

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**Appeal No. 116 of 2023
&
Appeal No. 177 of 2023**

Dated: 24.06.2025

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member**

Appeal No. 116 of 2023

In the matter of:

M/s Saurya Urja Company of Rajasthan Ltd.
(Formerly known as Saurya Urja Private Ltd.)
Through the Sr. Vice President,
R7-A, 3rd Floor Crystal Palm Mall, Sahkar Circle,
Patel Marg, Jaipur,
Rajasthan – 302004.

...Appellant(s)

Vs.

1. Central Electricity Regulatory Commission
Through its Secretary
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.

2. Powergrid Corporation of India Limited
Through its Managing Director
Saudamini, Plot No.-2,
Sector-29,
Gurgaon – 122 001 (Haryana)

...Respondent(s)

Counsel for the Appellant(s) : Mr. Arijit Maitra

Counsel for the Respondent(s) : Mr. Anand K. Ganesan,

Ms. Swapna Seshadri
Ms. Neha Garg for R-2

Appeal No.177 of 2023

In the matter of:

M/s Saurya Urja Company of Rajasthan Ltd.
(Formerly known as Saurya Urja Private Ltd.)
Through the Sr. Vice President,
R7-A, 3rd Floor Crystal Palm Mall, Sahkar Circle,
Patel Marg, Jaipur,
Rajasthan – 302004.

...Appellant(s)

Vs.

1. Central Electricity Regulatory Commission
Through its Secretary
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.
2. Powergrid Corporation of India Limited
Through its Managing Director
Saudamini, Plot No.-2,
Sector-29,
Gurgaon – 122 001 (Haryana)
3. Solar Energy Corporation of India,
Through the Managing Director,
1st Floor, Prius Building,
D-3, District Centre, Saket,
New Delhi – 100 017.
4. Central Transmission Utility of India Limited,
Through the Managing Director,
Plot No.-2, Sector-29, Gurugram
Haryana – 122 001.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Arijit Maitra

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-2

Mr. M. G. Ramachandran, Sr. Adv.
Ms. Tanya Sareen
Ms. Srishti Khindaria
Ms. Surbhi Kapoor
Mr. Aneesh Bajaj for R-3

Ms. Suparna Srivastava for R-4

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The Appeal No. 116 of 2023 and 177 of 2023 have been filed by the Appellant, i.e., M/s Saurya Urja Company of Rajasthan Ltd. (in short "SUCRL"). The Appellant is challenging the Orders (in short "Impugned Order") in Petition No.9/TT/2021 dated 11.06.2022 in Appeal No. 116 of 2023 and Case No.583/MP/2020 dated 29.08.2022 in Appeal No.177 of 2023 passed by Central Electricity Regulatory Commission (in short "Central Commission" or "CERC").

Description of Parties

2. In both the Appeals, M/s. Saurya Urja Company of Rajasthan Ltd. is the Appellant. The Appellant had developed a 1000 MW solar park in Village Bhadla, Tehsil Bap, District Jodhpur, Rajasthan in accordance with the applicable permissions, approvals, and legal and regulatory provisions promoted by MNRE,

inter alia, the Appellant is a company (a JV company of Govt. of Rajasthan & IL&FS Energy).

3. In both the appeals, Respondent No. 1 is the Central Electricity Regulatory Commission, established under section 76 of the Electricity Act, 2003, having been vested with the powers to resolve the dispute herein.

4. Respondent No.2, Power Grid Corporation of India Limited (in short “PGCIL” or “Power Grid”), is a deemed Inter-State Transmission Licensee.

5. In Appeal No.177 of 2023, Respondent No.3 is the Solar Energy Corporation of India (in short “SECI”), Nodal Agency designated by MNRE for the development of renewable energy sector in India and has executed power purchase agreements (“PPAs”) with the solar generating stations set up in the solar park.

6. In Appeal No.177 of 2023, Respondent No.4 is Central Transmission Utility of India Limited (in short “CTUIL” or “CTU”) and was mandated to undertake functions under Section 38 (1) of the Electricity Act, 2003 for transmission of power.

7. It is important to note here that the Solar Power Generators arrayed initially by the Appellant have been deleted from the Memo of Parties on the request of the Appellant only. The relevant extract of the Order passed by this Tribunal is quoted as under:

“APL No. 116 OF 2023 & IA No. 2275 OF 2023
APL No. 177 OF 2023 & IA No. 2276 OF 2023

Dated: 9th November, 2023

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson

Hon`ble Ms. Seema Gupta, Technical Member(Electricity)

ORDER

IA Nos. 2275 of 2023 & 2276 of 2023

(for deletion)

The Appellant is aggrieved by the impugned order passed by the Central Electricity Regulatory Commission holding them liable to pay transmission charges, and leaving it open to them to recover the amounts, so paid by them, from the Solar Power Generators.

Mr. Arijit Maitra, Learned Counsel for the Appellant, submits that the Appellant would confine its submission in these appeals only to their claim of not being liable to pay transmission charges; and any grievance, which they may have *vis-à-vis* the Solar Power Generators, would be resolved through the process of Dispute Resolution as stipulated in their agreement; and no claim against the Solar Power Generators would be made in the present appeal.

Since it is submitted on behalf of the Appellant that the limited issue to be examined in these appeals is only regarding the Appellant’s liability to pay transmission charges and nothing else, we permit the Appellant to delete the 3rd Respondent from the array of Respondents in Appeal No. 116 of 2023 and the 4th and 5th

Respondents in Appeal No. 177 of 2023. The IAs are, accordingly, disposed of.

The amended memo of parties shall be filed within two weeks.”

8. Accordingly, the Solar Power Generators were deleted from the contesting parties.

Factual Matrix of the Case (Appeal No.116 of 2023)

9. The Ministry of New & Renewable Energy, by its letter dated 07.10.2015, designated the Appellant as the Solar Power Park Developer (in short “SPPD”) for Bhadla Phase III Solar Park (1000 MW) in Bhadla, Jodhpur, and directed it to undertake infrastructure activities, including connectivity arrangements for solar power generators.

10. Subsequently, PGCIL, by its letter dated 07.04.2016, granted the Appellant Long-Term Access (in short “LTA”) for transferring 500 MW power to the Northern Region. Further, by letter dated 09.04.2016, Power Grid granted connectivity for 500 MW at the 765/400/220 kV Bhadla pooling station, effective from the date of connectivity grant or the availability of the transmission system, whichever is later.

11. The implementation of transmission and evacuation facilities by CTU required the Appellant to apply for connectivity and LTA. Accordingly, the Solar Park executed LTA agreements with PGCIL on 10.05.2016 for power evacuation.

12. On 10.05.2016, the Appellant executed a long-term access agreement with

Power Grid, which required furnishing a bank guarantee of ₹25 crore (₹12.50 crores²).

13. The Appellant, a joint venture of the Government of Rajasthan and IL&FS Energy, developed a 1000 MW solar park in Village Bhadla, Tehsil Bap, District Jodhpur, Rajasthan, in compliance with regulatory approvals and MNRE guidelines. The first 500 MW was completed in September 2018, while the second 500 MW was commissioned on 26.03.2019 following the completion of a 220/33 kV pooling sub-station, a 9 km long 220 kV double circuit transmission line connecting the pooling sub-station to the CTU network at the 765/400/220 kV Bhadla sub-station, along with essential infrastructure such as access roads, water supply, cable trays, and street lighting. Metering was carried out at the 220 kV substation of Respondent No. 2.

14. On 29.05.2019, the Appellant informed Power Grid via email that it was unable to commission the system due to the non-readiness of the required interface system at PGCIL GSS in Bhadla and had undertaken a provisional arrangement due to the absence of the 220 kV termination bays and the FOTE system. The Appellant requested confirmation on the readiness of the 220 kV system and FOTE system to facilitate power evacuation of 200 MW by June 2019 and 500 MW by July 2019.

15. Subsequently, on 16.07.2019, Power Grid demanded a Letter of Credit from the Appellant as a payment security mechanism amounting to ₹3,793.55 lakh, based on POC rates from April to June 2019. By letter dated 25.09.2019, Solar Energy Corporation of India (SECI) revised the financial closure/conditions date to

27.04.2019 and extended the scheduled commissioning date to 18.02.2020. SECI later revised the financial closure date to 30.08.2019 and the commissioning date to 29.02.2020.

16. By letter dated 25.09.2019, SECI rescheduled the commissioning dates for 300 MW of Respondent No. 24, M/s Clean Solar Power (Bhadla) Pvt. Ltd., (as submitted by the Appellant in the List of Dates of the Appeal Paper Book) to 27.10.2019 for 100 MW and 29.02.2020 and 18.02.2020 for the remaining 200 MW. The Appellant, referring to the 12th JCC Meeting held on 26.09.2019, informed Power Grid that the 765 kV transmission line between Bhadla and Bikaner and the long-term access (LTA) for the full 500 MW were scheduled to be operational from 30.09.2019.

17. By letter dated 30.09.2019, the Appellant informed Power Grid regarding the two bank guarantees of ₹12.5 crore each (totaling ₹25 crore) submitted on 16.08.2016 for 500 MW (₹5 lakh per MW). It stated that the guarantees, valid until 31.12.2019, had been extended in accordance with Power Grid's requests due to changes in the commissioning schedule of the Bhadla pooling sub-station.

18. The Appellant confirmed that the 1000 MW solar park was completed in March 2019, with the pooling sub-station commissioned on 22-23.04.2019 and the transmission lines charged on 22.04.2019 (Line 1) and 26.08.2019 (Line 2). The internal evacuation system was fully ready by March 2019. Out of the 500 MW, 200 MW was commissioned by M/s Soft Bank Energy Four Pvt. Ltd. (100 MW on 03.05.2019 and another 100 MW on 09.07.2019), while work was ongoing for the remaining 300 MW under M/s Clean Solar Power (Bhadla) Pvt. Ltd.

19. On 25.10.2019, Power Grid rejected the Appellant's request for an extension of the LTA operationalization date for the remaining 300 MW, citing the absence of any such provision under CERC Regulations. It further stated that the transmission system for the 500 MW LTA was being operationalized through a separate communication with effect from 25.10.2019.

20. In another letter dated 25.10.2019, Power Grid informed the National Load Despatch Centre and the Northern Regional Load Transmission Centre that the relevant transmission elements had been commissioned and that the LTA granted to the Appellant for 500 MW (300 MW by M/s Clean Solar Power and 200 MW by M/s SB Energy Four) was being operationalized from 25.10.2019 as per CERC Connectivity Regulations, 2019, and applicable orders and amendments. Power Grid further stated that the Appellant would be liable for transmission charges in accordance with CERC Regulations and Orders.

21. By letter dated 19.12.2019, Power Grid demanded payment of transmission charges from the Appellant, asserting that the LTA for 500 MW was operationalized on 25.10.2019, while the Appellant had yet to commission 300 MW as per the LTA. Power Grid also noted the Appellant's failure to open the required Letter of Credit and issued a notice of default under Clause 16.2.1 of the Transmission Service Agreement and Clause 3.6 of the billing collection and disbursement procedure under the CERC Sharing Regulations. It directed the Appellant to open the Letter of Credit within 30 days, warning of further action under Clause 16.4.4 of the Agreement.

22. On 13.01.2020, the Appellant responded, informing Power Grid that it had requested SECI to extend the commissioning date for Bhadla Phase III solar park, which was under consideration. Regarding the Letter of Credit, the Appellant contended that since inter-state transmission charges are exempt for solar projects, there was no budget allocation for the same, and Board approval was required before issuance. It requested an extension until 31.03.2020.

23. Due to the lockdown, the Board meeting could not take place, leading the Appellant to request additional extensions until 30.06.2020 via letters dated 13.03.2020 and 13.04.2020. As a joint venture of the Rajasthan Government and IL&FS, the Appellant emphasized that decisions on financial commitments required Board resolutions.

24. On 30.03.2020, the Appellant submitted COD certificates issued by SECI for 500 MW (200 MW by SB Energy and 300 MW by CSPBPL) to seek a waiver of transmission charges and losses for utilizing the Inter-State transmission network.

25. On 15.04.2020, the Ministry of New & Renewable Energy clarified to the Appellant that the prescribed timeline applied to the completion of solar park infrastructure and not to the commissioning of individual solar plants within the park. It stated that if the infrastructure was completed by 05.02.2020, as per the Ministry's timeline, no extension for the development of Bhadla Phase III solar park would be necessary.

26. On 29.04.2020, the Appellant requested Power Grid to release the bank guarantee, asserting that, as per the operationalization order dated 25.10.2019,

the transmission elements required for the LTA of 500 MW had been commissioned and operationalized. Referring to Clause 1.0(c) of the LT Agreement, the Appellant argued that the bank guarantee was required to remain valid for six months beyond the expected or actual commissioning date, whichever was later.

27. Since six months had elapsed from the LTA operationalization date and the power evacuation system was fully operational, the Appellant sought the earliest release of the bank guarantee.

28. Subsequently, on 13.10.2020, the Appellant filed Petition No. 583/MP/2020 before the Commission, seeking, inter alia, a declaration that it had fulfilled its contractual obligations, as confirmed by the Ministry of New and Renewable Energy on 15.04.2020. The Appellant sought directions against Power Grid to release the bank guarantee of ₹25 crore (₹12.5 crore x 2), refrain from demanding the opening of a Letter of Credit, withdraw the default notice dated 19.12.2019, and be restrained from taking any action under Clause 16.4.4 of the Transmission Service Agreement.

29. Additionally, the Appellant sought an order directing Solar Power Generator to bear transmission charges attributable to delays in commissioning and to relieve the Appellant from any such liability claimed by Power Grid.

30. Further, it requested that Power Grid be penalized for the seven-month delay in commissioning the Bhadla 765 kV system. The Appellant also sought an ex-parte ad interim order for specific reliefs and relaxation of Clause 3(1)(iii) regarding

the liability of the solar power park developer for obligations on behalf of solar power generators within the park. The Impugned Order in Petition No. 9/TT/2021 was reserved on 26.10.2021.

31. The Respondent Commission had reserved its order in Petition No. 583/MP/2020 as per the Record of Proceedings dated 12.04.2022.

32. However, without adjudicating the issues raised in that petition, it proceeded to pass the Impugned Order dated 11.06.2022 in Petition No. 9/TT/2021, holding the Appellant liable for transmission charges due to the mismatch between the Commercial Operation Date (COD) of the Central Transmission Utility (CTU) and that of the solar generator.

33. Thus, being aggrieved by the Impugned Order dated 11.06.2022 passed by the CERC in the Petition No. 9/TT/2021, the Appellant has preferred the present Appeal.

Factual Matrix of the Case (Appeal No.177 of 2023)

34. The Respondent Commission, in its Statement of Reasons dated 15.05.2015 concerning amendments to relevant CERC Regulations, clarified that a Solar Power Park Developer (SPPD) is a legal entity acting as an agent of generating companies, although not explicitly defined in the Act. It further stated that under MNRE's scheme, SPPD is responsible for developing intra-park transmission systems and facilitating power evacuation through ISTS, regardless of the generator's PPA status.

35. Power Grid, by order dated 07.04.2016, granted the Appellant Long-Term Access (LTA) for 500 MW to the Northern Region, and by letter dated 09.04.2016, granted connectivity at the 765/400/220 kV Bhadla pooling station, effective from the availability of the transmission system or grant date, whichever was later.

36. Under applicable approvals and regulatory frameworks, the Appellant, a joint venture of the Government of Rajasthan and IL&FS Energy, developed the 1000 MW solar park at Bhadla, Rajasthan, with the first 500 MW commissioned in September 2018.

37. The second phase of the Bhadla Solar Park (500 MW) was completed on 26.03.2019, following the development of a 220/33 kV pooling substation and a 9 km, 220 kV double circuit transmission line connecting the park to the CTU's 765/400/220 kV Bhadla substation, along with associated infrastructure.

38. Asset-1, comprising 400 kV Bhadla PG and Bhadla RVPN circuits, became operational on 29.04.2019. Circuit-2 of Saurya Urja was initially energized using an Emergency Response System due to the non-availability of bays 206 and 207, and therefore, transmission charges for Asset-1 were not payable. Circuit-2 began feeding 100 MW from 03.05.2019 and 200 MW from 13.07.2019. Permanent connectivity of both circuits to bays 206 and 207 was established on 26.07.2019 after dismantling the ERS.

39. However, RVPN was unable to accommodate the remaining 300 MW due to technical constraints in its 400 kV GSS, thereby preventing full connectivity until

the 765 kV GSS became operational. On 29.05.2019, the Appellant informed Power Grid that the interface systems at the Bhadla substation were not ready and requested confirmation of readiness for 200 MW evacuation by June 2019 and 500 MW by July 2019.

40. Subsequently, by letter dated 16.07.2019, Power Grid demanded a Letter of Credit worth ₹3793.55 lakh from the Appellant as payment security, based on POC rates applicable from April to June 2019. By letter dated 25.09.2019, Solar Energy Corporation of India (SECI) revised the scheduled dates for financial closure and commissioning for the solar generators. The financial closure was extended to 30.08.2019, and commissioning to 29.02.2020. For Respondent No. 4, Clean Solar Power (Bhadla) Pvt. Ltd., commissioning for 300 MW was revised to 27.10.2019 (100 MW) and 29.02.2020/18.02.2020 (remaining 200 MW).

41. During the 12th JCC meeting held on 26.09.2019, it was confirmed that the 765 kV line between Bhadla and Bikaner and LTA for the entire 500 MW would be operational from 30.09.2019. The Appellant emphasized to Power Grid that it had completed its evacuation infrastructure well before the commissioning of the Bhadla pooling station. It contended that delays in commissioning of the generating stations were due to SECI's extensions granted at the generator's request and beyond the Appellant's control or knowledge.

42. Accordingly, the Appellant maintained that the operationalization of LTA for the remaining 300 MW should be aligned with SECI's revised CODs, and transmission charges should not be levied upon it in the interim.

43. On 30.09.2019, the Appellant informed Power Grid that the bank guarantees amounting to ₹25 crore (2 × ₹12.5 crore), submitted on 16.08.2016 for 500 MW capacity, remained valid until 31.12.2019 and had been consistently extended due to commissioning delays of the Power Grid pooling substation.

44. The Appellant reiterated that its 1000 MW solar park was completed in March 2019, with the pooling substation commissioned on 22–23.04.2019, Line-1 charged on 22.04.2019, and Line-2 on 26.08.2019. Internal evacuation infrastructure was fully ready since March 2019, and 200 MW had been commissioned by Soft Bank Energy (100 MW each on 03.05.2019 and 09.07.2019), while the remaining 300 MW by Clean Solar Power was under development.

45. On 25.10.2019, Power Grid denied the Appellant's request to extend the LTA operationalization date for the remaining 300 MW, citing a lack of provision for such extension under the CERC Regulations. It communicated that LTA for the full 500 MW was deemed operational from 25.10.2019. This was also notified to the National and Northern Regional Load Despatch Centres, with a clarification that the Appellant would be liable to pay transmission charges as per CERC norms.

46. Subsequently, on 19.12.2019, Power Grid raised a demand for transmission charges from 25.10.2019, stating that although transmission infrastructure was in place, the Appellant had not commissioned the remaining 300 MW nor opened the required Letter of Credit (LC). Power Grid issued a notice under clause 16.2.1 of the Transmission Service Agreement and clause 3.6 of the CERC billing

regulations, warning of potential enforcement under clause 16.4.4 if the LC was not established within 30 days.

47. In response, on 13.01.2020, the Appellant conveyed that it had sought an extension of the commissioning schedule from SECI. Regarding the LC, the Appellant argued that as inter-State transmission charges for solar projects were exempt, there was no budgetary provision, and Board approval was required. Due to the COVID-19 lockdown, Board meetings could not be convened.

48. Accordingly, through further letters dated 13.03.2020 and 13.04.2020, the Appellant sought an extension until 30.06.2020 to open the LC, citing its governance structure as a joint venture of the Rajasthan Government and IL&FS, requiring formal Board resolutions for such commitments.

49. On 30.03.2020, the Appellant submitted the Commercial Operation Date (COD) certificates for 500 MW (200 MW by the generator and 300 MW by CSPBPL) to seek waiver of transmission charges and losses for usage of the inter-State transmission system. Subsequently, on 15.04.2020, the Ministry of New & Renewable Energy clarified that its prescribed timeline pertains to the completion of solar park infrastructure and not the commissioning of individual generating units.

50. Therefore, since Bhadla Phase III solar park infrastructure was completed on or before 05.02.2020, no extension was needed. On 29.04.2020, the Appellant requested Power Grid to release its bank guarantees, citing clause 1.0(c) of the Long-Term Access (LTA) Agreement, which mandates the guarantees to remain

valid only up to six months beyond the commissioning date or actual commissioning, whichever is later. As LTA had been operationalized from 25.10.2019 and six months had elapsed, with the full evacuation system in place, the Appellant argued for the release of the guarantees.

51. Thereafter, on 13.10.2020, the Appellant filed Petition No. 583/MP/2020 seeking multiple reliefs, including:

- A declaration that it fulfilled its contractual obligations as confirmed by MNRE (15.04.2020), and that no transmission charges were payable due to alleged breach.
- Release of the ₹25 crore Bank Guarantee.
- A direction restraining Power Grid from seeking a Letter of Credit or enforcing its 19.12.2019 default notice under clause 16.4.4 of the Transmission Service Agreement.
- An order directing Respondent No. 3, the solar generator, to bear transmission charges attributable to commissioning delays.
- Imposition of penalty on Power Grid for a 7-month delay in commissioning the 765 kV system under the approved LTA.
- Interim relief and a relaxation of clause 3(1)(iii) to exempt the Solar Power Park Developer from blanket liability for the generators' delays.

52. The final order in related Petition No. 9/TT/2021 was reserved on 26.10.2021.

53. The Central Electricity Regulatory Commission (CERC) reserved its decision

in Petition No. 583/MP/2020 on 12.04.2022. However, before addressing the substantive issues raised in that petition, the Commission, through an order dated 11.06.2022, held the Appellant liable to pay transmission charges due to the mismatch in the Commercial Operation Date (COD) of the Central Transmission Utility (CTU) system and that of the solar power generator.

54. Subsequently, on 29.08.2022, the Commission issued the Impugned Order, which, according to the Appellant, is patently inconsistent with Sections 38 and 40 of the Electricity Act, 2003. The Appellant argues that it has been improperly categorized as liable for transmission charges despite not being a transmission licensee, generating company, or consumer, as per the statutory framework.

55. Thus, being aggrieved by the Impugned Order dated 29.08.2022 passed by the CERC in the Case No. 583/MP/2020, the Appellant has preferred the present Appeal.

Analysis and Conclusion

56. It is important to note the submissions of the Appellant before Court-1 that their only grievance is the decision of the CERC in holding them liable to pay transmission charges, as noted in the daily Order dated 09.11.2023 of this Tribunal, during the hearing in **IA Nos. 2275 of 2023 & 2276 of 2023**, in Appeal Nos. 116 of 2023 and 177 of 2023, respectively. The relevant extract, as noted earlier, is again repeated for the sake of clarity:

“The Appellant is aggrieved by the impugned order passed by the Central Electricity Regulatory Commission holding them liable to pay transmission charges, -----.”

57. It is also the submission of the Appellant before this Tribunal during the hearing on 09.11.2023 that ***“the Appellant would confine its submission in these appeals only to their claim of not being liable to pay transmission charges; and any grievance, which they may have vis-à-vis the Solar Power Generators, would be resolved through the process of Dispute Resolution as stipulated in their agreement; and no claim against the Solar Power Generators would be made in the present appeal.”***

58. During the aforesaid hearing, it is also held that:

“Since it is submitted on behalf of the Appellant that the limited issue to be examined in these appeals is only regarding the Appellant’s liability to pay transmission charges and nothing else, we permit the Appellant to delete the 3rd Respondent from the array of Respondents in Appeal No. 116 of 2023 and the 4th and 5th Respondents in Appeal No. 177 of 2023. The IAs are, accordingly, disposed of.”

59. Therefore, the only issue before us is whether the Appellant is liable to pay transmission charges as claimed by PGCIL.

60. In Appeal No. 116 of 2023, SUCRL challenges the CERC’s determination of tariff for the 2019–24 period for the “Transmission System for Solar Power Park at

Bhadla” under Section 79 of the Electricity Act, 2003 (in short “Act”), whereby CERC held SUCRL liable to pay the full transmission charges for 500 MW Long-Term Access (in short “LTA”) from the effective date of LTA, even though only a part of the generation capacity was commissioned.

61. In Appeal No. 177 of 2023, SUCRL challenges the CERC’s order in Petition No. 583/MP/2020 directing it to pay transmission charges attributable to the mismatch period (27.10.2019 to 29.02.2020) for the uncommissioned 300 MW out of 500 MW.

62. As seen from the various documents placed before us, the Ministry of New & Renewable Energy (“MNRE”) designated SUCRL as SPPD for the Bhadla Phase-III Solar Park (1,000 MW) by letters dated 02.06.2015 and 07.10.2015. As SPPD, SUCRL was responsible for land acquisition, site preparation, internal network, and obtaining connectivity and LTA for evacuation of power from aggregate capacity to the ISTS.

63. In furtherance of this role, SUCRL furnished an undertaking on 23.11.2015 to bear “***all liabilities related to connectivity/LTA in accordance with CERC Regulations/orders on behalf of the Solar Power Generators to be set up in the above Solar Park.***” This undertaking, SUCRL contends, was simply a pre-condition for the grant of Connectivity and LTA, without import of ongoing financial liability. The relevant extract of the undertaking given by SUCRL is quoted as under:

“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 the Solar power generators to be set up in the above Solar park.**”

64. From the above, it is beyond any doubt that all the liabilities falling upon the Solar Power Generators in accordance with CERC Regulations or Orders shall be borne by the SUCRL.

65. Even if it is assumed that the SUCRL is an agent of the Solar Power Generators, it cannot now be argued that it has no liability for the payment of charges on behalf of the Solar Power Generators, once it has taken the responsibility under the contractual agreements signed by it to the payees (PGCIL/CTUIL), inter alia, under the regulatory provisions for such charges.

66. Undoubtedly, the transmission charges to be paid by the Generators of the Solar Park fall under the Regulatory framework notified by CERC; therefore, in case the same is not paid by the Generators, the same shall be borne by the SUCRL.

67. SUCRL applied to the CTUIL (PGCIL before bifurcation into PGCIL and CTUIL) for Connectivity (500 MW) on 30.11.2015, and for LTA (500 MW) on 24.09.2015 and 16.10.2015. PGCIL's intimation dated 07.04.2016 granted Connectivity and LTA, subject to SUCRL executing:

- A Connection Agreement;
- LTA Agreement dated 10.05.2016; and
- Transmission Service Agreement (“TSA”).

68. Under the LTA Agreement, SUCRL acknowledged its LTA grantee status and agreed to furnish Bank Guarantees and a Letter of Credit. Clause Q expressly recorded the 23.11.2015 undertaking “**to bear all liabilities on behalf of solar power generators ... as communicated vide Undertaking dated 23.11.2015.**”

The TSA provided for the payment of PoC-based transmission charges by SUCRL. Clause Q of the LTA Agreement is extracted below:

*“Q. AND WHEREAS to meet the provisions in the CERC (Grant of Regulatory Approval for execution of Inter-state Transmission Scheme to Central Transmission Utility) (First Amendment) Regulations, 2015; **SUCRL hereby undertakes to bear all liabilities on behalf of solar power generators to be set up in the Solar Park as communicated vide the an ‘undertaking’ dated 23.11.2015 placed as Attachment IV.**”*

69. The transmission assets required for evacuation comprised:

- (i) internal 400/220 kV ICTs and line bays commissioned during April–September 2019;
- (ii) 765/400 kV ICTs and 765 kV D/C lines commissioned on 17.10.2019.

70. Meanwhile, two SPDs in the park, SB Energy Four Pvt. Ltd. (200 MW) and Clean Solar Power (Bhadla) Pvt. Ltd. (300 MW), commissioned 200 MW by July 2019, with the remaining 300 MW completed only on 27.10.2019 (100 MW) and 29.02.2020 (200 MW).

71. In Petition No. 9/TT/2021, PGCIL sought tariff determination for these ISTS assets, against which, CERC's order dated 11.06.2022 held SUCRL liable for transmission charges of 500 MW from 27.10.2019 (LTA effective date), even though generation was only partial.

72. In Petition No. 583/MP/2020, SUCRL sought a declaration that it was not liable for charges of the 300 MW delay, arguing SPDs alone should bear them; CERC's order dated 29.08.2022 rejected this and directed SUCRL to pay mismatch charges.

73. The submissions of the Appellant and the Respondents were taken on record and noted in brief hereafter.

Appellant's Contentions

74. SUCRL submits that as SPPD, it is neither a "licensee" nor a "generating company" nor a "consumer" under Sections 38(2)(d) and 40(c) of the Act, and therefore outside classes liable for "use" based transmission charges. It relies on this Tribunal's Saurya Urja Company of Rajasthan Ltd. Vs. RERC & Ors. (Appeal No. 69/2021) holding SPPD not a DIC for purposes of disputes.

75. The reliance of the Appellant on the judgment rendered by this Tribunal in **Saurya Urja Company of Rajasthan Ltd. Vs. RERC & Ors. (Appeal No. 69/2021)** is misconceived as the regulatory provisions were different in that case from the present case, and no undertaking was given by the SPPD therein.

76. The Appellant also submitted that the binding principle in the judgment, as per the “Inversion test,” is crucial to the case's outcome. If the proposition extracted from the judgment is removed, the conclusion of the Tribunal in Appeal No. 69/2021 would be altered. The case concluded that the State Commission lacks jurisdiction under Section 79(1)(f) to resolve disputes between a Solar Park and a Solar Generator. The principle is supported by the case *State of Gujarat v. Utility Users Welfare Assn.* (2018) 6 SCC 21, paras 113-114.

77. We find the above arguments devoid of any merit as the **Saurya Urja Company of Rajasthan Ltd. Vs. RERC & Ors.** was covered by the provision of section 86 of the Act and not by section 79(f) of the Act, however, the present case falls under section 79 of the Act, having a different provision as compare to section 86 of the Act.

78. It contends that the 23.11.2015 undertaking was made to comply with statutory formality; no consideration passed, and it suffers under Section 25, Indian Contract Act, thus void as a binding commitment.

79. SUCRL characterizes itself as an “agent” of SPDs. Under Contract Act sections 182, 222, 223, it argues any primary liability runs from SPDs to CTU;

SUCRL's role is confined to facilitating access. It further cites private Implementation Agreements and Lease Deeds where SPDs indemnify SPPD for all transmission costs.

80. It asserts CERC's decisions are ultra vires as no regulation empowers CERC to levy mismatch charges on a non-DIC. It prays for allowing only SPDs to be levied, not SPPD.

Respondents' contentions

81. In response to the Appellant's contentions, both PGCIL (Respondent No. 2) and CTUIL (Respondent No. 4) have mounted a multi-pronged defence, grounded in the statutory framework, the Appellant's own undertakings and agreements, and established principles of public-law contract.

82. The Respondents highlight that the CERC's Fifth Amendment to the Connectivity Regulations, 2015, and the Third Amendment to the Sharing Regulations, 2015, were enacted precisely to bring Solar Power Park Developers ("SPPDs") into the ambit of long-term access liability. The Statement of Reasons issued by the Commission on 15.05.2015 makes clear:

"SPPD shall also be liable for payment of transmission charges for delay in commissioning of generator and relinquishment charges ... on the same line as the liability for payment by the thermal and hydro generating station in accordance with the ... Tariff Regulations."

83. This express provision confirms that, once an SPPD elects to seek connectivity/LTA on behalf of its constituent generators, it stands in the shoes of a “Designated ISTS Customer” and must bear delay-related charges. There is no carve-out or exception for “mere facilitators”, the legislative design is unambiguous.

84. PGCIL and CTUIL further point out that SUCRL did not passively await the regulatory amendments, but voluntarily executed binding public-law contracts that ratified its statutory obligations. In particular:

- LTA Agreement (10.05.2016): In Recital Q, SUCRL “undertakes to bear all liabilities on behalf of solar power generators ... as communicated vide the Undertaking dated 23.11.2015”.
- Transmission Service Agreement (10.05.2016): SUCRL agreed to pay PoC-based transmission charges and to furnish Letters of Credit as security.

85. By signing these instruments, SUCRL assumed direct, personal liability to PGCIL/CTUIL regardless of any back-to-back arrangements it may have had with individual generators. The Respondents underscore that agency or indemnity clauses in private SPD contracts cannot negate SUCRL’s primary obligations under its LTA/TSA, to which PGCIL and CTUIL are not parties.

86. CTUIL’s detailed JCC meeting minutes, reproduced in its submissions, reveal that SUCRL was repeatedly informed at the 6th, 12th, and subsequent Northern Region JCC meetings that any delay in generator commissioning would

attract transmission charges once the ISTS elements were commissioned.

87. SUCRL raised no contemporaneous challenge to this interpretation. By making no objections at the coordination stage, SUCRL implicitly acquiesced in the regime, which, the Respondents argue, bars it from adopting a contradictory stance at this appellate juncture.

88. The Respondents emphasize the equitable principle that one who accepts a statutory scheme's advantages must also bear its burdens. SUCRL obtained the benefit of a "plug-and-play" model, single-window land and connectivity approvals, coordinated system design, and priority scheduling, by expressly undertaking to shoulder the financial risk of any commissioning mismatch. Having reaped these facilitative advantages, SUCRL cannot repudiate its reciprocal obligation to pay transmission charges, especially where the regulatory scheme and its own agreements so clearly impose that duty.

89. Finally, PGCIL and CTUIL submit that CERC's limited power to "relax" regulations cannot be invoked to circumvent unambiguous obligations under the Sharing and Connectivity Regulations. There is no provision permitting the Commission to waive mismatch-period charges once LTA is operationalized. To do so, the Respondents warn, would undermine regulatory certainty and destabilize the ISTS cost-recovery mechanism, an outcome plainly at odds with the objectives of the Electricity Act and the Tariff Regulations.

Our Analysis

90. The only issue, as noted earlier, is whether the Appellant, SUCRL, in its capacity as a Solar Power Park Developer (SPPD), is liable to bear the inter-State transmission charges for the period during which there was a mismatch between the commissioning of the transmission infrastructure and the delayed commissioning of solar generating units situated within the Solar Park.

91. It is not in dispute that SUCRL has been appointed as a Solar Power Park Developer by the Ministry of New and Renewable Energy (MNRE) for the Bhadla Phase-III Solar Park. The MNRE scheme of 2014-15 and the accompanying guidelines clearly delineate the role of the SPPD as a centralized planning and implementation entity.

92. SUCRL was authorized to aggregate land, facilitate clearances, develop internal transmission infrastructure, and crucially, apply for connectivity and long-term access (LTA) on behalf of the individual Solar Power Developers (SPDs) who would subsequently develop generating stations within the park.

93. The CERC's regulatory amendments, most notably, the Fifth Amendment to the Connectivity Regulations, 2015, explicitly recognized the SPPD as an entity that may apply for LTA and Connectivity, but only based on an express undertaking that it would “***bear all liabilities on behalf of the solar power generators.***”

94. The above provision is specifically incorporated in the contractual agreements. **In fact, this legislative design is not incidental, but it is deliberate.** The very eligibility of an SPPD to apply for and operationalize

transmission access was made conditional upon its assuming liability. This recognition is not merely procedural; it imports substantial responsibility.

95. The Appellant's contention that it is merely an agent or facilitator, and thus beyond the reach of statutory liability, fails to account for this foundational shift.

96. Once the SPPD avails of statutory privileges under the Electricity Act, 2003, and the Regulations notified thereunder, it cannot disclaim the regulatory burdens that come with the role of an entity taking responsibility for access to ISTS, exemption from multiple generator applications, and streamlined coordination with PGCIL. Regulatory frameworks such as those under the Electricity Act, 2003, and associated CERC Regulations function on principles of mutuality, clarity, and enforceability. The moment the Appellant stepped into the shoes of a DIC (Designated ISTS Customer) under the Connectivity Regulations, it bore the correlative duty to pay transmission charges in accordance with the Sharing Regulations.

97. The Appellant furnished an undertaking on 23.11.2015, explicitly stating that it ***“undertakes to bear all liabilities related to Connectivity/LTA in accordance with CERC Regulations/orders on behalf of the solar power generators.”*** This undertaking was not extracted under duress or coercion, but given with open eyes after understanding the regulatory provisions. It was furnished voluntarily, and more importantly, in direct response to a statutory requirement embedded within the CERC’s amended regulatory architecture.

98. The submission that the undertaking is void under Section 25 of the Indian

Contract Act, 1872, for want of consideration, is misconceived. In public law contractual frameworks, consideration is not limited to pecuniary exchange but extends to benefits received in kind or through legal facilitation. In this case, SUCRL has drawn the power to apply for and secure connectivity for 500 MW of capacity, avoiding the regulatory complexity and delays that would otherwise arise if each generator were to apply independently. That facilitation itself constitutes a valid legal consideration.

99. Furthermore, SUCRL signed the LTA Agreement and Transmission Service Agreement (TSA) dated 10.05.2016, both of which reinforce and memorialize the undertaking of 2015. The LTA Agreement recites and binds the undertaking, and the TSA confirms SUCRL's responsibility to pay transmission charges under the Point of Connection (PoC) regime. These are not ceremonial instruments but contractually binding agreements with public law force. Their enforceability is unassailable.

100. The Appellant has argued that it does not “use” the transmission system in the sense envisaged under Section 38(2)(d) or Section 40(c) of the Electricity Act, 2003, and therefore cannot be liable for transmission charges. However, this argument disregards the fact that regulatory liability under the Sharing Regulations is not strictly contingent upon physical use but extends to entities whose contractual conduct triggers the operationalization of LTA capacity.

101. In fact, SUCRL has volunteered itself for the responsibility and liability on behalf of the Solar Power Generators who otherwise would have borne the liability.

102. Regulation 8(5) of the Sharing Regulations (as amended) makes it clear that when approved injection or withdrawal is not materializing, the DIC (here, the liability has been taken by SUCRL on behalf of DIC) is obligated to bear transmission charges nonetheless. The rationale is straightforward: once LTA is operationalized based on a grant, the corresponding transmission assets incur capital costs and must be serviced. Whether or not SUCRL transmitted electrons through the line, its actions initiated a capacity reservation in the grid, which justifies cost recovery.

103. Moreover, the Statement of Reasons dated 15.05.2015 issued by CERC unambiguously confirms that “SPPD shall also be liable for payment of transmission charges for delay in commissioning of generator... on the same lines as the liability of thermal and hydro generating stations.” The Appellant’s selective reliance on other parts of the Statement while ignoring this direct expression of legislative intent is untenable.

104. The Appellant places significant weight on the claim that it is merely an agent of the SPDs and that the principal, the generator, should bear the transmission charges. While the relationship between the Appellant and SPDs may be characterized as principal-agent for purposes of internal governance and indemnity, that arrangement does not alter the external, direct, and independent legal relationship between SUCRL and PGCIL/CTUIL.

105. Under Indian law, an agent who expressly undertakes an obligation in its own name or signs an agreement in a personal capacity becomes directly liable to the counterparty. In this case, SUCRL not only signed the TSA and LTA

Agreement in its own name, but also undertook to bear liability in terms of the prevailing CERC regulations. Even if, *arguendo*, SUCRL has a right to claim indemnity from the SPDs, that does not affect its primary liability to pay transmission charges under public law agreements with the CTU and the transmission licensee.

106. To argue otherwise would allow every SPPD to shield itself from transmission charges by merely invoking private contracts. That would defeat the regulatory intent and disrupt the financial viability of ISTS development, which relies on the certainty of cost recovery.

107. SUCRL, having chosen to participate in a statutory framework that provided centralized approvals, expedited connectivity, and system-level benefits under the MNRE solar scheme, cannot now approbate and reprobate. The doctrine of election applies squarely. A party that has enjoyed the benefit of a regulatory regime cannot turn around and deny the corresponding obligations when it is inconvenient to comply.

108. The Appellant has vaguely argued that CERC ought to have exercised its “power to relax” to waive or defer charges. However, such relaxation is only permissible where there exists ambiguity, hardship, or manifest injustice under specific facts. Here, the liability flows directly from the regulatory framework and the Appellant’s voluntary, informed conduct.

109. The plea for relaxation amounts to a request to nullify the obligations that SUCRL itself contracted into and is not tenable in equity or in law. To do so would

result in discriminating against similarly situated LTA holders who have fulfilled their obligations.

ORDER

For the foregoing reasons stated above, we are of the considered view that Appeal Nos. 116 of 2023 and 177 of 2023 are devoid of merit and are accordingly dismissed.

In light of the statutory scheme, regulatory amendments, Appellant's own binding undertakings, and the unambiguous terms of its LTA/TSA, we find the Appellant liable to pay inter-state transmission charges for the period of commissioning mismatch of the solar generators within its park.

Accordingly, the orders of the CERC dated 11.06.2022 (Petition 9/TT/2021) and 29.08.2022 (Petition 583/MP/2020) are hereby affirmed.

The Captioned Appeal and pending IAs, if any, are disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 24th DAY OF JUNE, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kks