vashist, Advocate, CSPBPL
Shri Md. Aman Sheikh, Advocate, CSPBPL
Shri V. Srinivas, CTUIL
Shri Kashish Bhambhani, CTUIL
Shri Yatin Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Shri Akshay Kislay, CTUIL
Shri Servesh Kumar Singh, CSPBPL

ORDER

Saurya Urja Company of Rajasthan Limited (hereinafter to be referred as 'the Petitioner') has filed the present Petition under Sections 79(1) (b), 79(1)(c) and 79(1) (f) of the Electricity Act, 2003 and has made the following prayers:

- a) Declare that the Petitioner has fulfilled its contractual obligations which has been confirmed by the Ministry of New and Renewable Energy vide its letter dated 15.4.2020 and no any claim for transmission charges could be raised against the Petitioner for breach of contract;
- b) Direct Power Grid to immediately release the Bank Guarantee of 2 x12.5 crore;
- c) Direct Power Grid not to demand opening of Letter of Credit towards payment security mechanism from the Petitioner and to withdraw its default notice dated 19.12.2019 and to injunct Power Grid from taking any action under clause 16.4.4 of the Transmission Service Agreement;
- d) Direct the Respondent No.3 Solar Power Generator to bear the transmission charges as may be attributable for the delay in their commissioning and relieve the Petitioner from any such claim made by Power Grid against it;

- e) Direct Power Grid to pay suitable penalty for the delay in commissioning of the Bhadla 765 KV system as per approved LTA for 7 (seven) months;
- f) Grant ex-parte ad interim order with reference to prayer clauses (a) and (b) above;
- g) Issue an order to relax the provision of clause 3(1)(iii) relaxing the provision for solar power park developer to bear all liabilities on behalf of the solar power generator to be set up in the solar park; and
- h) Pass any order or directions as this Hon'ble Commission may deem fit in the facts and circumstances case and interests of justice.

I. A. No. 68/I.A/2021

2. The Petitioner has made the following prayers in its I.A. :

- a) Direct Respondent No.1 Power Grid Corporation of India Ltd. and/or Respondent No.5 Central Transmission Utility of India Ltd. not to encash the Bank Guarantee No.003GM01162290001 and No.003GM01162290002 and/or to insist that the said Bank Guarantees be extended before the lapse of the validity period on 30.9.2021;
- b) Issue an injunction against Respondent No.1 Power Grid Corporation of India Ltd. and/or Respondent No.5 Central Transmission Utility of India Ltd. restraining them from making any claim under the said Bank Guarantees bearing No.003GM01162290001 and No.No.003GM01162290002 prior to the end of the claim period i.e. 30.9.2021.

I.A No. 76/I.A/2021

3. The Petitioner has made the following prayers:

- a) Include the additional grounds to be added after para 22 in the main petition;
- b) Include the additional prayers after prayer clause (b) in the main petition;

c) Pass any other or further order as this Hon'ble Commission may deem fit and proper.

4. The Petitioner in the above I.A has requested for addition of additional grounds as under:

a) Para 22A: BGs have been unlawfully retained by PGCIL and the Petitioner has been coerced to extend the BGs. The Petitioner was unnecessarily compelled to bear BG extension charges for the period post April 2020. BG extension was not necessary 6 months post LTA operationalization on 28.12.2019.

b) Para 22(B): As such the Petitioner seeks to claim the BG charges during the period PGCIL asked for BG extension which was beyond 6 months of LTA operationalization date. The charges are beyond July 2020 as BG was to be kept valid till 29 April 2020 (6 months from LTA date).

c) The details of BG Commission paid till date are as follows:

Details of BG Commission (PGCIL) Paid from 01-Apr-20 to 30-Sep-21				
		Month	Bank Guarantee Commission	Date of Payment
01-Apr-20	30-Jun-20	For Three Month	622188	08-Apr-20
01-Jul-20	30-Sep-20	For Three Month	629011	29-Jun-20
01-Oct-20	31-Mar-21	For Six Month	1247174	22-Sep-20
01-Apr-21	30-Sep-21	For Six Month	1254022	26-Mar-21
Total			3752395	

d) The Petitioner's solar park was completed before LTA date of October, 2019 and already 200 MW was being generated, BG should have been kept till April, 2020. So charges incurred in BG extension, at the demand of PGCIL, beyond June 2020 should be reimbursed. Even if one considers the last generation in February, 2020, then the BG should have been kept till August, 2020, not beyond that. Hence, PGCIL ought to reimburse / pay to the Petitioner BG charges (Bank extension charges) from September, 2020 to March 2021 and March 2021 to September 2021. There is no reason why PGCIL demanded for BG extension, when the project was operational.

Additional prayers to be added after prayer clause (b) in the petition

e) “(b-1) Direct Power Grid to pay and reimburse the BG extension charges to the Petitioner for the period beyond June 2020 till September 2021, and BG extension charges as may be applicable for any future period.”

Submissions of Petitioner

5. The Petitioner in its main Petition has made the following submissions:

a) The Petitioner has developed a 1000 MW solar park in Village Bhadla, Tehsil Bap, District Jodhpur, Rajasthan. The first and second part of 500 MW of the Solar Park has been completed in October, 2018 and on 26.3.2019, respectively.

b) Power from the Solar Park is evacuated as under:-

Generating station of Respondent 3 & 4 → 220/33 KV Pooling S/S of Petitioner → CTU (Inter-state Transmission System).

c) PGCIL vide its letter dated 7.4.2016 intimated the grant of connectivity for 500 MW for Bhadla solar power park of the Petitioner. The point on which connectivity was granted was 765/400/220 KV Bhadla pooling station of PGCIL.

d) The Petitioner was granted 500 MW LTA on target region basis (NR) vide CTU intimation dated 7.4.2016 with effect from 31.12.2017 or availability of the following ISTS system, whichever is later:-

i. Bhadla (PG) – Bikaner (PG) 765 kV D/c line

ii. Bhadla (PG) – Bhadla (RVPN) 400 kV D/c (Quad) line

iii. Establishment of Pooling Station of Bhadla (PG) 765/400 kV: 300 MVA 400/220 kV: 3 x 500 MVA.

iv. 2 nos. 400 kV & 4 nos. 220 kV line bays at Bhadla (PG) for interconnection of solar park interconnection.

v. 1 x 240 MVAR switchable line reactor at each end (each ckt) of Bhadla (PG) 765 kV D/c line.

vi. 1 x 240 MVAR (765 kV) & 1 x 125 MVAR (400 kV) Bus reactors Bhadla Pooling Station.

e) The Petitioner has also signed long term access (LTA) agreements dated 10.5.2016 with Power Grid Corporation of India Ltd., (PGCIL). Subsequently, 500 MW LTA was firmed up vide letter dated 25.4.2019 with generators (Clean Solar Power (Bhadla) Pvt. Ltd., 300MW and M/s. SB Energy Four Pvt. Ltd. – 200 MW) within the Solar Park of Petitioner having drawl beneficiary as UPPCL. The first 500 MW has been operational since Oct 2018. For the balance 500 MW, based on the bidding by SECI, following developers are mandated to install Solar Projects in the park:

Sr. No.	Solar Project Developer	Capacity (MW)
1	Clean Solar Power (Bhadla) Pvt. Ltd.(CSPBPL)	300
2	SB Energy Four Power Pvt. Ltd. (SBEFPL)	200

f) Status of CoD of the generators are given below:

Sr. No.	MW	Company	Commissioning date
(i)	100	SBEFPL	3.5.2019
(ii)	100	SBEFPL	7.7.2019
(iii)	100	CSPBPL	10.12.2019
(vi)	100	CSPBPL	15.2.2020
(vii)	100	CSPBPL	28.2.2020

g) The Commission in the “Statement of Reasons” of Amendments to Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter- State Transmission Scheme to Central Transmission Utility) Regulations, 2010 has clarified that SPPD is a legal entity, which acts as an agent of the generating companies. Accordingly, the Petitioner is an agent of the generating companies being Respondents No. 3 and 4 hereto.

h) PGCIL vide its letter dated 16.7.2019 requested the Petitioner to open a Letter of Credit in favour of PGCIL towards payment security mechanism for Rs.3793.55 lakh inter alia on the basis of April, 2019 to June, 2019 POC rate. Petitioner vide its email dated 29.5.2019 had informed PGCIL

that it has not been able to commission the concerned system, due to non-readiness of required interface system at PGCIL GSS at Bhadla and accordingly undertaken a provisional arrangement due to non-readiness of the 220 kV termination Bays and FOTE system. The Petitioner asked Power Grid to confirm the readiness of 220 KV system and FOTE system to meet the power evacuation requirements of 200 MW by the month of June, 2019 and 500 MW by July, 2019.

i) With reference to the bank guarantees of 2 x Rs. 12.5 crore for the aggregate capacity of 500 MW (Rs.5 lakh per MW) furnished by the Petitioner on 16.8.2016, the Petitioner vide its letter dated 30.9.2019 apprised PGCIL that that the current validity of the bank guarantee was 31.12.2019 and for subsequent extension due to extension of date of commissioning schedule of the PGCIL (Bhadla) pooling sub-station and as per requests made by Power Grid every time. The petitioner informed that it had developed 1000 MW solar power park which has already been completed in March, 2019. The pooling sub-station was commissioned on 22nd/23rd April 2019 and the transmission line was charged on 22.4.2019 (Line 1) and 26.8.2019 (Line 2). The internal evacuation system of the solar park was fully ready since March, 2019. Out of the 500 MW, 200 MW has been commissioned by M/s Soft Bank Energy Four Pvt. Ltd. (100 MW on 3.5.2019 and another 100 MW on 9.7.2019). The work is in progress for balance 300 MW being developed by M/s. Clean Solar Power (Bhadla) Pvt. Ltd.

j) SECI vide its letter dated 25.9.2019 rescheduled the commissioning date for 300 MW of M/s Clean Solar Power (Bhadla) Pvt Ltd. to 27.10.2019 for 100 MW and 29.2.2020 and 18.2.2020 for the other 200 MW. The Petitioner also informed that as per 12th JCC Meeting held on 26.9.2019, the 765 kV line between Bhadla and Bikaner and LTA for the complete 500 MW was to be operationalized from 30.9.2019. The Petitioner categorically informed Power Grid that the Petitioner has completed its evacuation system from its solar park to 765/400/220 KV Bhadla pooling station of Power Grid much before commissioning of Bhadla pooling station. The commissioning of generating project is governed under PPA signed by the generator and SECI. SECI has given extension to the generator based on the request of the

generator which is beyond control of the Petitioner. The Petitioner had no active role or prior knowledge of the commissioning being extended by SECI. The Petitioner requested to match LTA operationalization date for the balance 300 MW by aligning it with the revised COD issued by SECI so that levy of transmission charges on the Petitioner would not arise.

k) In response to above request of the Petitioner, PGCIL vide its letter dated 25.10.2019 refused to match LTA operationalization date for balance 300 MW by the alignment match with the revised COD issued by SECI, on the ground that there is no provision for extension in the date of LTA operationalization in the regulations framed by this Commission and detailed procedure therein and therefore, extension of LTA operationalization is not possible. PGCIL also informed that all the transmission elements proposed to effect LTA for transfer of 500 MW are being operationalized through a separate letter with effect from 25.10.2019.

l) PGCIL vide its letter dated 25.10.2019 informed the National Load Despatch Centre and the Northern Regional Load Transmission Centre that transmission elements proposed to effect the LTA have been commissioned and that the said LTA granted to the Petitioner for transfer of 500 MW (300 MW by M/s. Clean Solar Power (Bhadla) Pvt. Ltd., and 200 MW by SB Energy Four is being made operationalized with effect from 25.10.2019 in line with the Connectivity Regulations, 2019. PGCIL vide its another letter dated 19.12.2019 sought payment of transmission charges from the Petitioner on the ground that the LTA for 500 MW has been operationalized with effect from 25.10.2019 and the Petitioner is yet to commission generation of 300 MW as per the LTA Agreement.

m) The Petitioner vide its letter dated 13.1.2020 informed PGCIL that the Petitioner has requested SECI to extend the commissioning date of Bhadla Phase III solar park which is under consideration of the SECI. With regard to opening of LoC, the Petitioner informed PGCIL that as the inter-state transmission charges are exempted for solar power projects, no budget exists and in any case approval of the Board is required which will take some time and accordingly requested Power Grid to allow time till 31.3.2020 for opening of the Letter of Credit. As the Board meeting of the Petitioner could not take

place due to lockdown, the Petitioner vide its letters dated 13.3.2020 and 13.4.2020 requested PGCIL to extend the same till 30.6.2020.

n) The Petitioner vide its e-mail dated 30.3.2020 submitted COD certificates issued by Solar Energy Corporation of India Ltd. for 500 MW (200 MW commissioned by SB Energy and 300 MW by CSPBPL for waiver of transmission charges and losses incurred for use of the inter-state transmission network.

o) Ministry of New & Renewable Energy vide its letter dated 15.4.2020 informed the Petitioner that the timeline of the solar park is with respect to the commissioning of the solar park infrastructure and not for the solar plants inside the park and therefore if the solar park infrastructure is completed on or before 5.2.2020 i.e. as per the timeline prescribed by the Ministry, then there is no need for extension of timeline for development of Bhadla Phase III solar park.

p) The Petitioner vide its email dated 29.4.2020 requested PGCIL to release of the bank guarantee furnished by the Petitioner on the ground that transmission elements proposed to effect the LTA for 500 MW of power from the solar park has been commissioned and 500 MW is being made operational with effect from 25.10.2019. As per clause 1.0(c) of the LTAA, the bank guarantee was to be kept valid for a period of six months after the expected date of commissioning schedule of solar generating station and dedicated transmission system or actual date of commissioning by the Petitioner, whichever is later. However, considering the completion of six months from LTA operationalized date and successful establishment of the operationalization of the power evacuation system, the Petitioner requested Power Grid to release the bank guarantee at the earliest.

q) As per the Sharing Regulation, 2020, no transmission charges and losses for the use of ISTS are payable inter alia for the generation based on solar or wind power resources, for a period of 25 years from the date of commercial operation, fulfilling specified conditions

r) The Petitioner has fulfilled its contractual obligations which has been confirmed by the Ministry of New and Renewable Energy vide its letter dated 15.4.2020 acknowledging that the solar park infrastructure has been completed on or before 5.2.2020 i.e. as per the timeline prescribed by the Ministry. Thus, there cannot be any claim against the Petitioner for any breach of contract.

s) PGCIL's vide its letter dated 16.7.2019 asked the Petitioner for opening of Letter of Credit for Rs.3793.55 Lacs and also informed that if LoC is not opened, TSA shall stand terminated.

Grounds for Relief

t) The onus of commissioning of the solar generators aligned with the commissioning of the transmission system by Power Grid can never be on the Petitioner and was always on the other party, that is the solar generator. Having completed its contractual obligations, the Petitioner cannot be made liable for the omissions and commissions of the other party, that is the solar generator. Consequently, even if the ATS was lying idle and stranded (which has not been proved by Power Grid) for the period when the SPDs had not been commissioned; this is not due to any reasons attributable to the Petitioner.

u) It can be clearly seen that in the JCC Meetings, the commissioning dates of Power Grid transmission system kept changing from time to time. The claim for transmission charges, extension of bank guarantee and furnishing of letter of credit made by Power Grid is only to cover up its own mistake by shifting the responsibility which vests with the principal party, that is Power Grid. Therefore, the bank guarantee and the letter of credit ought not to be insisted upon by Power Grid, as no liability is attracted on the Petitioner herein.

v) In the First JCC meeting held on 27.12.2016 the commissioning schedule as per JCC for the Bhadla Pooling Station 220 kV D/c line was June 2018 matching with solar park. The status as per JCC for the associated transmission system in the scope of Power Grid was March, 2018 (400 kV)

and June, 2018 (765 kV) on best effort basis. The progress recorded in the subsequent JCC's is as under :

- i. Commissioning schedule as per the second JCC was August, 2018 for the Bhadla Pooling Station 220 kV D/c line matching with solar park. In so far as the associated transmission system, the position remained the same in the second JCC meeting also.
- ii. In the third JCC meeting, the scope of Power Grid stood revised to June 2018 (400 kV) and August 2018 (765 kV) on best effort basis.
- iii. In the fourth JCC meeting, the scope of the Petitioner stood revised to January, 2019. The scope of Power Grid stood revised to August, 2018 (400 kV) and August, 2018 (765 kV).
- iv. In the fifth JCC meeting, the scope of the Petitioner stood revised to March, 2019 and the scope of Power Grid remained the same as of the fourth JCC meeting.
- v. In the sixth JCC meeting, it was recorded in the meeting that PPA for the 500 MW with Uttar Pradesh was yet to be signed by SECI. The scope of Power Grid stood revised to October, 2018 (400 kV) and October, 2018 (765 kV).
- vi. In the seventh JCC meeting, the scope of the Petitioner stood revised to 27.4.2019 as per the PPA signed between Respondent 3 & 4 and SECI. The scope of Power Grid stood revised to December, 2018.
- vii. In the eighth JCC meeting, the scope of the Petitioner stood revised to 27.4.2019. The scope of Power Grid stood revised to March, 2019 (on best effort basis) (except for additional 1 x 500 MVA, 400/220 kV fourth ICT at Bhadla Pooling Station).
- viii. In the ninth JCC meeting, the Petitioner's scope stood revised to 27.4.2019.
- ix. In the tenth JCC meeting, the Petitioner's scope stood revised to 27.4.2019 (transmission line is ready).
- x. In the 12th JCC Meeting of NR held on 25.9.2019, it was informed that all the elements required for effecting the aforesaid LTA have been commissioned except Bhadla-Bikaner 765 kV D/c line, expected to be commissioned by September 2019. It was also informed that upon commissioning of above line, the entire 500 MW LTA shall be operationalized and the Petitioner shall be liable for payment of applicable transmission charges, if any, in

terms of applicable CERC Regulations/Orders. Also, for waiver of transmission charges, Petitioner shall have to submit the requisite documents towards fulfillment of the provisions for waiver of transmission charges and losses for the use of ISTS network, as per advisory available on CTU website. Power Grid stated that there is no provision for extension in date of LTA operationalization in CERC Regulations/Detailed Procedure. Hence, extension of LTA operationalization date is not possible.

w) PGCIL vide its letter dated 25.10.2019 stated that in the 12th JCC Meeting on NR held on 25.9.2019 it was informed that all the elements required for effecting the LTA have been commissioned except the Bhadla-Bikaner 765 KV D/C line and the same was expected to be commissioned by the end of September, 2019. It was also informed that upon commissioning of the above line, the entire 500 MW LTA shall be operationalized.

x) CTU has informed vide its letter dated 25.10.2019 that LTA granted to Petitioner is being made operationalized w.e.f. 27.10.2019. PGCIL has lost sight of the fact that the Petitioner has developed the 1000 MW solar park and completed the same in March, 2019, that is 7 (seven) months before the commissioning of the Bhadla-Bikaner 765 KV D/C line by PG. The pooling sub-station was commissioned on 22/23.04.2019 and transmission line was charged on 22.4.2019 (Line 01) and 26.8.2019 (Line 02). Internal evacuation system of the solar park developed by the Petitioner was fully ready since March, 2019. For no fault of the Petitioner, PGCIL is demanding transmission charges and has served a notice of default on the Petitioner for the failure to open Letter of Credit and has furthermore threatened to take action under clause 16.4.4 of the transmission service agreement.

y) The Commission vide its order dated 07.10.2015; 02.06.2011, 29.04.2015, 05.08.2015, 29.07.2016, 27.06.2016, has held that the transmission charges shall be directly recovered from the Generators or the Developers from upstream or downstream of the transmission system of the ISTS which had achieved COD but is prevented from being put into service on account of the non-readiness of the generating stations or their dedicated

transmission lines of the upstream or the downstream lines of transmission system.

z) **In Power Grid Corporation of India Ltd. Vs. Punjab State Power Corporation Ltd. & Ors.** (2016)4 SCC 797, Hon'ble Supreme Court held that the beneficiary cannot be made liable to pay for the delay in the operation of the transmission lines for the applicability of the transmission tariff, as the delay was on account of the generating station. Hence, in view of the above position of law it is imperative that the honourable Commission ought to direct the Respondent No.3 Solar Power Generator to bear the transmission charges as may be attributable for the delay in their commissioning and relieve the Petitioner from any such claim made by Power Grid against it.

aa) Regulation 3 of the Regulatory Approval Regulations, 2010, contemplating that the solar power park developer undertakes to bear all liability on behalf of the solar power generator to be set up in the solar park is based on the fundamental premise that all liabilities arise only as attributable to the solar power generator. Accordingly, in view of the facts and circumstances of the present case, especially where (1) the 1000 MW solar park already stood completed in March 2019, that is 7 (seven) months before commissioning of the Bhadla-Bikaner 765 KV D/C line by Power Grid; and (2) extension has been granted by SECI to the Respondent solar generator under the PPA between both of them which is not under the control of the Petitioner, the claims of Power Grid against the Petitioner are totally unlawful and unjustified as well as completely inequitable.

Submission of the Petitioner in I.A 68/I.A/2021

6. The Petitioner in its I.A has submitted that it has received two letters both dated 17.8.2021 from CTUIL addressed to Yes Bank Ltd., with the subject "Claim against Bank Guarantees expiring on 30.9.2021". CTUIL has, *inter alia*, in the aforesaid letters stated that in case if the Bank Guarantees are not extended prior to their expiry, the said letters dated 17.8.2021 may be treated as CTUIL's final claim against the said Bank Guarantees and the proceeds of the same equivalent to the Bank Guarantee value be remitted in favour of CTUIL. CTUIL furthermore goes on to state that its claim

will automatically become a formal claim in the event of non-extension of the validity period of the Bank Guarantees and no further claim will be lodged by CTUIL for releasing the proceeds against the said Bank Guarantees. Accordingly, the Petitioner has prayed for direction PGCIL/ CTUIL not to encash the Bank Guarantees and to insist that the said Bank Guarantees be extended before the lapse of the validity period on 30.9.2021.

Submission of the Petitioner in I.A 76/I.A/2021

7. The Petitioner in its I.A has made the following submissions:

a) BGs have been unlawfully retained by PGCIL and the Petitioner has been coerced to extend the BGs. The Petitioner was unnecessarily compelled to bear BG extension charges for the period post April 2020. BG extension was not necessary 6 months post LTA operationalization (28 Oct 2019).

b) The details of BG Commission paid till date are as follows:-

Details of BG Commission (PGCIL) Paid from 01-Apr-20 to 30-Sep-21				
			Guarantee Commission	Date of Payment
01-Apr-20	30-Jun-20	For Three Month	6,22,188	08-Apr-20
01-Jul-20	30-Sep-20	For Three Month	6,29,011	29-Jun-20
01-Oct-20	31-Mar-21	For Six Month	12,47,174	22-Sep-20
01-Apr-21	30-Sep-21	For Six Month	12,54,022	26-Mar-21
			37,52,395	

c) Accordingly, the Petitioner prays for the addition of additional prayer of Direction to PGCIL to pay and reimburse the BG extension charges to the Petitioner for the period beyond June 2020 till September 2021, and BG extension charges as may be applicable for any future period.

Replies to the query asked by the Commission vide RoP dated 15.4.2021

8. In compliance of RoP dated 15.4.2021, PGCIL vide its affidavit dated 10.9.2021 has placed on record the requisite information as under:

Element-wise scheduled COD and actual COD of the evacuation system : PGCIL has given the following information :

Sl. No.	Description	SCOD	DOCO (Actual)
1	Asset-1: Combined Asset of a) 400KV D/C Bhadla (POWERGRID)- Bhadla (RVPNL) Ckt -1 & 2 along with associated bays; b) 1 no. of 400KV, 125 MVAR Bus Reactor along with associated bays at Bhadla (POWERGRID) Substation; c) 400KV, 500 MVA ICT-II along with associated bays at Bhadla (POWERGRID) Substation; d) 220KV, Adani Bhadla (Pooling station) line-1 bay at Bhadla (POWERGRID) Substation,	19.01.2019	29.4.2019
2	Asset-2: 220 KV SauryaUrja line-2 Bay at Bhadla (POWERGRID) Substation,	19.01.2019	4.5.2019
3	Asset-3: 500 MVA ICT-III along with associated bays at Bhadla (POWERGRID) Substation,	19.01.2019	17.5.2019
4	Asset-4: 500 MVA ICT-I along with associated bays at Bhadla (POWERGRID) Substation,	19.01.2019	1.6.2019
5	Asset-5: 2 nos. 220 kV line bays (205 & 206) at badhla (POWERGRID) Substation ,	19.01.2019	7.8.2019
6	Asset-6: 02 no. 400 kV line bays at Bhadla (POWERGRID) Substation,	19.01.2019	27.9.2019* (Proposed)
7	Asset-7: Combined Asset of a) 765KV D/C Bhadla (POWERGRID)- Bikaner (POWERGRID) along with 2 nos. 240 MVAR Switchable Line Reactors along with associated bays at Bhadla (POWERGRID) S/s and 2 nos. 240MVAR Switchable Line Reactors along with associated bays at Bikaner (POWERGRID) S/s ; b) 765/400KV, 1500MVA ICT-I, II and III along with associated bays at Bhadla (POWERGRID) Substation; c) 1 no. of 240MVAR Bus Reactor along with associated bays at Bhadla (POWERGRID) Substation	19.01.2019	17.10.2019

Replies and Rejoinders

9. PGCIL in its reply vide affidavit dated 10.9.2021 has stated as under:

a) In furtherance of the MNRE authorization dated 7.10.2015, the Petitioner, vide two applications of 250 MW each dated 16.10.2015, had applied for grant of long-term access (LTA) for evacuation of 500 MW power from Bhadla-III Solar Park to the Northern Region. The connectivity was granted at the 765/400/220kV Bhadla pooling station of PGCIL. The LTA was granted from *“1.7.2017 or from availability of the associated transmission system, whichever was later”* and the Petitioner was required to furnish a two bank guarantees of Rs.12.50 crores each under the said grants. It was also

mentioned in the LTA grant that the target commissioning schedule of the transmission system associated with the aforesaid solar parks were to be taken as progressively from December, 2017 and accordingly, the commissioning of the generation projects was to be reviewed and aligned by the Petitioner-grantee.

b) Pursuant to the above LTA grants, the Petitioner entered into two Long-Term Access Agreements (LTAs) with PGCIL on 10.5.2016. At the time of signing of both the LTAs, transmission charges were not payable and transmission losses were not attributable to the Petitioner (as the LTA customer) under Regulation 7(u) and (v) of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 [hereinafter, the "Sharing Regulations"]. The LTAs recorded that if due to any amendment in the Sharing Regulations, the Petitioner was required to pay the transmission charges and losses for ISTS network, then the Petitioner would pay the said charges as per the specified norms. In this context, the LTAs further recorded that if the Petitioner failed to furnish the LC of requisite amount in accordance with the Sharing Regulations, the same was to be construed as a breach of contract or default of LTA and was to entitle PGCIL to terminate the LTAs after giving notice of default to the Petitioner; in the event that despite notice the Petitioner failed to furnish the LC, the LTAs as also the LTAs were to stand cancelled forthwith with attendant consequences.

c) In addition to the aforesaid LTAs, the Petitioner also signed two Transmission Service Agreements (TSAs) dated 10.5.2016 with Respondent No.1 agreeing to pay transmission charges computed as per the Point of Connection (PoC) mechanism under the Sharing Regulations. The Petitioner further agreed (in clause 12.3) to allow Respondent No.5 to enforce recovery of payment of unpaid transmission charges through LC on behalf of the ISTS licensees in the event of default in such payment. In the event that there was a material breach of any of the TSA by the Petitioner (such as failure to open the required LC) which was not rectified within 30 days of receipt of a notice in that behalf, then, clause 16.4.4 provided that the Petitioner was to cease to be a party to the TSA.

d) The Petitioner undertook the development of the Bhadla Solar Power Park and completed the same along with the internal evacuation system in March, 2019. The evacuation system for 765/400/220 KV Bhadla pooling station of Respondent No.1 had been planned through 765 KV D/C Bhadla to Bikaner transmission line. The pooling sub-station was commissioned on 22-23/4/2019 and the transmission line was charged on 22.4.2019 (line 1) and 26.8.2019 (line 2). Out of the 500 MW generation envisaged in the park, 200 MW was commissioned by SB Energy Four Pvt. Ltd. (100 MW on 3.5.2019 and another 100 MW on 9.7.2019) and work was in progress for balance 300 MW being developed by Clean Solar Power (Bhadla) Pvt. Ltd. On 25.9.2019, SECI rescheduled the commissioning date for the said 300 MW based on the provision of its PPA with Clean Solar Power (Bhadla) Pvt. Ltd. as under:

100 MW – 27.10.2019

200 MW – 29.2.2020 and 18.2.2020

e) That as early as the 6th Joint Coordination Committee Meeting in the Northern Region held on 28.03.2018, the Petitioner was duly informed that they would be liable for payment of transmission charges after the completion of transmission system in case the generation did not materialise; they were also requested to expedite the generation.

f) Further, the Petitioner was also repeatedly informed in subsequent JCCs in relation to its liability as a LTA grantee regarding payment of transmission charges for any mismatch resulting from delay in commissioning of the generation projects. During 12th Joint Coordination Committee Meeting in the Northern Region held on 26.9.2019, the Petitioner was informed that the 765 KV line between Bhadla and Bikaner was expected to be charged/commissioned by 30.9.2019 and LTA for the complete 500 MW was to be operationalized from 30.9.2019 and for which PGCIL is entitled to levy transmission charges on the Petitioner for the 300 MW which was not yet commissioned.

g) Meanwhile vide letter dated 16.7.2019, CTUIL requested the Petitioner to open an LC in the sum of Rs.37.93 crores towards operationalization of the 500 MW LTA. In response thereto, the Petitioner, vide its letter dated 30.9.2019, requested that the LTA operationalization date for balance 300

MW be aligned/matched with revised COD issued by SECI so that levy of transmission charges on SUCRL would not arise. In response to the request of the Petitioner for extension of LTA operationalization date, PGCIL informed the Petitioner vide its letter dated 25.10.2019 that there is no provision for extension in date of LTA operationalization in CERC Regulations/Detailed Procedure.

h) The Commission in the Statement of Reasons dated 15.5.2015 issued for the 1st Amendment of Central Electricity Regulatory Commission (Grant of Regulatory Approval for Execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations clarified that SPPD who shall apply for Connectivity/Long term Access shall be liable to deposit Application Bank Guarantee/Construction Bank Guarantee as required under Connectivity Regulation. Further, SPPD shall also be liable for payment of transmission charges for delay in commissioning of the generator and relinquishment charges towards transmission access under the Connectivity Regulations and the Sharing Regulations. Regulation 7(1)(u) of the Sharing Regulations provides that "No transmission charges for the use of ISTS network shall be charged to solar based generation" is applicable only when the power is evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station. Therefore, transmission charges for delay in commissioning of solar power generators shall be payable by such solar generators/SPPD on the same line as the liability for payment by the thermal and hydro generating station in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014."

i) The LTAs granted to the Petitioner has been operationalized w.e.f. 25.10.2019 as per the terms and condition referred to in the LTA intimations in line with the Connectivity Regulations, the Orders and amendments issued from time to time. The Petitioner was informed that it was liable for payment of applicable transmission charges in terms of the Regulations/Orders.

j) The Petitioner failed to open the required LC which is a statutory requirement under the Regulations of this Commission.

k) Vide letter dated 13.3.2020, the Petitioner informed that all the 500 MW of the projects had been commissioned in the park between 3.7.2019 till 28.2.2020 and the Petitioner had requested MNRE to extend the commissioning date of the Bhadla-III park which was under consideration of the MNRE. Since the Petitioner had been extending the bank guarantee for Rs.25 crore against the 500 MW of LTA, it requested PGCIL to allow opening of the LC till 30.4.2020; the said time period was requested to be extended by 30.6.2020 vide letter dated 22.4.2020.

l) That thereafter, the Petitioner requested for return of the bank guarantees after completion of 6 months from LTA operationalized date and successful establishment & operationalization of the power evacuation system. The said request of the Petitioner is not tenable in view of the regulatory/contractual prescriptions. The Commission had framed the Regulatory Approval Regulations, 2010 which were applicable, inter alia, to the ISTS schemes proposed by CTUIL for which generators had sought LTA as per the Connectivity Regulations.

m) In the Statement of Reasons dated 15.5.2015 issued for the 1st Amendment, the issues as regards recovery of transmission charges on account of delay in commissioning of the solar generation was also discussed. Hon'ble Commission opined as under:

“8.2.1 With regard to the suggestions of PGCIL, it is clarified that SPPD who shall apply for Connectivity/Long term Access shall be liable to deposit Application Bank Guarantee/Construction Bank Guarantee as required under Connectivity Regulation. Further, SPPD shall also be liable for payment of transmission charges for delay in commissioning of generator and relinquishment charges towards transmission access under Connectivity Regulations and Sharing Regulations.

n) This Commission thus clarified that where there was a delay in commissioning of solar power generators being set up in a solar power park, the transmission charges for such delay were payable by the solar generators/SPPDs.

o) The Petitioner being the grantee of connectivity and LTA under the Connectivity Regulations and further being authorized to undertake the solar power park development with all attendant liabilities including the liability to pay transmission charges for any delayed capacity commissioning, it could not be said to be relieved of the obligations either of the LTA/connectivity grantee or of the SPPD merely because it had completed the infrastructure development within the solar power park. Moreover, CTUIL had no privity of contract with the generators situated within the solar power park and as such, any action in the form of regulation of power supply may not have been available against them.

p) The Petitioner-SPPD being the LTA grantee and squarely liable for payment of transmission charges for the delay in commissioning of 300 MW capacity within the solar power park, it could not be heard to contend an existence of principal-agent relationship qua the generators.

q) As per the regulatory and the contractual scheme, the Petitioner could have completed the development of solar power park; however, the liabilities attached with the LTA as per the Regulations remained and were to be duly discharged by it.

r) The Petition for determination of transmission charges for the transmission assets associated with the Petitioner's solar power park [being Petition No.9/TT/2021] is presently pending adjudication before this Commission. As such, the invoice for transmission charges for the delayed commissioning of 300 MW capacity in the Petitioner's solar power park will be raised by Respondent No.1 as per the determined tariff (Rs.16.18 crores approx. as per the claimed tariff). Pending the raising of such invoice and payment thereof by the Petitioner, the bank guarantees (2x Rs.12.5 Cr.) furnished by it are liable to be retained by CTUIL. In this regard, PGCIL had also addressed a letter dated 12.7.2021 to the Petitioner to acknowledge and incorporate the name of Respondent No.5 entity i.e. "Central Transmission Utility of India Ltd" in place of "Power Grid Corporation of India Ltd" in terms of the Gazette Notification S.O. 1095(E) dated 9.3.2021 (w.e.f. 1.4.2021) wherein Respondent No.5 had been designated and notified as Central Transmission Utility in terms of sub-section (1) of Section 38 of the Electricity Act, 2003.

s) In view of the settled position as regards the liability of the SPPD to bear the transmission charges liability for the delayed commissioned capacity within its solar power park, the Petitioner's plea for relaxing the provisions of the 1st Amendment to the Regulatory Approval Regulations is not tenable. The power to relax has been envisaged under Regulation 8 of the Regulatory Approval Regulations with respect to an "aggrieved person"; however, when the liabilities have been fastened by operation of law, no question of a person being "aggrieved" by them can at all arise. As such, the power to relax is not available for its invocation or exercise so as to permit the Petitioner as an SPPD to discharge its liability to pay transmission charges for the 300 MW capacity commissioned in its park with delay.

Reply of Respondent no. 3 i.e., Clean solar power (bhadla) Pvt. Ltd. Vide its affidavit dated 23.9.2021

10. Clean solar power (Bhadla) Pvt. Limited in its reply has submitted as under:

a) As per Regulation 3(1) (iii) of the Regulatory Approval Regulations, 2010 the Petitioner being the SPPD, has undertaken to bear all the liabilities on behalf of solar power developers ("SPDs") in the Solar Park.

b) The Commission while passing the amendment dated 15.05.2015 to Regulatory Approval Regulations, 2010 by way of its Statement of Reasons dated 15.05.2015 has categorically acknowledged that SPPDs act on behalf of SPDs and Regulation 3(1)(iii) of the said Regulations made SPPD liable to undertake all the liabilities on behalf of SPDs.

c) The Petitioner has entered into Long Term Access Agreements dated 10.05.2016 with PGCIL and there is absolutely no privity of contract between PGCIL and answering Respondent. Accordingly, there is no privity of contract between PGCIL and CSPBPL, no question of payment of transmission charges by CSPBPL could arise.

d) The averments made by the Petitioner that it did not receive any intimation/information regarding the extensions granted by SECI are completely false. The delay in commissioning of the Projects by the answering Respondent was on account of the delay in allotment/handover of

encroachment and encumbrance free land and delay in execution of Land Sub-Lease Deed ("**LSDL**") for development of the Projects which were primarily the obligations of SURCL. The same was time and again conveyed to the Petitioner *vide* multiple correspondences and was also raised in several meetings convened at different levels. Apart from this, the aforesaid delay was also highlighted to SECI through various correspondences and it was upon close examination of the said documents and the correspondences and pursuant to being satisfied that such delay was justified that SECI in terms of Article 4.5 of the PPAs, granted extension to CSPBPL in two tranches i.e., an interim extension on 14.01.2019 and final extension on 30.10.2019.

e) Even otherwise, the validity of extensions granted to the answering Respondent by SECI ought not to be challenged by way of the present Petition, specifically when the extensions granted by SECI were not challenged by the petitioner before any forum and rather the said extensions were always acknowledged and agreed upon by the Petitioner.

f) Various correspondences were exchanged between the answering Respondent, petitioner and SECI regarding (i) the delay in execution of LSLD; (ii) the delay in handing over of encroachment and encumbrance free land by SUCRL; and (iii) deviation in layout of plots allotted to CSPBPL for development of the Projects, owing to which the commissioning of the Projects subsequently got delayed and basis which the aforesaid extensions were granted by SECI.

g) The Petitioner has relied upon the orders of this Commission dated 07.10.2015, 02.06.2011, 29.04.2015, 05.08.2015 and 29.07.2016, 27.06.2016 stating that that transmission charges shall be directly recovered from the Generators or the Developers from upstream or downstream of the transmission system of the ISTS which has achieved COD but is prevented from being put into service due to non-readiness of the generating stations of their dedicated transmission lines of the upstream or the downstream lines of transmission. In this regard, unlike in the facts and circumstances in the aforesaid cases, in the present case, it is the Petitioner being the SPPD has itself undertaken to bear all the liabilities on behalf of solar power developers and that the said statutory obligation is flowing from a regulatory provision.

h) The Petitioner has also relied on the decision of the Hon'ble Supreme Court in Power Grid Corporation of India Ltd. v. Punjab State Power Corporation Ltd. & Ors. reported as (2016). However, the judgment is not applicable as it was passed in relation to thermal power generators. Moreover, the Supreme Court vide the said judgment has laid down that beneficiaries cannot be made liable to pay for the delay attributable to generators, however, in present matter the Petitioner is not the beneficiary but is a SPPD which is under a statutory obligation to bear all the liabilities on behalf of the answering Respondent.

Rejoinder by the Petitioner to the reply filed by PGCIL vide affidavit dated 30.9.2021

11. The Petitioner in its rejoinder to the reply filed by PGCIL has submitted as follows:

a) In view of the Notification dated 9.3.2021 of "the Division and Merger of the Central Transmission Utility and Power Grid Corporation of India Limited ("**2021 Scheme**") in terms whereof the assets of Respondent No.1 (including contracts, deeds, agreements, bonds, benefits, etc.) in relation to discharge the functions of the CTU under the Electricity Act, 2003 ("**the 2003 Act**") stand transferred and vested in CTUIL as a going concern basis on and from the Effective Date of Division i.e. 01.04.2021. Therefore, PGCIL will have no jurisdiction over the matter or the power in law to hold the Bank Guarantee in question, in its favour.

b) The 2021 Scheme cannot automatically transfer the Bank Guarantee issued by the bank of the Petitioner to PGCIL in favour of CTUIL and vest it in CTUIL. There cannot be any automatic transfer and vesting of the Bank Guarantee on CTUIL pursuant to the 2021 Scheme. It is settled law laid down by the Supreme Court that the Bank Guarantee is an independent contract. This claim itself is invalid in law since the Bank Guarantee constitutes an independent contract between the Bank and PGCIL and not CTUIL.

c) As per Article 1(c) of the LTAA dated 10.5.2016, the Bank Guarantees were supposed to be **discharged** on the date the entire quantum of Long-term Access becomes operational. In fact, the entire Long-term Access became operational on 28.10.2019. Therefore, demand of PGCIL to extend the Bank Guarantees beyond their validity of 30.9.2021 is contrary and in breach of the Long-term Access Agreement dated 10.5.2016.

d) As per Commission's Order dated 15.5.2018 in Case No.L-1(3)/2019-CERC approving the "Detailed Procedure for grant of connectivity to Projects based on renewable sources through Inter State Transmission System", the connectivity Bank Guarantee is mandated to be discharged within six months after commencement of evacuation of power from the renewable Project.

e) In fact, the power injection of the last 30 MW Solar Project commenced on 26.2.2020. Accordingly, as per the Detailed Procedure, it was mandated that the Bank Guarantee is discharged by 26.8.2020.

f) The Proforma of "Bank Guarantee for Performance" contained in the Commission's Order dated 15.5.2018 approving the Detailed Procedure, inter alia provides that in case of failure/delay to construct the generating station or making an exit or abandonment of the Project by the Customer, PGCIL shall have right to collect the estimated Transmission Charges of stranded Transmission Capacity for Dedicated Lines at the rate mentioned in the Detailed Procedure as approved by the Commission, to compensate such damages."

g) However, neither PGCIL raised a claim that there has been failure/delay to construct the generating station, nor has PGCIL raised a bill of estimated Transmission Charges for stranding of Transmission Capacity for the reason of any failure/delay. For this omission on the part of PGCIL, Petitioner Saurya Urja cannot be penalized in terms of demanding extension of the Bank Guarantees which comes at an expense of paying the Bank its Commission Charges, which is approximately Rs.30 lakh per annum. It will not only be unjustified, but also unlawful to claim extension of Performance Bank Guarantees from the Petitioner which has neither delayed commissioning of

the Solar Park nor is responsible for the extension of the SCOD of the solar plants which has been granted by a Central Government Body viz. SECI.

h) The demand of Letter of Credit from the Petitioner is contrary to the contractual provisions under the LTA whereunder the PGCIL cannot demand both for a Bank Guarantee as well for a Letter of Credit, the purpose of both of which is the same i.e. to defray any costs to PGCIL, if the Interstate Transmission System is commissioned preceding the commissioning of the solar power plant and where the Interstate Transmission System demonstrably places stranded transmission capacity. There is noticeably complete absence of an averment on the part of PGCIL that their Inter-state Transmission System for evacuation of power from the solar park set up by the Petitioner has been affected by stranded transmission capacity for the reason of the solar capacity partly having been commissioned after the COD of the Interstate Transmission System of the PGCIL .

i) The Commission has held that the solar park is an Agent on behalf of the solar generator, the entire law of principle in agency will get attracted. If at all, there is any incidence of default, the same will apply to the Respondent Generators in the present case, who have unilaterally taken extension of their Commissioning Date from Solar Energy Corporation of India (“SECI”), a transaction/arrangement to which the Petitioner is not privy to. In such a situation, it would be a grave illegality to make the Petitioner solar park liable for the extension of the Commissioning Date granted by SECI to the Respondent Solar Generator.

j) PGCIL has admitted the liability of the Petitioner to pay transmission charges to the extent of non-commissioned capacity has no nexus with the extension of the COD of the generation capacity, which arises out of bilateral contractual arrangements. Therefore, the Petitioner cannot be made liable to pay transmission charges and/or compensation/damages, in any form whatsoever for the extension of COD of the generation capacity within the solar park, as that issue arises out of bilateral contractual arrangement between SECI and the solar generators who are the Respondents in the present matter.

12. The Petitioner vide affidavit dated 29.10.2021 has filed rejoinder to the reply of Clean Solar Power (Bhadla) Private Limited and same is as follows:

a) The petitioner is not liable towards any claim from PGCIL and/or CTUIL on the ground that 300 MW out of 500 MW was commissioned with a delay of about 5 (five) months after operationalization of LTA agreement. On such a premise PGCIL has retained the bank guarantees of the Petitioner.

b) As per Commission's Order dated 15.5.2015, SPPD is a legal entity who acts as an Agent of the Generating Companies which will be setting up Solar Power Plants in the Solar Park". Therefore, the petitioner cannot be made liable to pay transmission charges on behalf of Respondent No.3.

c) The argument that the Respondent No.3 and the Petitioner have no privity of contract is totally misconceived, because the privity of contract has been specifically given under the Tariff Regulations, 2014 and in the CERC's Order dated 15.5.2015.

d) With reference to the allegation of delay in allotment/handing over of encroachment and encumbrance free land and delay in execution of Land Sublease Deed for the development of the 3 x 100 MW Solar Power Projects, cannot be put forth as a ground to escape the liability to pay transmission charges by Respondent No.3.

e) The GOI, Ministry of Power issued a statutory direction on 15.1.2021 under section 107 of the E.A, 2003, to the CERC directing that: "7.....conversely, in any delay of COD by a generating station, the generating company concerned is required to pay the transmission charges of the ATS or the dedicated line, as the case may be, to the COD of the generating station (Regulation 13(5) and Regulation 13(9)".

Written Submission of the Petitioner

13. The Petitioner in its written submission dated 18.4.2022 has submitted as follow:

a) The Central Commission has clarified that SPPD will be a legal entity who shall act as an agent of the generating companies which will set up solar power plants in the park. In view of the above, Petitioner Solar Park has only facilitated the infrastructure required on behalf of the Solar Power Generators to inject power in the ISTS. As an agent, the Petitioner can never in law be made liable for any liability, much less liability to pay transmission charges, for delay in commissioning on the part of the Solar Power Generators (on behalf of the principal i.e. Solar Power Generator i.e. Respondent No.3).

b) Section 182 of the Indian Contract Act, 1872, defines under “Agency” – Appointment and Authority of Agent – 182. ‘Agent’ and ‘Principal’ – ‘Agent’ is a person employed to do any act for another or to represent another in dealings with third person. The third person for whom such act is done or who is represented is called ‘Principal’.

c) Section 222 of the Indian Contract Act, 1872 reads under “Principal’s duty to “Agent” – 222. Agent to be indemnified against consequences of lawful acts – The employer of an Agent is bound to indemnify him against the consequences of lawful acts done by the Agent in exercise of the authority conferred upon him”. Section 223 – Agent to be Indemnified against Consequences of act done in good faith, where one person employs another to do an act and the agent does the act in good faith, the employer is liable to indemnify the agent against consequences of that act, though it may cause injury to the rights of the third person.

d) The Petitioner gave an Undertaking dated 23-11-2015 as follows:-

a. “The Company Saurya Urja Company of Rajasthan Limited as Solar Power Park Developer for 500 MW solar Park undertakes to bear all **liabilities related to connectivity / LTA** in accordance with CERC regulations / Orders on behalf of solar power generators to be set up in the above solar park.

e) Petitioner’s Undertaking cannot be construed to mean that “ solar Park undertakes to bear all liabilities **related to transmission charges** on behalf of solar power generators to be set up in the above solar park.”

f) The Appellate Tribunal in APPEAL No. .69 OF 2021 vide its judgment dated 21.12.2021 in the matter of: M/s Saurya Urja Company of Rajasthan Limited Vs. 1. Rajasthan Electricity Regulatory Commission & Ors, has held that the Solar Power Park Developer (SPPD) does not fall either in the category of a Generator or a Licensee under the provisions of the Electricity Act, 2003. As per the “Guidelines for Development of Solar Parks”, the SPPD is entrusted with the development of the transmission network within the solar park as a captive / dedicated transmission system of the solar project developers of the park and therefore, is not a transmission Licensee.

g) Following the law laid down by Appellate Tribunal in APPEAL NO.69 OF 2021, the Commission will have no jurisdiction to go into the disputed questions of law and facts raised by Respondent No. 3 Clean Solar which is a SPD ie Generating Company.

Respondent No.3 cannot dispute the issue of allotment/handing over of land in the present Petition, since the Respondent No.3 has never initiated any dispute and/or any litigation with respect to the subject matter covering the allotment/handing over of land to the Respondent No.3. Therefore, the Respondent No.3 is estopped from asserting the claim or right, if any, arising out of allotment/handing over of land. The doctrine of estoppel is a bar that prevents re-litigation of issues. The Respondent No.3 having not disputed the handing over/allotment of land before any Forum, cannot seek a finding as a Respondent in the present matter. The Respondent No.3 claimed relief from being exempted from performing its obligations by seeking protection under the doctrine of force majeure. On one hand it cannot be that the Respondent No.3 has been protected by the doctrine of force majeure, while on the other hand the same doctrine of force majeure will not protect the Petitioner, where the issue is the same i.e. availability of land.

h) The claim of transmission charges and/or extension/furnishing of bank guarantee made by PGCIL on the Petitioner is not only in contravention of the said statutory direction of the Ministry of Power issued under section 107, but is also in contravention of the provisions of Grant of Connectivity Regulations, 200

14. Respondent No. 3 has also filed its written submission dated 20.4.2022 has submitted as follows:

a) The Petitioner has undertaken an independent obligation to bear all the liabilities of the SPDs including the Petitioner to be set up in the Solar Park, in light of Regulation 3(1)(iii) of the Regulatory Approval Regulations, 2010. Even otherwise, it is the petitioner that has entered into Long Term Access Agreements dated 10.05.2016 with PGCIL and there is absolutely no privity of contract between PGCIL and CSPBPL. Accordingly, given the fact that there is no privity of contract between PGCIL and CSPBPL, therefore, no question of payment of transmission charges by CSPBPL arises.

b) The reliance on Judgment dated 21.12.2021 issued by the Appellate Tribunal for Electricity ("APTEL") in Appeal No. 69 of 2021 by SUCRL was raised for the first time during the course of arguments before this Commission. However, no such stand to the effect that this Commission cannot adjudicate the dispute between the petitioner (SPPD) and CSPBPL (generator) and that the same requires to be adjudicated in arbitration, was ever taken by SUCRL in the pleadings filed by it before this Commission. The Petitioner despite the judgment getting pronounced on 21.12.2021 failed to file any submission/pleading prior to the final arguments in the matter. It is submitted on one hand the petitioner has sought a specific relief against CSPBPL to bear the transmission charges for the delay in commissioning the Projects, however, on the other hand, it has now taken a completely new stand (which has not been encapsulated in the pleadings) to the effect that the disputes between CSPBPL and SUCRL cannot be adjudicated by this Commission.

c) Petitioner has itself issued undertakings dated 23.11.2015 and 08.01.2019 wherein it has been specifically undertaken by SUCRL that it will bear all liabilities on behalf of CSPBPL. Moreover, it is apparent that the delay in commissioning of the Projects is attributable to SUCRL.

Hearing dated 28.6.2022

15. The order in the present petition was reserved on 12.4.2022. However, the order could not be passed prior to the Chairperson Shri P. K. Pujari demitting the office. Accordingly, the matter was listed for hearing on 28.6.2022. During the course of hearing the Petitioner sought liberty to make certain additional submissions in view of the subsequent developments, which was permitted by the Commission. The relevant extracts of RoP dated 28.6.2022 is as under :

“ Learned counsel for Petitioner mainly made following submissions:

(a) The Commission vide its order dated 11.6.2022 in Petition No. 9/TT/2021 filed by the Respondent No.1, PGCIL in the matter of determination of tariff for transmission system for Solar Power Park at Bhadla has, inter alia, fastened and the liability of the payment of transmission charges for certain period on the Petitioner.

(b) However, in the said order, the Commission has not examined the legal and factual issues raised by the Petitioner in the present matter and the Petitioner argued that it being a solar park developer is not obligated to, contractually and under law, pay the transmission charges to PGCIL. Therefore, the doctrine of res judicata does not apply in the present case. In this regard, reliance was placed on the judgment of Hon'ble Supreme Court in the case of Gulam Abbas and Ors. v. State of UP [1982 1 (SCC) 71].

(c) In the tariff matters, the principles of res judicata do not apply as has been already held by the Hon'ble Supreme Court in the case of UPPCL v. NTPC [2009 6 (SCC) 235].

(d) Recently, the Commission in order dated 8.6.2022 in Petition No. 103/MP/2021 & batch matter and order dated 23.5.2022 in Petition No. 525/MP/2020 has held that the renewable generating companies are liable to pay the transmission charges from the date of operationalisation of long-term access in the event of delay in commercial operation of the generating stations. Similarly, in the present case also, the Respondent No.3 is liable to pay the transmission charges for delay in commissioning of its 300 MW solar generating capacity. In the above context, reliance was placed on the judgment of Hon'ble Supreme Court in the case of PGCIL v. PSPCL & Ors., [(2016) 4 SCC 797].

3. After hearing the learned counsel for the Petitioner, the Commission directed the Petitioner to file additional submissions in view of the subsequent developments within a week after serving copy of the same to the Respondents, who may file their response thereon, if any, within a week thereafter.

4. Subject to the above, the Commission reserved the matter for order.

16. Accordingly, the Petitioner in its additional submission dated 15.7.2022 has submitted as under:

a) The Commission vide its order dated 11.06.2022 in Petition No.9/TT/2021 determined transmission tariff for Respondent No.1 for the period 2019-24 in respect of transmission assets under the transmission system for the Solar Power Park at Bhadla in the Northern Region. The

Petitioner did not have the occasion to appear in the said Petition No.9/TT/2021 despite the newspaper notice of the Petition filed by Respondent No.1 in the said matter, and consequently the Petitioner did not have the occasion to raise the matter in controversy to prove its case along with placement of material on record in the said Petition No.9/TT/2021 which the Petitioner had submitted in the present matter i.e. Petition No. 583/MP/2020.

b) In view of the above, the Petitioner urges to decide the matter in controversy after affording fair opportunities to the affected parties to prove their case along with placement of material on record, on merit, in the above Petition No. 583/MP/2020 without being influenced by its decision dated 11.06.2022 in Petition No.9/TT/2021, because the doctrine of res judicata will not operate while deciding the said Petition No.583/MP/2020.

c) The fundamental legal position is as under :

i. No transmission charges can be levied on a Solar Park under section 38 or under section 40 of the 2003 Act;

ii. The Petitioner Solar Park completed its scope of work prior to the date of operationalization of LTA by Power Grid Corporation of India Limited;

iii. The solar generators for delaying its COD must pay the transmission charges as held by this Commission in its order dated 08.06.2022 in Petition No.103/MP/2021 (Acme Deogarh Solar Power Private Ltd. Vs. Power Grid Corporation of India Ltd. & Ors) as well as Order dated 23.05.2022 in Petition No.525/MP/2022 in re Sprng Renewable Energy Pvt. Ltd. Vs. CTUIL & Anr.);

iv. The Petitioner had intimated PGCIL regarding the delay of COD by the Respondent No.3, but PGCIL refused to extend the LTA.

v. Since the Petitioner being a Solar Park is helping the State to meet its renewable purchase obligations, the Petitioner's Solar Park cannot be

penalized for the delay in COD of the Generator. This will be grossly inequitable and unlawful;

vi. Solar Park is an “Agent” on behalf of the Generators as held by this Commission in the Statement of Reasons dated 15.05.2015 in the matter of Amendment to Open Access Regulations, 2009 and Grant of Regulatory Approvals, 2010.

d) The Petitioner, being a Solar Park, has implemented a captive/ dedicated transmission system of the Solar Project Developers operating in its Solar Park, and hence the Petitioner Solar Park cannot be made liable to pay transmission charges for the delay on behalf of the Solar Generators.

e) The Petitioner does not generate electricity, it does not transmit electricity, it does not sell electricity to beneficiaries/consumers unlike the Solar Generators, in which case it will be ex facie illegal to levy transmission charges on the Petitioner Solar Park especially when it is of no fault of the Petitioner. Such a levy will also be totally contrary to the law of agency as settled in a catena of judgments of the Hon’ble Supreme Court.

f) The Hon’ble Supreme Court in ***Power Grid Corpn. of India Ltd. v. Punjab State Power Corpn. Ltd*** has indicated that for the delay in the scope of work undertaken by the Generator and for which Power Grid Corporation may have suffered, the beneficiaries cannot be made liable to pay.

g) The Commission has determined transmission tariff for PGCIL by its order dated 11.06.2022 in Petition No.9/TT/2021 in which the Hon’ble CERC has also decided that the Petitioner shall be liable to pay transmission charges for the period of mismatch between the COD of the transmission assets and the COD of the solar generator. The said order dated 11.06.2022 being a Tariff Order, principles of res judicata will have no application as held by the Hon’ble Supreme Court in Uttar Pradesh Power Corporation Ltd. Vs. NTPC Limited & Ors.

17. Clean Solar Power (Bhadla) Private Limited i.e. Respondent No. 3 in its written submission dated 23.7.2022 has additionally submitted as under :

a) The Commission *vide* its Order dated 11.06.2022 has not only determined the tariff for the period from the date of commercial operation till 31.03.2021 under the CERC (Terms and Conditions of Tariff) Regulations, 2019, in respect of the stated transmission assets but has also, in order to do complete justice, fastened the liability to pay the transmission charges *for the period of mismatch between the commercial date of operation of the transmission assets and the commercial date of operation of the Projects onto the Petitioner, which is the SPPD in the present case* on the basis of the clear legal position in terms of Regulation 3(1)(iii) of the Regulatory Approval Regulations, 2010. Meaning thereby, that this Commission has clearly and unequivocally held that it is the Petitioner that is liable to pay the transmission charges/losses for the delay in commissioning of the Project.

b) With regard to Petitioner's contentions that it did not have the occasion to appear in Petition No. 9/TT/2021 and/or raise the matter in controversy before this Hon'ble Commission in the said matter, it is submitted that upon perusal of the order dated 11.06.2022, it becomes clear that the Petitioner was a respondent (i.e., Respondent No. 18) in the said Petition No. 9/TT/2021. Therefore, being a party to the said petition, SUCRL had ample opportunities/occasions to plead its case or for that matter, even appear before this Commission in the said matter. However, since the Petitioner chose not to participate in the said proceedings, it cannot, now be permitted to allege that it did not have the occasion to appear or put forth its case in Petition No. 9/TT/2021.

c) The Petitioner's contentions to the effect that since the Order dated 11.06.2022 is a tariff order, the principles and doctrine of *res judicata* will not operate while deciding the Petition and the reliance placed by SUCRL *inter alia* on the Hon'ble Supreme Court's decisions titled as *UPPCL v. NTPC* [2009 6 (SCC) 235] and *Gulam Abbas and Ors. v. State of UP* [1982 1 (SCC) 71]. it is submitted that the rationale given by the Hon'ble Supreme Court is that since the tariff determination is an ongoing process, the re-determination

of tariff is not barred by the doctrine of res-judicata. However, the same cannot be construed to be an overarching principle, so as to allege that the findings of this Commission, even if they pertain to the fastening the liability to pay transmission charges/losses for the period of mismatch (and not tariff) are not bound by the principles of res-judicata. Moreover, this Commission, after applying its judicial mind, has unequivocally fastened the liability for payment of transmission charges/losses upon SUCRL for the period of mismatch.

d) The issue of determination of tariff/transmission charges cannot be confused with the aspect of liability to make payment of transmission charges for the period of mismatch. Therefore, it is untenable for the Petitioner to contend that merely because the Order dated 11.06.2022 is one pertaining to a tariff matter, the principles of res-judicata will not apply to even the part of the said order wherein this Hon'ble Commission has unequivocally decided the liability for payment of transmission charges/losses for the period of mismatch, or that the same will not be binding on this Hon'ble Commission.

e) The Petitioner's reliance on the Hon'ble Supreme Court's decision in *Power Grid Corporation of India Limited v. Punjab State Power Corporation Limited* is misplaced as the facts in the present case are completely distinguishable from the facts of the said case. The said case decision relied upon by SUCRL pertains to the delay in work undertaken by a generating company, whereas in contrast, the present matter pertains to the issue of payment of transmission charges/losses for the period of mismatch in the commercial operation date of the transmission assets and the commercial operation date of the Project, located in a solar park which was to be set up and provided by a SPPD (i.e., the Petitioner) and where the delay is clearly attributable to the Petitioner.

Analysis and Decision

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

Issue No. 1: Whether any claim for transmission charges could be raised against the Petitioner? Whether Petitioner is an agent of generating stations and no liability can be raised on it as an agent?

Issue No. 2: Whether any direction is required to be issued for reimbursement of the costs incurred in extension of validity of Bank Guarantee by the Petitioner? Whether any direction is required for Powergrid not to demand opening of Letter of Credit towards payment security mechanism from the Petitioner and to withdraw its default notice dated 19.12.2019 and to injunct Power Grid from taking any action under clause 16.4.4 of the Transmission Service Agreement?

Issue No. 3: Whether Power to Relax may be invoked to grant relief to the Petitioner?

Issue No. 4: Whether Power Grid is required to pay suitable penalty for the delay in commissioning of the Bhadla 765 KV system as per approved LTA for 7 (seven) months?

The issues are dealt in the succeeding paragraphs.

Issue No. 1: Whether any claim for transmission charges could be raised against the Petitioner? Whether Petitioner is an agent of generating stations and no liability can be raised on it as an agent?

19. Petitioner has submitted is that it has developed the solar power park and its internal evacuation system has been fully ready much before the commissioning of the associated transmission system. In the event of delay in the commissioning of associated generating stations, the Petitioner should not be made liable for any obligation arising on account of delay of such generating stations. The commissioning of the generation projects in the solar power park is governed under the Power Purchase Agreement (PPAs) between the generators and Solar Energy Corporation of India (SECI), If SECI has given extension to the solar power generators for commissioning their projects, the same is totally beyond the control of the Petitioner and the Petitioner cannot be made liable for such eventualities. Petitioner has referred to MNRE letter dated 15.4.2020 to substantiate its claim that letter dated 15.4.2020 acknowledged that the solar park infrastructure is completed

on or before 5.2.2020 i.e. as per the timeline prescribed by the Ministry, thus, there cannot be any claim against the Petitioner for any breach of contract.

20. The Petitioner has also stated that the Commission in the “Statement of Reasons” of Amendments to Connectivity Regulations, 2009, has clarified that SPPD is a legal entity, which acts as agent of the generating companies. Accordingly, the Petitioner is an agent of the generating companies being Respondents No. 3 and 4.

21. PGCIL/ CTUIL has submitted that in the event there is a delay in commissioning of the generating stations in such solar park, the bilateral transmission charges are required to be borne by the solar park developers and the BGs have been retained in terms of the Connectivity Regulations and Long Term Transmission Agreements, whereby the solar park developers have assumed all liabilities regarding connectivity and LTA.

22. The present Petition has been filed inter alia on the premise of demand made by PGCIL/CTUIL to the Petitioner for opening the letter of credit and the operationalization of LTA with effect from 27.10.2019.

23. We have considered the submissions of Petitioner and Respondents. We consider it necessary to refer the correspondences exchanged between the parties, relevant provisions of LTA, TSA, and provisions of regulations relied upon by the parties.

24. PGCIL vide its letter dated 16.7.2019 requested the Petitioner to open the letter of credit towards the operationalization of LTA of 500 MW granted to the Petitioner. The relevant extracts of the letter dated 15.7.2019 is as follows:

Shri Bibhu Biswal
Sr. Vice President
Saurya Urja Company of Rajasthan Ltd.

Sub: Opening of Letter of Credit towards operationalization of 500 MW Long Term Access.

Dear Sir,

1.0 This is with reference to (i) LTA intimation letter no. C/CTU-Plg/LTA/N/2016/SPD/Saurya Urja dated 07.04.2016 from Central Transmission Utility (CTU) - POWERGRID granting 500 MW Long Term Access (LTA) to M/s Saurya Urja Company of Rajasthan Ltd. for transfer Power in Bhadla Rajasthan and LTA Agreement signed on 10.05.2016(LTA application -1200000201 &217)

2.0 Further, as per the terms of the Agreement and prevailing CERC Regulations, Saurya Urja is required to open a Letter of Credit in favour of POWERGRID towards payment security mechanism for Rs. 3793.55 Lakhs. (Calculations as below on the basis of April'19 to June'19 PoC rates:)

LTA Applicant	Beneficiary	LTA Granted MW (A)	POC Slab rates Rs/MW/ Month (B)	Reliability support charges Rs/MW/ Month (C)	HVDC charges Rs/MW/ Month (D)	Total POC Charges Rs/MW/ Month (E=B+C+D)	LC Requirement (E*A*2.1)
Saurya Urja	UPPCL-250MW	250MW	308359	31315	21516	361290	189677250
	UPPCL-50MW	250MW	308359	31315	21616	361290	151741800
	UPPCL-200MW		308359	31315	21616	361290	37935450
TOTAL							379354500

“

25. We note that the Petitioner vide its letter dated 27.9.2019 requested PGCIL to operationalize the LTA matching with the revised SCoD of the Respondent No.. 3. PGCIL vide its letter dated 25.10.2019 informed the Petitioner that there is no provision for the extension of operationalisation of LTA in the regulation framed by the Commission and the detailed procedure contained therein. The relevant extracts of the letter dated 25.10.2019 is as follows:

“We write with reference to your letter dated 27.09.2019 regarding extension of operationalization date of LTA for balance 300MW capacity (out of total 500 MW) aligned/matched with revised commissioning schedule issued by SECI. In this regard, following is submitted:

- *Saurya Urja Company of Rajasthan Ltd. (SUCRL) was granted 500MW LTA on target region basis (NR) vide CTU Intimation nos. C/CTU-Plg/LTA/N/2016/SPD/SauryaUrja and C/CTU-Plg/LTA/N/2016/SPD/SauryaUrja-2 dated 07/04/2016 w.e.f. 31.12.20.17 or availability of following ISTS system, whichever is later:*
 - a. *Bhadla (PG) - Bikaner(PG) 765kV D/c line*
 - b *Bhadla (PG)- Bhadla (RVPN) 400kV D/c (Quad) line*
 - c. *Establishment of Pooling Station at Bhadla (PG) (765/400kV : 3x1500MVA, 400/220kV: 3x500MVA)*
 - d. *2 nos. 400kV & 4 nos. 220kV line bays at Bhadla (PG) for interconnection of solar park interconnection*
 - e. *1x240 MVAR switchable line reactor at each end (each ckt) of Bhadla(PG)-Bikaner(PG) 765kV D/c line*
 - f. *1x240 MVAR (765kV) & 1x125 MVAR (400kV) Bus reactors at Bhadla Pooling S*
- *Subsequently, as informed by M/s SUCRL, 500MW LTA was firmed up vide letter dated 25.04.2019 with generators (Clean Solar Power (Bhadla) Pvt. Ltd. -300B Energy Four Pvt. Ltd. - 200MW) within the Solar Park of SUCRL having drawl beneficiary as UPPCL.*
- *In the 12th JCC meeting of NR held on 25/09/2019, it was informed that all the elements required for effecting the aforesaid LTA have been commissioned except Bhadla-Bikaner 765kV D/c line, expected to commissioned by end of September, 2019. It was also informed that upon commissioning of above line, the entire 500MW LTA shall be operationalized and SUCRL shall be liable for payment of applicable transmission charges, if any, in terms of applicable CERC Regulations/Orders. Also, for waiver of transmission charges, SUCRL shall have to submit the requisite documents towards fulfillment of the provisions for waiver of transmission charges and losses for the use of ISTS network, as per advisory available on CTU website.*
- *It is to inform that there is no provision for extension in date of LTA operationalization in CERC Regulations/Detailed Procedure. Hence, extension of LTA operationalization date is not possible.*
- *Now, all the transmission elements proposed to effect above LTA have been commissioned. Accordingly, LTA granted to SUCRL for transfer of 500MW power (M/s Clean Solar Power (Bhadla) Pvt. Ltd.: 300MW, M/s SB Energy Four Pvt Ltd.: 200MW) is being operationalized, through a separate communication, w.e.f. 27/10/2019 as per the terms and conditions referred in LTA intimation in line with the CERC Connectivity Regulations, 2009/Orders and amendments issued thereof from time to time*

26. We also noted that PGCIL vide its letter dated 25.10.2019 intimated the Petitioner about operationalization of LTA with effect from 27.10.2019 quoted as follows:

Subject: Operationalization of 500 MW (250 MW +250 MW) Long Term Access granted to Saurya Urja Company of Rajasthan Ltd. (SUCRL) for Solar Power Park in Jodhpur, Rajasthan- reg.

Dear Sir,

This is with reference to LTA granted to SUCRL (Solar Power Park Developer) vide

CTU Intimation nos. C/CTU-Plg/LTA/N/2016/SPD/SauryaUrja(250MW) and C/CTU-Plg/LTA/N/2016/SPD/SauryaUrja-2 (250 MW) dated 07/04/2016 for transfer of 500 MW power from Solar Park to UPPCL. It is to inform that the transmission elements proposed to effect the LTA have been commissioned.

In view of the above, the LTA granted to M/s SUCRL for transfer of 500 MW (M/s Clean Solar Power (Bhadla) Pvt. Ltd.: 300MW, M/s SB Energy Four Pvt Ltd.: 200MW) from SUCRL Bhadla solar power park is being made operationalized w.e.f 27/10/2019 as per the terms and conditions referred in LTA intimations in line with the CERC Connectivity Regulations, 2009/Orders and amendments issued thereof from time to time. M/s SUCRL shall be liable for payment of applicable Transmission Charges in terms of CERC Regulations/Orders.

This is for your information and necessary action please.

27. The LTA Agreement dated 10.5.2016 signed between Petitioner and PGCIL provides as follows:

- d) Whereas, if the 'LTC' fails to construct the generating station/ dedicated transmission system/internal transmission system or makes an exit or abandons its project, the 'LTC' shall be liable to comply with directions as issued by the Central Commission from time to time.

As per above 'LTC', which is the Petitioner herein, agreed to comply with directions of CERC in case it fails to construct the generating station. We observe that the said LTA Agreement has no generating station as a signatory, and only the Petitioner and PGCIL.

28. We observe that the issue of liability and obligation of Solar Power Park Developer i.e. the Petitioner towards the payment of transmission charges, on account of delay in commissioning of generating stations attached to solar parks has been dealt with in order dated 28.1.2021 in Petition No. 331/MP/2020 quoted as follows:

"16. We also note that the Statement of Reasons dated 15.5.2015 issued along with the 5th amendment to the 2009 Connectivity Regulations (through which SPPDs were made eligible to apply for LTA and connectivity) state as under:

“Statement of Reasons

Government of India has planned to set up Solar Parks for promotion of Solar Power. Ministry of New and Renewable Energy(MNRE) vide letter dated 12th December,2014, conveyed the intent of Government of India to provide a framework for setting up at least 25 Solar Parks in different parts of the country with a target of over 20,000 MW installed capacity of solar power in a span of 5 years from 2014-15 to 2018-19

“8. Transmission and evacuation of power from solar park: Interconnection of each plot with pooling stations through 66 kV /other suitable voltage underground or overhead cable will be the responsibility of the solar project developer. The designated nodal agency will set up the pooling stations (with 400/220, 220/66 kV or as may be suitable switchyard and respective transformers) inside the solar park and will also draw transmission line to transmit power to 220 kV/400 KV sub-station. The responsibility of setting up a sub-station nearby the solar park to take power from one or more pooling stations will lie with the Central Transmission Utility (CTU) or the State Transmission Utility (STU), after following necessary technical and commercial procedures as stipulated in the various regulations notified by the Central/State Commission.”

2. Implementation of the transmission and evacuation facility under the above framework requires a Solar Park Developer to apply for connectivity and long term access (LTA) to the CTU. Since the existing regulations of the Commission envisage a generating company or a bulk consumer as the eligible entity for the purpose of both connectivity and LTA, the Commission with due regard to the need for providing regulatory backing and support for promotion of solar energy in the overall interest of the nation’s energy security and in order to facilitate the Government of India in its endeavour to implement the ambitious goals for solar power generation, proposed to make the “Solar Power Park Developer” an eligible entity for grant of connectivity and LTA. Accordingly, amendments to the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in interState Transmission and related matters) Regulations, 2009 (hereinafter “Connectivity Regulations”)

4.2.6 Sh. Vijay Menghani has suggested that a company of State Government or a private company may also be considered as eligible SPPD and wind developers may also be included. He has also suggested that proper risk management is to be ensured through prudence check while assessment of the capability of company to take responsibility of payment of transmission charges, relinquishment charges and payment of deviation charges at operation stage.

.....

4.3 Decision of the Commission

....

43.2... As regards the comments of CEA, APP, PGCIL and Shri Menghani that the SPPDs of solar parks developed by the State Governments or any other company who may be interested to develop solar park should be made eligible for applying for connectivity and long term access to ISTS, we are of the view that SPPD promoted by the concerned State Government or any other company should be recognised by the Central Government who shall carry out the due diligence about the capability and commitments of such

companies to bear the transmission charges and losses on account of the connectivity and long term access of the solar power generators to the ISTS in their respective solar parks. As regards the suggestions of Shri Vijay Menghani regarding prudence check for the company being authorised as SPPD, it is clarified that responsibility to lay down the guidelines with regard to SPPD rests with MNRE.

8.1.1 PGCIL has submitted that SPPD should submit Construction Bank Guarantee while applying for connectivity which requires system strengthening for power evacuation as per the Regulations. PGCIL has also mentioned that directions are necessary for payment of transmission charges in case of delay in commissioning of generating unit, where the transmission system for evacuation has already been commissioned.

8.1.2 NTPC has suggested that in case of mismatch in commissioning of generating station vis-a-vis transmission system, any provision regarding bearing of transmission charges of transmission licensee /Annual fixed cost of the generator should be equitable to both the parties. It has also submitted that as commissioning of Solar Generation in the Solar Park would be in a phased manner. Accordingly, the commissioning of transmission system should also be in a phased manner matching with commissioning of generating capacity to reduce the impact of transmission charges on beneficiaries which would be levied through PoC mechanism. NTPC has also raised the issue of equitable payments by a transmission licensee and generator in case of delay by either of the two and that similarly treatment of delay of intervening system by SPPD should be addressed by the Commission. NTPC has also stated that development of transmission should be in a phased manner matching with commissioning of generating capacity.

8.2 Commission's decision:

8.2.1 With regard to the suggestions of PGCIL, it is clarified that SPPD who shall apply for Connectivity/Long term Access shall be liable to deposit Application Bank Guarantee/Construction Bank Guarantee as required under Connectivity Regulation. Further, SPPD shall also be liable for payment of transmission charges for delay in commissioning of generator and relinquishment charges towards transmission access under Connectivity Regulations and Sharing Regulations. Regulation 7(1)(u) of the Sharing Regulations provides that "No transmission charges for the use of ISTS network shall be charged to solar based generation" is applicable only when the power is evacuated through the transmission system to the beneficiaries after the commercial operation of the generating station. Therefore, transmission charges for delay in commissioning of solar power generators shall be payable by such solar generators/SPPD on the same line as the liability for payment by the thermal and hydro generating station in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014."

17. As per above-mentioned provisions of the 2009 Connectivity Regulations read with Statement of Reasons issued with the 5th Amendment to the 2009 Connectivity Regulations, it is clear that the Petitioners (as SPPDs) are entities eligible for applying to PGCIL for connectivity and LTA. Therefore, the contention of the Petitioner that they have applied for connectivity and LTA on behalf of SPDs, is not correct. The Petitioners have not applied for connectivity and LTA on behalf of solar power developers and rather they had applied for the same in their capacity as SPPD in terms of provisions of the 2009 Connectivity Regulations. Along with grant of connectivity and LTA, the

Petitioners have also signed Connection Agreement, LTA Agreement and Transmission Agreement with PGCIL. Thus, they were aware of their responsibilities in terms of those agreements. Having applied for connectivity and LTA and being aware about their responsibilities, the Petitioners cannot now plead that they do not have financial capacity to pay for transmission charges. We also note that there is no provision for differential treatment to a SPPD vis-à-vis other entities in the 2009 Connectivity Regulations. Having been granted connectivity and LTA as per the provisions of the 2009 Connectivity Regulations, they are responsible for bearing charges towards connectivity and LTA granted to them

18. The Statement of Reasons also clarifies that an SPPD who shall apply for connectivity or long term access shall be liable for payment of transmission charges for delay in commissioning of generator and relinquishment charges towards transmission access under provisions of the 2009 Connectivity Regulations and the 2010 Sharing Regulations. It was also clarified that transmission charges for delay in commissioning of solar power generators shall be payable by such solar generators/ SPPD. Thus, if SPPDs choose to apply for connectivity or LTA, they have to bear all consequential liabilities. Any sharing of responsibility including payment of transmission charges and losses between the SPPD and the SPDs can be governed by agreements, if any, amongst them, but in no case it can be shared by other entities through the PoC pool.

19. Accordingly, we reject the prayers of Petitioners seeking to exempt them from payment of transmission charges and losses in case of delay in commissioning of solar power projects in the solar parks.”

In the above captioned Petition, the Commission took the view that the Petitioners i.e. SPPD have applied for connectivity and LTA in their capacity as SPPD in terms of provisions of the 2009 Connectivity Regulations. Along with grant of connectivity and LTA, the Petitioners have also signed Connection Agreement, LTA Agreement and Transmission Agreement with PGCIL. Thus, they were aware of their responsibilities in terms of those agreements.

29. The present Petition is squarely covered under the above mentioned order. In the present Petition also, the Petitioner have executed LTA and TSA dated 10.5.2016 with PGCIL in its independent capacity and was also aware of its liabilities. There is no linkage with the LTA /TSA and extension given by SECI to the SPD. The Petitioner has chosen to apply for connectivity or LTA, with all consequential liabilities. The Statement of Reasons also clarifies that an SPPD who shall apply for

connectivity or long term access shall be liable for payment of transmission charges for delay in commissioning of generator.

30. In light of above discussions including order dated 28.1.2021 in Petition No. 331/MP/2020 , we are of the view that the Petitioner shall be liable for the payment of transmission charges from the date of operationalization of LTA i.e. 27.10.2019, along with all other liabilities and obligations under LTA and TSA dated 10.5.2016.

31. PGCIL had filed the tariff Petition No. 9/TT/2021 for the period from the date of commercial operation (COD) to 31.3.2024 for determination of tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as "the 2019 Tariff Regulations") in respect of the transmission assets under "Transmission System for Solar Power Park at Bhadla" in the Northern Region where PGCIL served the petition on the Respondents and notice regarding filing of this petition has also been published in the newspapers in accordance with Section 64 of the Electricity Act, 2003. Thus, the contention on the part of Petitioner herein that the Petitioner was not given the opportunity of being heard is misplaced. The Petitioner cannot be permitted to take such stand on account of its own inaction. The Petitioner was not debarred from filing reply and making submissions therein. Therefore, it cannot be said that the Petitioner was not given the opportunity of being heard. In-fact, the Petitioner had the opportunity of making appearance, filing reply and submissions but that was never availed of.

32. Vide Order dated 11.6.2022 in Petition No. 9/TT/2021, the Commission observed as follows :

"92. As per the regulatory approval order dated 31.3.2016 in Petition No. 1/MP/2016, 37th SCM of NR held on 20.1.2016, 33rd TCC and 37th NRPC meeting held on 21/22.3.2016, the transmission system for Solar Power Park at Bhadla is planned as inter-State transmission scheme for evacuation of 3000 MW of Solar Power in Jodhpur (Bhadla: 1000 MW) and Jaisalmer (Parewar and Fatehgarh: 2000 MW). It was also agreed that implementation of above-mentioned transmission system shall

be taken up by the Petitioner only after receipt of LTA for at least 25% of their installed capacity from respective Solar Park Developers. After grant of LTAs to AREPRL, SUCRL and ESUCRL for 250 MW, 500 MW and 750 MW respectively, totalling to more than 25% of the installed capacity, the Petitioner undertook to implement the transmission system associated with Bhadla Solar Park.

93. It is observed that the Petitioner has implemented transmission system which is capable of transferring about 3000 MW power from Bhadla Solar Park. The transmission system has been developed considering the potential of various RE generators associated with Ultra mega Solar park at Bhadla. In order to facilitate Pooling of power from various solar power generators in the park as well as evacuate and transfer of power from Ultra mega Solar park at Bhadla, the Petitioner has proposed to establish 765/400/220 kV Pooling station at Bhadla along with 765 kV interconnection to Bikaner Substation and Bhadla Poling station is interconnected with Bhadla (RVPN) substation through a 400 kV D/C line. The petitioner also developed necessary 220 kV & 400 kV interconnection line from Solar Power parks upto 220/400/765 kV Bhadla Pooling station. The instant transmission system has been evolved in a comprehensive manner which consists of associated transmission system (ATS) for immediate inter connection and transfer of power and second is common transmission system which can be utilised by the existing and upcoming RE generators, as indicated below:

<p>Saurya Urja Company of Rajasthan Ltd.(500 MW)</p>	<p>Bhadla</p>	<p>ATS: 3x500 MVA, 400/220 kV ICT at Bhadla 2 numbers of 220 kV bays</p> <p>Common transmission system Pooling Station at Bhadla (PG) (765/400 kV: 3x1500MVA)</p> <p>Bhadla (PG) - Bhadla (RVPN) 400 kV D/C line (Quad)</p> <p>Bhadla (PG) - Bikaner 765 kV D/C line along with 240 MVAR Switchable line reactors at each end (each circuit)</p> <p>1x240MVAR (765 kV) & 1x125 MVAR (420 kV) Bus Reactors at Bhadla (PG)</p>
<p>Essel Saurya Company of Rajasthan Ltd. (750 MW)</p>	<p>Bhadla</p>	<p>ATS: 3x500MVA+1x500 MVA, 400/220kV ICT at Bhadla Common transmission system Pooling Station at Bhadla (PG)</p> <p>(765/400 kV: 3x1500MVA) Bhadla (PG) - Bhadla (RVPN) 400 kV D/C line (Quad)</p> <p>Bhadla (PG) - Bikaner 765 kV D/C line along with 240MVAR Switchable line reactors at each end (each circuit)</p> <p>1x240MVAR (765 kV) &</p>

		1x125MVA (420 kV) Bus Reactors at Bhadla (PG)
Adani Renewable Energy Park Rajasthan Ltd. (250 MW)	Bhadla	<p>ATS</p> <p>3x500 MVA, 400/220 kV ICT at Bhadla</p> <p>2 numbers of 220 kV bays</p> <p>Common transmission system</p> <p>Pooling Station at Bhadla (PG) (765/400 kV: 3x1500MVA)</p> <p>Bhadla (PG) - Bhadla (RVPN) 400 kV D/C line (Quad)</p> <p>Bhadla (PG) - Bikaner 765 kV D/C line along with 240MVA Switchable line reactors at each end (each circuit)</p> <p>1x240MVA (765 kV) & 1x125MVA (420 kV) Bus Reactors at Bhadla (PG)</p>

94. The Regulation 8(5) and Regulation 8(6) of the 2010 Sharing Regulations provide as follows:

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

.....

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

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

Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay the transmission charges for LTA operationalised corresponding to the transmission system commissioned:

Provided also that where the construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8 (8) of the Connectivity Regulations: Provided also that a generating station drawing start-up power or injecting infirm power before commencement of LTA shall be liable to pay the withdrawal or injection charges corresponding to the actual injection of infirm power or withdrawal start-up power during a month (concerned month) and the amount

received on account of such payments shall be reimbursed to the DICs in the month following the month of billing, in proportion to the billing of the DICs during the concerned month. Provided also that CTU shall maintain a separate account for the above amount received in a quarter and deduct the same from the transmission charges of ISTS considered in PoC calculation for the next application period. (6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure- I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.” ----

95. Out of the total LTA of 1500 MW granted, the solar generation of 1050 MW achieved COD on different dates while 450 MW has not achieved COD as on date. The issue for our consideration is how would the transmission charges of 1500 MW pertaining to the LTA granted will be shared by the three Solar Power Park Developers (AREPRL, SUCRL and ESUCRL).

96. The asset wise liabilities of payment of transmission charges as per Regulation 8(5) and Regulation 8(6) of the 2010 Sharing Regulations have been dealt with in the following paragraphs.

xxxx

98. Out of the above-mentioned elements, Bhadla (PG)-Bhadla (RVPN) 400 kV D/C line along with bays and 125 MVAR Bus Reactor along with bays are part of common transmission system which is interconnected with Bhadla (RVPN) Substation through this 400 kV D/C line and can be used for transfer of power from various solar generators. Therefore, the transmission charges proportionate to these items shall be included in PoC Pool. The 500 MVA ICT-2 is part of associated transmission system (ATS). Therefore, the transmission of 500 MVA ICT-2 for the period of mismatch shall be borne by the three generators namely AREPL, SUCRL and ESUCRL. The 220 kV Adani Bhadla (Pooling station) line-1 bay at Bhadla (POWERGRID) Sub-station is part of ATS for AREPL. Therefore, the transmission charges for the period of mismatch shall be payable by AREPL.

xxxx

Asset 2

100. Asset-2 has achieved COD on 4.5.2019. Asset-2, i.e 220 kV Saurya Urja line-1 bay is part of ATS for SUCRL. Therefore, the transmission charges shall be payable by SUCRL. The liability of transmission charges payable by SUCRL is as follows:

xxxxx

Asset-3

101. Asset-3, i.e. 500 MVA ICT-3 along with associated bays at Bhadla Sub-station is common associated transmission system (ATS) associated with three generators namely AREPRL, SUCRL and ESUCRL). Therefore, the transmission charges of Asset-3 shall be borne proportionately by all the three generators and the liability of payment of transmission charges is as follows:

Xxxx

Asset-4

102. Asset-4, i.e. 500 MVA ICT-1 along with associated bays at Bhadla Sub-station is part of common associated transmission system (ATS) associated with three generators namely AREPRL, SUCRL and ESUCRL. Therefore, the transmission charges of Asset-4 shall be borne proportionately by all the three generators and the liability of payment of transmission charges is as follows:

Xxxx

Asset-5

103. Asset-5 consists of two no of 220 kV line bays which are associated with AREPL and SUCRL. Out of the two 220 kV bays, one bay is associated with AREPL and other bay is associated with SUCRL. AREPRL has commissioned the 250 MW generation prior to COD of Asset-5. Therefore, AREPRL is not liable to pay any transmission charges for one of 220 kV bay. SUCRL is liable to pay transmission charges proportionate to one of 220 kV bay and the liability of payment of transmission charges of Asset-5 are as follows:

Xxx

33. In the above order, the Petitioner has been made liable for arrears of transmission charges determined the order shall be computed DIC-wise in accordance with the provisions of respective Tariff Regulations and Sharing Regulations. The liability of the Petitioner ascertained vide order dated 11.6.2022 in Petition no. 9/TT/2021 is as under:

“

COD of the transmission assets	Solar generation capacity (MW) commissioned	Date of commissioning of solar generation capacity	Liability of transmission charges
Asset-1			
Asset 1 29.4.2019	-	-	From 29.4.2019 to 2.5.2019: transmission charges proportionate to 500 MW out of 1500 MW of Asset-1 shall be borne by SUCRL.
	100 MW	3.5.2019	From 3.5.2019 to 8.7.2019: Transmission charges proportionate to 100 MW out of 1500 MW of Asset-1 shall be included in the common pool and balance 400 MW shall be borne by SUCRL
	100 MW	9.7.2019	From 9.7.2019 to 9.12.2019: transmission

			<i>charges proportionate to 200 MW out of 1500 MW in case of Asset-1 shall be included in the common pool while for 300 MW, it shall be borne by SUCRL.</i>
	100 MW	10.12.2019	<i>From 10.12.2019 to 14.2.2019: transmission charges proportionate to 300 MW out of 1500 MW in case of Asset-1 shall be included in the common pool while for 200 MW, it shall be borne by SUCRL.</i>
	100 MW	15.2.2020	<i>From 15.2.2020 to 27.2.2020: transmission charges proportionate to 400 MW out of 1500 MW in case of Asset1, shall be included in the common pool while for 100 MW, it shall be borne by SUCRL.</i>
	100 MW	28.2.2020	<i>From 28.2.2020, the transmission charges proportionate to 500 MW out of 1500 MW shall be included in Common pool.</i>
Asset 2			
<i>Asset 2 Achieved CoD on 4.5.2019</i>	100 MW	3.5.2019	<i>From 4.5.2019 to 8.7.2019: Transmission charges proportionate to 100 MW out of 500 MW of Asset-2 shall be included in the common pool and balance 400 MW shall be borne by SUCRL.</i>
	100 MW	9.7.2019	<i>From 9.7.2019 to 9.12.2019: transmission charges proportionate to 200 MW out of 500 MW in case of Asset-2 shall be included in the common pool while for 300 MW, it shall be borne by SUCRL.</i>
	100 MW	10.12.2019	<i>From 10.12.2019 to 14.2.2019: transmission charges proportionate to 300 MW out of 500 MW in case of Asset-2 shall be included in the common pool while for 200 MW, it shall be borne by SUCRL.</i>
	100 MW	15.2.2020	<i>From 15.2.2020 to 27.2.2020: transmission charges proportionate to 400 MW out of 500 MW in case of Asset-2, shall be</i>

			<i>included in the common pool while for 100 MW, it shall be borne by SUCRL.</i>
	100 MW	28.2.2020	<i>From 28.2.2020, the transmission charges proportionate to 500 MW of Asset-2 shall be included in Common pool.</i>
Asset 3			
Asset 3 :17.5.2019	100 MW	3.5.2019	<i>From 17.5.2019 to 8.7.2019: Transmission charges proportionate to 100 MW out of 1500 MW of Asset-3 shall be included in the common pool and balance 400 MW shall be borne by SUCRL.</i>
	100 MW	9.7.2019	<i>From 9.7.2019 to 9.12.2019: transmission charges proportionate to 200 MW out of 1500 MW in case of Asset-3 shall be included in the common pool while for 300 MW, it shall be borne by SUCRL.</i>
	100 MW	10.12.2019	<i>From 10.12.2019 to 14.2.2019: transmission charges proportionate to 300 MW out of 1500 MW in case of Asset-3 shall be included in the common pool while for 200 MW, it shall be borne by SUCRL.</i>
	100 MW	15.2.2020	<i>From 15.2.2020 to 27.2.2020: transmission charges proportionate to 400 MW out of 1500 MW in case of Asset-3, shall be included in the common pool while for 100 MW, it shall be borne by SUCRL</i>
	100 MW	28.2.2020	<i>From 28.2.2020, the transmission charges proportionate to 500 MW out of 1500 MW of Asset-3 shall be included in Common pool.</i>
Asset 4			
Asset 4			
Asse 4 1.6.2019	100 MW	3.5.2019	<i>From 1.6.2019 to 8.7.2019: Transmission charges proportionate to 100 MW out of 1500 MW of Asset-4 shall be included in the common pool and balance 400 MW shall be borne by</i>

			SUCRL.
	100 MW	9.7.2019	From 9.7.2019 to 9.12.2019: transmission charges proportionate to 200 out of 1500 MW in case of Asset-4 shall be included in the common pool while for 300 MW, it shall be borne by SUCRL.
	100 MW	10.12.2019	From 10.12.2019 to 14.2.2019: transmission charges proportionate to 300 MW out of 1500 MW in case of Asset-4 shall be included in the common pool while for 200 MW, it shall be borne by SUCRL.
	100 MW	15.2.2020	From 15.02.2020 to 27.02.2020: transmission charges proportionate to 400 MW out of 1500 MW in case of Asset-4, shall be included in the common pool while for 100 MW, it shall be borne by SUCRL
	100 MW	28.2.2020	From 28.2.2020, the transmission charges proportionate to 500 MW out of 1500 MW of Asset-4 shall be included in common pool
Asset 5			
Asset 5 7.8.2019	200 MW	3.5.2019 & 9.7.2019	From 7.8.2019 to 9.12.2019: transmission charges proportionate to 200 MW out of 500 MW in case of Asset-5 shall be included in the common pool while for 300 MW, it shall be borne by SUCRL
	100 MW	10.12.2019	From 10.12.2019 to 14.2.2019: transmission charges proportionate to 300 MW out of 500 MW in case of Asset-5 shall be included in the common pool while for 200 MW, it shall be borne by SUCRL
	100 MW	15.2.2020	From 15.2.2020 to 27.2.2020: transmission charges proportionate to 400 MW out of 500 MW in case of Asset5, shall be included in the common pool while for 100 MW, it shall be borne by SUCRL.

	100 MW	28.2.2020	<i>From 28.2.2020, the transmission charges proportionate to 500 MW of Asset-5 shall be included in common pool.</i>
--	--------	-----------	--

“

It can be seen that, we have determined the asset wise liabilities of payment of transmission charges as per Regulation 8(5) and Regulation 8(6) of the 2010 Sharing Regulations. From 28.2.2020, the transmission charges proportionate to 500 MW of ATS are being included in common pool.

34. In view of above discussions, we are of the view that the Petitioner has chosen to apply for connectivity or LTA, with all consequential liabilities. Statement of Reasons dated 15.5.2015 issued along with the 5th amendment to the 2009 Connectivity Regulations also clarifies that SPPD shall apply for connectivity or long term access and shall be liable for payment of transmission charges for delay in commissioning of generator. Accordingly, prayer (a) of the Petitioner i.e. Declare that the Petitioner has fulfilled its contractual obligations which has been confirmed by the Ministry of New and Renewable Energy vide its letter dated 15.4.2020 and no claim for transmission charges could be raised against the Petitioner for breach of contract, is rejected.

35. Petitioner has stated that it is an agent of generating station and cannot be levied charges being an agent. We observe that Petitioner applied for LTA in its capability as Solar power park developer. Nothing has been brought on record by the Petitioner viz' its agreement with generators to substantiate its claim providing that generating station should be made liable to pay transmission charges. When Petitioner has sought LTA, signed LTA and TSA, it is liable for all responsibilities and consequences arising under these Agreements. Accordingly prayer (d) of the

Petitioner seeking to make solar generator liable for transmission charges is rejected.

36. We further observe that the Appellate Tribunal vide its judgment in Appeal No. 69 of 2021 dated 21.12.2021, in the Appeal filed by Petitioner herein against Rajasthan Electricity Regulatory Commission stated as follows:

“7.1.3 We are clear in our mind that the present dispute cannot be resolved under the provisions of section 86(1)(f) which empowers the State Commission with the powers to adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration. Undisputedly, the Solar Power Park Developer (SPPD) does not fall either in the category of a Generator or a Licensee under the provisions of the Electricity Act, 2003. As per the “Guidelines for Development of Solar Parks”, the SPPD is entrusted with the development of the transmission network within the solar park as a captive / dedicated transmission system of the solar project developers of the park and therefore, is not a transmission Licensee.

7.1.4 Government of India, Ministry of New & Renewable Energy has specifically brought out with the “Guidelines for Development of Solar Parks ”for smooth, efficient, cost effective and time bound development of the Solar Power Development in the Country. Further, to resolve the dispute between the SPPD and the SPD has incorporated the provision therein as “The SPPD may enter into an Implementation Agreement with the Solar Project Developers (SPDs) clearly indicating terms and conditions (suggested draft enclosed at Annexure III).”

7.1.5 The Implementation Agreement (the Implementation & Support Agreement) signed between the Parties i.e., the SPPD (the Appellant) and the SPD (the Respondent) as mentioned above provided the procedure for the Dispute Resolution as:

Article 20: Dispute Resolution and Arbitration

20.1 In the event of a dispute between the Parties arising out of or in connection with this Agreement, the Parties shall mutually discuss and endeavour to amicably resolve such dispute within 30 (thirty) days.

20.2 If the Parties are unable to resolve any dispute, controversy or claim relating to or arising under this Agreement, as stated above, the same shall be referred to SECI for resolution of the dispute, SECI upon hearing the Parties shall provide its decision within 30 (thirty) days from the date the dispute was referred to SECI. In the event any Party is aggrieved by the decision of SECI, such aggrieved party shall have the right to refer the matter to arbitration.

20.3 Disputes referred to arbitration shall be conducted by a panel consisting of three (3) arbitrators (“Arbitration Tribunal”). The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015.”

7.1.6 The State Commission has failed to bear in mind that the dispute brought before the State Commission is not covered under the provision of section 86 (1)(f) and considering it, Ministry of New & Renewable Energy has notified the said Guidelines for resolving the dispute between the SPPD and the SPD through

arbitration under the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015.

7.1.7 We hold, on the given facts, that Government of India with a conscious decision has issued these guidelines and vested the dispute resolution powers under the Arbitration and Conciliation Act

37. As per above order, APTEL concluded that for any dispute between SPPD and SPD, should be strictly as per Implementation Agreement entered between them. Accordingly, we direct that for any dispute between Petitioner and generating station, the Petitioner may seek compensation from generating station in terms of those agreements.

Issue No. 2: Whether any direction is required to be issued for reimbursement of the costs incurred in extension of validity of Bank Guarantee by the Petitioner? Whether any direction is required for Powergrid not to demand opening of Letter of Credit towards payment security mechanism from the Petitioner and to withdraw its default notice dated 19.12.2019 and to injunct Power Grid from taking any action under clause 16.4.4 of the Transmission Service Agreement?

38. The Petitioner has prayed for direction to Power Grid to immediately release the Bank Guarantee of 2x12.5 crore. The Petitioner in its I.A No. 76/I.A/2021 has prayed to reimburse the BG extension charges to the Petitioner for the period beyond June 2020 till September 2021 and BG extension charges as may be applicable for any future period. Petitioner has contended that BG extension was not necessary 6 months post LTA operationalization on 28.12.2019.

39. Petitioner has stated the commissioning detail of projects as follows:

Sr. No	MW	Company	Status of Commissioning of generation projects
1.	100	SBEFPL	Commissioned on 3.5.2019
2.	100	SBEFPL	Commissioned on 7.7.2019
3.	100	CSPBPL	Commissioned on 10.12.2019
4.	100	CSPBPL	Commissioned 70 MW on 3.1.2020 and 30 MW on 15.2.2020
5.	100	CSPBPL	Commissioned 70 MW on 16.1.2020 and 30 MW on 28.2.2020

40. We have considered the submissions of Petitioner. The LTA Agreement between Petitioner and PGCIL provides as follows:

- c) **the bank guarantee would be initially kept valid for a period of six months after the expected date of commissioning schedule of solar generating station and dedicated transmission system or actual date of commissioning by 'LTC' whichever is later and the same is required to be extended from time to time until entire quantum of LTA becomes operational and due payment security mechanism are established by the 'LTC'. However bank guaranty shall be initially valid upto 30th June, 2018 as mentioned at Attachment-III.**

As per above the bank guarantee was to be extended till entire quantum of LTA becomes operational and due payment security mechanism is established by the LTC. In the instant case, we observe that entire LTA is operational since 28.12.2019, however, the Petitioner did not open the payment security mechanism (LC) as sought by Powergrid. There is nothing on record to show that Petitioner has established the said Payment Security mechanism subsequently. Hence, we hold that non release of Bank Guarantee by PGCIL was in order and BG extension charges cannot be levied on PGCIL for non action by the Petitioner.

41. We have already concluded in Issue No.1 about the commercial liabilities of Petitioner vis a vis delay in COD of generating stations. As on date, the entire capacity of LTA is operational and full 500 MW generating stations have declared COD. Hence, the Bank Guarantee of 2 x Rs. 12.5 crore is directed to be released subject to payment of transmission charges liability as arrived at by PGCIL/ CTUIL pursuant to our Order dated 9/TT/2021. Alternatively, the transmission charges may be deducted by PGCIL/ CTUIL from the Bank Guarantees (2 x Rs. 12.5 crore) and the remaining Bank Guarantees be released. One of the above two options may be exercised as mutually agreed between the Petitioner and PGCIL/ CTUIL.

42. Further since the entire capacity of generation has declared COD which is covered under waiver of inter-state transmission charges, there shall be no requirement for opening of Letter of Credit towards payment security mechanism. The default notice dated 19.12.2019 and the prayer of Petitioner to injunct Power Grid from taking any action under clause 16.4.4 of the Transmission Service Agreement, shall be subject to payment of transmission charges by the Petitioner as directed vide our Order dated 11.6.2022 in Petition No. 9/TT/2021 and as directed in Para 41 above.

Issue No. 3: Whether Power to Relax may be invoked to grant relief to the Petitioner?

43. The Petitioner has prayed for exercising Power to Relax the provision of Regulation 3(1)(iii) of Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010.

44. Respondent PGCIL has submitted that in view of the settled position as regards the liability of the SPPD to bear the transmission charges liability for the delayed commissioned capacity within its solar power park, the Petitioner's plea for relaxing the provisions of the 1st Amendment to the Regulatory Approval Regulations is not tenable. The power to relax has been envisaged under Regulation 8 of the Regulatory Approval Regulations with respect to an "aggrieved person"; however, when the liabilities have been fastened by operation of law, no question of a person being "aggrieved" by them can at all arise. As such, the power to relax is not available for its invocation or exercise so as to permit the Petitioner not to discharge its liability to pay transmission charges for the 300 MW capacity commissioned in its park with delay.

45. We have considered submissions of Petitioner and Respondents. Regulation 3 (1) (iii) of Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010 provides as follows:

“(iii) ISTS Scheme proposed by CTU, for which the Central Government authorised Solar Power Park Developer has sought long term access, and for which consultation with CEA and beneficiaries wherever identified has been held for setting up the ISTS scheme and the Solar Power Park Developer undertakes to bear all liabilities on behalf of the solar power generators to be set up in the Solar Park.

The Petitioner has prayed for the exercise of Power to Relax to exempt it to bear all liabilities on behalf of the solar power generators to be set up in the solar park

46. We observed that it is a well settled position of law that the power to relax cannot be exercised in a manner to make a statutory provision redundant. Further, exercise of discretion must not be arbitrary and must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case. We are of the view that the Petitioner has not placed on record sufficient grounds for enabling the Commission to exercise ‘Power to Relax’ in its favour. The ‘Power to Relax’ cannot be exercised to exempt anyone from their inabilities and obligations. Hence Prayer (g) of petitioner seeking to invoke Power to relax is rejected.

Issue No. 4: Whether Power Grid is required to pay suitable penalty for the delay in commissioning of the Bhadla 765 KV system as per approved LTA for 7 (seven) months?

47. The Petitioner has prayed for direction to PowerGrid to pay suitable penalty for the delay in commissioning of the Bhadla 765 KV system as per approved LTA by 7 (seven) months. Petitioner has stated that it developed the 1000 MW solar park

and completed the same in March, 2019, that is 7 (seven) months before the commissioning of the Bhadla-Bikaner 765 KV D/C line by PG.

48. We observe that the LTA Agreement between Petitioner and PGCIL has no clause pertaining to liability of PGCIL in case of delay of transmission system.

49. We also observe that LTA for Petitioner was made operational from 27.10.2019 on commissioning of entire required transmission system. We observe that generating station for 200 MW of SBEFPL was commissioned prior to LTA operationalization date. However the petitioner or the SBEFPL have not filed anything on record to prove that it was not able to evacuate its power or that no alternate arrangement was made by PGCIL to evacuate its power. Accordingly the prayer of petitioner seeking payment of charges by PGCIL is rejected.

50. Accordingly, Petition No. 583/MP/2020, I.A's No. 68 & 76/IA/2021 are disposed of in terms of the above discussions and findings.

**Sd/
(P. K. Singh)
Member**

**Sd/
(Arun Goyal)
Member**

**Sd/
(I. S. Jha)
Member**