

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APPEAL NO.50 OF 2024& IA No.212 OF 2024
APPEAL NO.51 OF 2024& IA No.214 OF 2024
APPEAL NO.160 OF 2024 & IA No.473 OF 2024
APPEAL NO.79 OF 2024 & IA Nos.320 OF 2024 & 572 OF 2024
APPEAL NO.82 OF 2024& IA No.334 OF 2024

Dated: 28.05.2024

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)

APPEAL NO.50 OF 2024 & IA No.212 OF 2024

In the matter of:

PROJECT NINE RENEWABLE POWER PRIVATE LIMITED

Through its Authorized Representative, Sumit Kumar,

S 2904, 29th Floor,

World Trade Centre,

Brigade Gateway,

#26/1, Dr. Rajkumar Road,

Rajajinagar Bangalore,

Karnataka-560055, India

... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,

36, Janpath Rd.,

Janpath, Connaught Place,

New Delhi – 110001

...Respondent No.1

2. EDEN RENEWABLE BERCY PRIVATE LIMITED

Through its Head Business Development,

Unit No.236 B & C, 1st Floor,

DLF South Court Saket,

New Delhi – 110017

...Respondent No.2

3. **CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED**
Through its Chief General Manager,
First Floor, Saudamini,
Plot No.2, Sector - 29
Near IFFCO Chowk Metro Station,
Gurgaon, Haryana- 122001 ...Respondent No.3
4. **SOLAR ENERGY CORPORATION OF INDIA LIMITED**
Through its General Manager,
6th Floor, Plate-B,
NBCC Office Block Tower-2,
East Kidwai Nagar,
New Delhi-110023 ...Respondent No.4
5. **TELANGANA STATE SOUTHERN POWER DISTRIBUTION COMPANY LIMITED**
Through its Director,
6-1-50, Mint Compound,
Hyderabad,
Telangana - 500063 ... Respondent No.5
6. **TELANGANA STATE NORTHERN POWER DISTRIBUTION COMPANY LIMITED**
Through its Chairman & Managing Director,
H.No. 2-5-31/2,
Corporate Office,
Vidyut Bhavan,
Nakkalahgutta,
Hanamkonda, Warangal,
Telangana – 506001.

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Shubham Arya
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Ravi Nair
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Anumeha Smiti for Res. 3

APPEAL NO.51 OF 2024 & IA No.214 OF 2024

In the matter of:

PROJECT NINE RENEWABLE POWER PRIVATE LIMITED

Through its Authorized Representative, Sumit Kumar,
S 2904, 29th Floor,
World Trade Centre,
Brigade Gateway,
#26/1, Dr. Rajkumar Road,
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Karnataka-560055, India

... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,
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...Respondent No.1

2. EDEN RENEWABLE PASSY PRIVATE LIMITED

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3. CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED,

Through its Chief General Manager,
First Floor, Saudamini,
Plot No.2, Sector-29,
Near IFFCO Chowk Metro Station,
Gurgaon, Haryana - 122001

...Respondent No.3

4. NHPC Limited,

Through its General Manager,
NHPC Office Complex,
Sector 33, Faridabad,

Haryana - 121003

...Respondent No.4

5. MADHYA PRADESH POWER MANAGEMENT COMPANY LIMITED

Through its Managing Director,
Block No.11, Shakti Bhawan,
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2

Poorva Saigal
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3

APPEAL NO.160 OF 2024 & IA No.473 OF 2024

In the matter of:

ACME CLEANTECH SOLUTIONS PRIVATE LIMITED,

Through its AVP, Regulatory,

Plot No.152, Sector 44,

Gurugram, Haryana - 122003

... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,

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2. EDEN RENEWABLE BERCY PVT. LTD.

Through its Managing Director,
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3. PROJECT NINE RENEWABLE POWER PVT LTD

Through its Managing Director,
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4. SOLAR ENERGY CORPORATION OF INDIA LTD.

Through its Managing Director,
6th Floor, Plate-B,
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New Delhi-110023

...Respondent No.4

5. TELANGANA STATE SOUTHERN POWER DISTRIBUTION CO. LTD.

Through its Chief Engineer,
6-1-50, Mint Compound,
Hyderabad,
Telangana - 500063

... Respondent No.5

6. TELANGANA STATE NORTHERN POWER DISTRIBUTION CO. LTD.

Through its Chief Engineer,
H.No. 2-5-31/2,
Corporate Office,
Vidyut Bhavan,
Nakkalahgutta,
Hanamkonda, Warangal,
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... Respondent No.6

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Poorva Saigal
Shubham Arya
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Ravi Nair
Reeha Singh
Anumeha Smiti
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APPEAL NO.79 OF 2024 & IA Nos.320 OF 2024 & 572 OF 2024

In the matter of:

CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED

Through its Executive Director,
Plot No.2, Sector 29,
Gurugram, Haryana- 122001

... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,
3rd and 4th Floor,
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36, Janpath,
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2. EDEN RENEWABLE BERCY PRIVATE LIMITED

Through its Managing Director,

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...Respondent No.2

3. PROJECT NINE RENEWABLE POWER PRIVATE LIMITED

Through its Managing Director,
S 2904, 29th Floor,
World Trade Centre,
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Karnataka-560055

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4. SOLAR ENERGY CORPORATION OF INDIA LIMITED

Through its Managing Director,
6th Floor, Plate-B,
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...Respondent No.4

5. TELANGANA STATE SOUTHERN POWER DISTRIBUTION COMPANY LIMITED

Through its Chief Engineer,
6-1-50, Mint Compound,
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Telangana - 500063

... Respondent No.5

6. TELANGANA STATE NORTHERN POWER DISTRIBUTION COMPANY LIMITED

Through its Chief Engineer,
H.No. 2-5-31/2,
Corporate Office,
Vidyut Bhavan,
Nakkalahgutta,
Hanamkonda, Warangal,
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... Respondent No.6

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APPEAL NO.82 OF 2024 & IA No.334 OF 2024

In the matter of:

CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED,

Through its Executive Director,

Plot No.2, Sector-29,

Gurugram, Haryana - 122001

... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,

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New Delhi – 110001

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2. EDEN RENEWABLE PASSY PRIVATE LIMITED

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3. NHPC Limited,

Through its Managing Director,

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Through its Managing Director,

Block No.11, Shakti Bhawan,

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5. PROJECT NINE RENEWABLE POWER PRIVATE LIMITED

Through its Managing Director,

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Aniket Prasoon
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Md. Aman Sheikh
Vinit Kumar
Prithu Chawla
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Archita Kashyap
Nishant Thakur
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JUDGMENT

PER HON'BLE SMT. SEEMA GUPTA, TECHNICAL MEMBER (ELECTRICITY)

1. All the above captioned appeals arise out of same impugned order of Central Electricity Regulatory Commission (“**CERC**”) the **Respondent No 1** and poses similar issues for determination by this Tribunal. Therefore, these appeals are disposed of by this common order. The Appeal Nos. 50 of 2024 & 51 of 2024 along with IA Nos 212 OF 2024 & 214 OF 2024 have been filed by Project Nine Renewable Power Private Ltd. (“**Appellant – PNRPPL**”). The Appeal Nos. 79 of 2024 & 82 of 2024 along with IA Nos 320 of 2024, 572 of 2024 & 334 of 2024 have been filed by Central Transmission Utility Ltd (**“Appellant -CTUIL”**). The Appeal No. 160 of 2024 along with IA No 473 of 2024 has been filed by ACME Cleantech Solutions Private Limited (**“Appellant -ACME ”**). All the appeals have been filed challenging Order dated 19.01.2024 (**“Impugned Order”**) passed by **CERC** in Petition Nos. 268/MP/2023 and 269/MP/2023 filed by Eden Renewable Bercy Pvt. Ltd (**“Eden Bercy”**) & Eden Renewables Passy Pvt Ltd (**“Eden Passy”**) respectively, collectively referred to as **“Eden Renewables”** *inter-alia*, seeking directions to be issued to the

Appellant- CTUIL for shifting of connectivity of their 300 MW Solar Power Project each from Fatehgarh-II Pooling Sub-Station (**'Fatehgarh-II PS'**) to Fatehgarh-III Pooling Sub-Station (**'Fatehgarh-III PS'**) or Bhadla II Pooling Sub-Station (**'Bhadla-II PS'**) on account of the situation faced by Eden Bercy & Eden Passy regarding the requirement of underground dedicated transmission line from its Solar Power Projects to Fatehgarh II PS.

2. The issue involved relates to the methodology and principles adopted by Appellant - CTUIL on the aspects of how the reallocation of bays in a substation, which has become available on account of surrender/revocation by Grantees to existing Grantees of other substations or new applicant for connectivity adopting vicinity/Complex approach.

3. By the Impugned order, the CERC, *inter-alia*, held as under

(i) *"We observe that CTU offers reallocation of bays based on a criteria adopted on a case to case basis. We observe that none of the criteria used by CTU is provided for in any of the regulations or by directions by this Commission, nor has it been put on the website of CTU transparently. As per the GNA Regulations, the bay is allocated with a grant of Connectivity, and the only criteria for priority in such cases is the date and time stamp of the application.*

(ii) *We express our serious concern for such process followed by CTU without specifying proper procedure in non discriminatory manner and deciding the criteria on a case to case basis in a non transparent manner. We direct CTU to stop the exercise of reallocation of bays with immediate effect, as per the case to case criteria, subject to our directions in Paragraph 47 of this Order."*

4. CERC in Para 45 of the impugned order has given direction to CTUIL as under,

"45. We observe, that CTU has issued a fresh grant of Connectivity to some entities as per the GNA Regulations and has offered "reallocation"

to some entities by way of meetings held on 20.6.2023 and 3.8.2023, which were already granted Connectivity at another substation. CTU has already carried out some reallocations across substations based on reallocation, meetings dated 20.6.2023 and 3.8.2023 or any subsequent reallocations meeting held for substations located in Rajasthan. We observe that based on reallocation meetings, CTU might have granted Connectivity to the generating stations at the reallocated substations, based on which a generating station might have submitted bank guarantee and have settled their further affairs. To make minimum perturbation in the reallocations already carried out, the following entities which were reallocated bays during reallocation meetings dated 20.6.2023 and 3.8.2023 or any subsequent reallocation meetings held for substations located in Rajasthan, shall not be perturbed under the reallocation exercise and shall continue to avail the connectivity at the reallocated substation:

- (a) entities to whom revised initial grant of Connectivity under Regulation 7 has been issued at the reallocated substation and the grantee has submitted the required Conn-BGs.*
- (b) entities to whom final grant of Connectivity has been issued under Regulation 9.1. of the GNA Regulations.*
- (c) Entities whose process of transition to GNA have been completed at the reallocated substation by way of issue of grant of deemed GNA at the reallocated substation....*

For all the cases, other than the ones covered in clauses (a) to (c) above, where Connectivity has not been crystallized shall be considered for the fresh reallocations based on the principles enunciated in the instant Order at Paragraph No. 47. As far as possible, the Connectivity granted to any fresh applicant under Regulation 7 or Regulation 9.1 of the GNA Regulations, as per the provisions of the GNA Regulations, shall not be disturbed. Only the reallocations carried out pursuant to minutes of meeting for reallocation meetings held on 20.6.2023 and 3.8.2023 or any subsequent reallocation meeting held for substations in Rajasthan shall be reconsidered in light of our observations. We direct CTU to carry out the above said exercise for the meetings held on 20.6.2023 and 3.8.2023 or any subsequent reallocation meeting held for substations in Rajasthan, within next 30 days of this order and to file the outcome within 45 days of date of issue of this Order.”

5. CERC, in Para 47 of the impugned order has issued Practice directions to Appellant-CTUIL for carrying out future reallocations in a transparent manner as per the following principles:

“(a) Any bay falling vacant due to surrender or revocation shall be transparently made available on the website of CTU. Any Connectivity grantee (Stage-II grantee under the Connectivity Regulations, 2009 or Connectivity grantee under the GNA Regulations) shall be eligible to request the said bay based on the date and time stamp of its original Connectivity application.

(b) Only the Connectivity grantees which have been granted Connectivity at any substation located within a State shall be eligible to place a request for reallocation to another substation within the same State,

(c) The option of reallocation shall be subject to agreeing to pay commercial liabilities pertaining to existing connectivity as per the Sharing Regulations 2020. Suppose, the bay falls vacant due to the shifting of the grantee (Grantee ‘X’) at another substation is allocated to another grantee (Grantee ‘Y’), where the start date of Connectivity of ‘Y’ is later than that of ‘X’, then the liability to pay the charges for the ATS/ bay shall remain with ‘X’ for such a mismatch period.

(d) The start date of connectivity of the Grantee ‘X’; which has been allowed to be reallocated, shall remain the same at the reallocated substation as that of the original substation and cannot be postponed pursuant to the reallocation exercise. However, the Grantee ‘X’ can seek an advancement of the start date, which shall be subject to the availability of transmission system.

The above principles have been enunciated so that exercise of reallocation, which is the need of the hour can be carried out in a transparent manner, until appropriate amendments to the regulations are issued after stakeholder consultation. This order is being issued in exercise of our regulatory power.”

FACTS OF THE CASE:

6. The Appellant- CTUIL is a Central Government Company, and is a wholly owned subsidiary of Power Grid Corporation of India Limited (**POWERGRID**). Appellant-CTUIL has been notified as the ‘Central

Transmission Utility ('CTU') by the Ministry of Power, Government of India in exercise of the powers conferred under 38(1) of the Electricity Act, 2003, to undertake and discharge all functions of CTU as specified in the said provision.

7. On 07.08.2009, the CERC notified the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium-Term Open Access in Inter State Transmission and Related Matters) Regulations, 2009 ('**Connectivity Regulations, 2009**') and Appellant- CTUIL was designated as nodal agency under the Connectivity Regulations, 2009. Regulation 8(2) of connectivity Regulations 2009 provides that on receipt of the application, the nodal agency shall, in consultation and through coordination with other agencies involved in inter-State transmission system to be used, including State Transmission Utility, if the State network is likely to be used, process the application and carry out the necessary interconnection study as specified in the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007."

8. Regulation 8(3) of the Connectivity Regulations, 2009 provides that, while granting connectivity, CTUIL shall specify the name of the substation or pooling station or switchyard where connectivity is to be granted. Regulation 8(8) provides that the dedicated transmission line from generating station of the applicant generating Company viz Renewable Power Park Developer and Renewable Energy Implementing Agency to the pooling station of the transmission licensee (including deemed transmission licensee) shall be developed, owned and operated by the applicant generating Company. The provision also required that in the ordinary course, CTUIL shall plan the system such that maximum length of dedicated transmission line does not exceed 100 km from switchyard of the applicant

till the nearest pooling substation of transmission licensee. In line with Regulation 27 of the Connectivity Regulations, 2009, Detailed Procedure, prepared by Appellant – CTUIL , was approved by CERC on 15.05.2018 (**Detailed Procedure, 2018**). On 20.02.2021, the CERC, notified the Revised Procedure for “Grant of connectivity to projects based on renewable sources to inter-state transmission system” (**Detailed Procedure, 2021**).

9. The Eden Passy & Eden Bercy had applied for connectivity under '**Connectivity Regulations, 2009**' and have been granted 300 MW Stage II connectivity each at Fatehgarh II PS at 220 KV on 05.11.2020 and 09.10.2020 and Transmission Agreement for Connectivity with CTUIL was executed in the year 2020.

10. On 19.04.2021, the Hon'ble Supreme Court passed an Order in Writ Petition (C) No. 838 of 2019 in the case of M.K. Ranjitsinh & Ors. v. Union of India & Ors.' (**GIB Order**) issuing certain directions for measures to be adopted, *inter alia*, towards existing and future over-head transmission lines in the priority and potential habitats of the Great Indian Bustard (**GIB**). According to this, Fatehgarh II PS came under Potential GIB area, meaning thereby that lines emanating from Fatehgarh II PS need to be laid underground including the dedicated transmission lines for generation projects of “Eden Renewables”.

11. The Respondents, namely Eden Passy and Eden Bercy, entered into Long Term Access Agreements (LTA) with CTUIL for the purpose of power evacuation from the generating station via Fatehgarh-II on 03.02.2021 and 14.09.2022 Respectively.

12. On 07.06.2022, CERC notified the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (**GNA Regulations**), which was made effective (in part) from 15.10.2022 and Detailed Procedure (**Detailed Procedure-GNA**) issued therein vide CERC order dated 14.10.2022.

13. Subsequent to notification of GNA Regulations, 2022 in parts on 15.10.2022, 05.04.2023 and 01.10.2023, *en masse* transition of existing grants of Connectivity and LTA under the Connectivity Regulations, 2009 was administered by Appellant - CTUIL under Regulation 37 of the GNA Regulations and out of more than 600 applications, 200 applications were processed for the State of Rajasthan alone for transitioning and/or for surrender of connectivity from the regime under Connectivity Regulations, 2009 to GNA Regulations, 2022.

14. On 20.06.2023, Meeting in regard to the Reallocation of Connectivity Bays at Fatehgarh-III, Bhadla-II & Bikaner-II was conducted by Appellant – CTUIL, after scrutiny as per the GNA transition options (opted/not opted), some of the applicants have surrendered the connectivity & LTA at Bhadla-II PS, Fatehgarh-II PS & Fatehgarh-III PS and same has become available. Further, St-II connectivity granted to M/s SOLTOWN (675MW) at Bikaner-II PS has been revoked by CTUIL on 05.04.2023 after which, 675MW margin is available for grant at Bikaner-II PS. The bays vacated at these substations post surrender/revocation may be allotted to other RE developers based on their application priority, consent for GNA Transition and willingness. Following options were exercised and decided with regard to reallocation of bays at Fatehgarh III PS and Bhadla II PS:

FATEHGARH -III**“Table 5 : Reallocation to Fatehgarh-III (SEC-2) from Fatehgarh-IV PS (Section-1)**

S.No	Applicant Name	LTA App.No.	LTA App. Date	LTA Quantum (MW)	Opted/Not opted for Reallocation
A	Grantees/Applicants with both St-II Connectivity & LTA at Fatehgarh-IV PS (Section-1)				
1	AMP Energy Green Pvt. Ltd.	1200003416	24-Aug-21	130	Not Opted
2.	ABC Renewable Energy Pvt. Ltd.	1200003531	20-Nov-21	380	Not Opted
3.	ReNew Dinkar Jyoti Private Limited	1200003879	20-Apr-22	100	Opted to 400 kV level at Fatehgarh-III PS (Section-2)
4.	Amp Energy Green Pvt. Ltd. (Under Process)	412100019	24-Jan-23	120	Not Opted
5	ABC RJ Land 01 Pvt. Ltd	1200003332	08-Jul-21	110	Not Opted
6	ReNew Solar (Shakti Three) Pvt Ltd.	1200003447	14-Sep-21	300	Opted to 400kV level at Fatehgarh-III PS (Sec-2) in sharing with ReNew Dinkar Jyoti
7	Khaba Renewable Energy Pvt. Ltd.	1200003502	28-Oct-21	250	Opted to 220kV level at Fatehgarh-III PS (Sec-2) **
8	ReNew Samir Shakti Private Limited	1200003504	29-Oct-21	100	Opted to 400kV level at Fatehgarh-III PS (Sec-2) in sharing with ReNew Dinkar Jyoti & ReNew Solar (Shakti Three)
9	ReNew Samir Shakti Private Limited	1200003514	07-Nov-21	100	Opted to 400kV level at Fatehgarh-III PS (Sec-2) in sharing with ReNew

						<i>Dinkar Jyoti & ReNew Solar (Shakti Three)</i>
10	<i>ReNew Samir Shakti Private Limited</i>	1200003562	28-Nov-21	100		<i>Opted to 400kV level at Fatehgarh-III PS (Sec-2) in sharing with ReNew Dinkar Jyoti & ReNew Solar (Shakti Three)</i>
11	<i>ABC RJ Land 01 Private Limited</i>	1200003575	23-Dec-21	270		<i>Not opted</i>
12	<i>Sprng Pavana Urja Private Limited</i>	1200003719	16-Feb-22	50		<i>Not opted</i>
13	<i>AMP Energy Green Private Limited</i>	0312100007	31-Aug-22	50		<i>Not opted</i>

**** Provisional. In case of any directions from the Ministry to CTU to grant these bays and available margin to Fatehgarh-II PS grantees, the connectivity of M/s Khaba shall be restored at Fatehgarh-IV (Sec-1)”**

Bhadla-II PS

“The list of applicants granted at Bhadla-III PS based on their application date priority and decision in meeting is as under:

Table 4 : Grantees/Applicants with both St-II Connectivity & LTA at Bhadla-III PS

S.No	LTA Applicant Name	LTA App.No.	LTA App. Date	LTA Quantum (MW)	Decision on Reallocation
A	Grantees/Applicants with both St-II Connectivity & LTA at Bhadla-III PS				
1	<i>Prerak Greentech Solar Private Limited (LTA Under Process)</i>	1671216520154	17-Dec-22	400	<i>Opted for Reallocation to Bhadla-II PS (220 kV bay(1 no.) – 400 MW)</i>
2.	<i>Tepsol Sun Sparkle Private Limited (LTA Under Process)</i>	1672319027575	29-Dec-22	300	<i>Not Opted</i>

3.	<i>Juniper Green Beta Private Limited (LTA Under Process)</i>	412100012	30-Dec-22	150	<i>Not Opted</i>
4.	<i>Juniper Green Beta Private Limited (LTA Under Process)</i>	412100013	30-Dec-22	100	<i>Not Opted</i>
5.	<i>Juniper Green Beta Private Limited (LTA Under Process)</i>	412100027	12-Apr-23	50	<i>Not Opted</i>
B					
Grantees/Applicants with Stage-II Connectivity at Bhadla-III PS					
S.No.	LTA Application Name	Application Number (St-II)	St-II Application Date	Balance St-II Quantum (MW)	Opted/Not opted for Reallocation
1	<i>ReNew Solar (Shakti Six) Private Limited</i>	1200003848	31-Mar-22	550	<i>Not Opted</i>
2	<i>ReNew Solar (Shakti Six) Private Limited</i>	0312100004	06-Jul-22	450	<i>Not Opted</i>
3	<i>Abu Renewables India Private Limited</i>	0212100026	30-Sep-22	340	<i>Not Opted</i>
4	<i>Seven Renewable Power Private Limited</i>	0212100028	17-Oct-22	300	<i>Not Opted</i>
5	<i>Frugal Energy Private Limited</i>	0212100031	29-Oct-22	50	<i>Not Opted</i>
6	<i>Bhadla Three SKP Green Ventures Private Limited</i>	0212100033	09-Nov-22	300	<i>Not Opted"</i>

15. In the above reallocation meeting, for Bhadla II 220 KV, only Prerak Greentech Solar Private Limited opted 400 MW for (220 kV bay-1 no.) from Bhadla III and for Fatehgarh III 220 KV (Sec2), only Khaba Renewable

Energy Pvt. Ltd opted for 250 MW from Fatehgarh-IV PS (Sec-1), which was allocated provisionally.

16. Request of Eden Bercy and Eden Passy, to lay overhead line from their generation projects to Fatehgarh II PS was turned down by GIB committee vide their response dated 26.06.2023 in terms of the order dated 19.04.2021 passed by Hon'ble Supreme Court. Subsequently on 26.06.2023 Eden Passy and Eden Bercy requested CTUIL to shift their connectivity from Fatehgarh II PS to Fatehgarh III PS which is outside the Prioritized GIB area. On the very same day, they also sent a communication to Ministry of New & Renewable Energy (MNRE) to recommend early action by CTUIL on their request. Eden Passy and Eden Bercy vide its communication dated 29.06.2023 requested CTUIL to explore alternative usage of bays being vacated by them at Fatehgarh II PS. To discuss the request of Eden Passy and Eden Bercy to shift/ transfer/reallocate its connectivity from Fatehgarh II PS to Fatehgarh III PS, a meeting was convened by Ministry of Power with participation by CERC, CEA, CTUIL on 20.07.2023 and following emerged:

"8. After the detailed deliberations, the following points emerged out of discussion:

- (i) The circumstances arising in the Fatehgarh-II PS are beyond the control of the developers.*
- (ii) The request of Eden Passy and Eden Bercy has been received from NHPC and SECI as Implementing agencies notified by Gol and Eden is developing the projects for them.*
- (iii) Construction of connectivity line from both the Projects of Eden i.e. Eden Passy & Bercy to Fatehgarh III pooling station is a feasible option as per the RE developer.*
- (iv) Shifting of connectivity from Fatehgarh-II to Fatehgarh-III is akin to surrender/closure of connectivity at Fatehgarh-II and taking fresh*

connectivity at Fatehgarh-III in normal case. This may lead to similar request from many other entities which may lead to squatting of connectivity.

- (v) *In case of bay allocation for Eden at Fatehgarh-III and shifting of connectivity from Fatehgarh-II to Fatehgarh-III, there would be obligations w.r.t. transmission charges of ISTS bays that would be commissioned at Fatehgarh-II as well as obligation associated with LTA which will rest with Eden as decided by CERC.”*

17. Subsequent request of Eden Passy and Eden Bercy to GIB committee for allowing overhead dedicated line was also turned down on 27.07.2023, upholding its earlier decision of 26.06.2023. MNRE, Vide its OM dated 02.08.2023, recommended to Ministry of Power to consider request of Eden Bercy and Eden Passy to shift/transfer/reallocate their Stage-II Connectivity from Fatehgarh-II PS to Fatehgarh-III PS, while taking appropriate steps to address the concerns of squatting of connectivity as well as reasonably addressing the concerns raised by CEA, PGCIL and CERC in respect of such transfer of connectivity.

18. On 03.08.2023, the 2nd Meeting in regard to the Reallocation of Connectivity Bays at Fatehgarh-III/IV and Badhla II Pooling Stations was conducted by CTUIL and following was decided as per MOM of said meeting.

“

In the first reallocation meeting, M/s Prerak Greentech had opted to shift from Bhadla-III to Bhadla-II PS and it was decided to allocate one no. of 220 kV line bay at Bhadla-II PS (out of the 2 no. of bay surrendered by M/s Adani) to M/s Prerak. However, after the meeting, M/s Prerak vide letter dated 04.07.2023 informed their decision to continue with connectivity at Bhadla-III PS. Since no other applicant granted

connectivity at Bhadla-III PS had opted for Bhadla II PS in the reallocation meeting, it was decided that the earlier vacated bays(2 no.)/capacity at Bhadla-II PS shall be offered to new applicants in Bhadla complex based on their application priority.....

.....”

“ It was informed that, in the previous meeting 250 MW connectivity at 220 kV Fatehgarh-III PS(Sec-2) was allocated to M/s Khaba on provisional basis with condition that, in case CTUIL receives any direction from ministry to specifically allocate these bays and available margin to Fatehgarh-II PS grantees, the connectivity of M/s Khaba shall be restored at Fatehgarh-IV PS. MNRE vide OM dated 02.08.23 to MOP has requested to consider request of M/s Eden for connectivity shifting while taking appropriate steps to address the concerns of squatting of connectivity as well as concerns raised by CERC in respect of such transfer of connectivity. In view of no specific direction received from Ministry by CTUIL, it was decided that 250 MW connectivity of M/s Khaba through 1 no. of 220 kV line bay at 220 kV Fatehgarh- III PS(Sec-2) shall be discussed for finalization in present meeting.”

19. Vide its letter dated 04.08.2023, Eden Passy and Eden Bercy requested CTUIL to confirm their shifting/ transfer/ reallocation of connectivity from Fatehgarh-II PS to Fatehgarh-III PS, in view of OM of MNRE dated 02.08.2023. CTUIL vide its letter dated 08.08.2023, informed that action will be taken in accordance with the outcome of the aforesaid request of MNRE to MOP.

20. On 29.08.2023, the 23rd Consultation Meeting for Evolving Transmission Schemes in Northern Region (**‘CMETS-NR’**) meeting was held wherein the Appellant–PNRPPL, a fresh applicant for Bhadla III PS, opted for Stage-II Connectivity (450 MW) at Bhadla-II PS as per their application priority. Based on above, 2 nos. of 220 kV bays were allocated for the project of Appellant – PNRPPL.

21. On 29.08.2023, Eden Passy and Eden Bercy filed Petitions No. 269/MP/2023 and 268/MP/2023 respectively before CERC seeking transfer of connectivity of its 300 MW Solar Power Project each from Fatehgarh-II PS to Fatehgarh-III PS. CERC vide its Record of Proceedings dated 18.09.2023 for the hearing held on 15.09.2023 admitted the Petitions and directed CTUIL to maintain the status-quo with regard to the allocation of bays/space at Fatehgarh-III and Bhadla-II till the next date of hearing and sought certain information from CTUIL like details of connectivity & LTA granted *vis a vis* available margins for Fatehgarh II, Fatehgarh III and Bhadla II, methodology followed by it in reallocation of bays etc.

22. CERC also sought information from Eden Bercy and Eden Passy whether they can avail connectivity at Fatehgarh-IV sub-station, if the bays (or) space is not available at Fatehgarh-III and Bhadla-II Pooling sub-stations and also to give an undertaking that there is no sufficient land available to develop their Projects (either of them) in the vicinity of Fatehgarh-II PS so that length of underground cable can be minimized.

23. Upon receipt of information, hearing was held on 22.09.2023 and CERC vide Record of Proceedings dated 26.09.2023 observed as under:

“3. After hearing the learned counsel for the Petitioners and the representative of CTUIL, the Commission observed that, keeping in view the genuine difficulties being faced by the Petitioners in getting connected to Fatehgarh-II pursuant to the Hon’ble Supreme Court’s GIB Order, which has also been acknowledged by the intermediary procures, SECI & NHPC as well as MNRE in its OM dated 2.8.2023, it would be appropriate that the Petitioners and CTUIL may explore the feasibility/possibility of granting Connectivity to the Petitioners at Fatehgarh-III or Bhadla-II. The Commission also observed that many of the vacant bays at these Pooling Stations have come to be allotted in recent meetings, including during the 23rd CMETS-NR as held on 29.8.2023 for which the minutes as well as consequent allocation

intimations have yet to be issued. In the above circumstances, CTUIL may also explore and examine the urgency of Connectivity vis-à-vis their commissioning schedules and whether the Petitioners can be accommodated in lieu thereof, if the other RE developers are willing to defer or in this case, surrender their Connectivity. Accordingly, the Commission directed the CTUIL and Petitioners to carry out a joint consultation (with the Petitioners and other project developers) to explore the feasibility/possibility shifting the Connectivity of the Petitioners to the Fatehgarh-III or Bhadla-II pooling sub-station maintaining the Petitioners' priority and to file the outcome of such consultation within two weeks. The Commission also instructed CTUIL to apprise the Petitioners about the obligation of transmission charges associated with such shifting as per the extant Regulations.”

24. On 05.10.2023, a Joint Consultation Meeting was conducted by CTUIL with Eden Passy & Eden Bercy and other RE generators who were recently allocated/reallocated connectivity at Fatehgarh III PS and Bhadla II PS, wherein all the RE developers refused to consider the request for shifting out from Fatehgarh III PS and Bhadla II PS. Eden Passy and Eden Bercy informed that they are targeting to commission their project by Jan'25 therefore, Fatehgarh-IV (Sec-II) PS and Barmer-I PS which are expected to come up in 2026 are not feasible for them. They also informed that they are also not willing to get connectivity at 400 KV level at Fatehgarh III PS. However, as Bhadla-III PS & Ramgarh PS are expected to be commissioned by March'25 & April'25 respectively, M/s Eden shall also explore the option of shifting their connectivity to Ramgarh PS /Bhadla-III PS and inform their decision regarding the same by next week. Outcome of the joint consultation meeting was informed to CERC by CTUIL vide its affidavit dated 13.10.2023. Eden Renewables vide its email dated 19.10.2023 to CTUIL informed that alternative suggested in the meeting with regard to connectivity at Fatehgarh IV PS, Barmer-I PS, Ramgarh PS and Bhadla-III PS is not suitable to them.

Information to this effect was submitted to CERC by CTUIL by its affidavit dated 23.10.2023.

25. On 31.10.2023, the Central Commission issued the Record of Proceedings for the hearing held on 25.10.2023 in Petition No. 269/MP/2023 & 268/MP/2023 of Eden Renewables wherein the Central Commission, *inter-alia*, observes as under:

4. *“After hearing the learned counsel for the Petitioner and the representatives of CTUIL, the Commission ordered as under:*

(a) The Petitioner to implead Project Nine as a party to the Petition and file a revised memo of parties within two days.

(b) The Petitioner to serve a copy of the Petition on Project Nine and Project Nine may file its comments primarily on the submission of the Petitioners herein that in, facts & circumstances of the case, the shifting of the Petitioner’s existing connectivity at Fatehgarh-II to Bhadla-II be prioritized over the Project Nine’s from the Bhadla-III to Bhadla-II, within three days with a copy to the Petitioner, who may file its response thereon within two days thereafter.

(c) The Petitioner will also file an affidavit indicating its willingness to bear the financial liabilities arising out of the vacating the bays at the Fatehgarh II PS on shifting of their connectivity to another location within three days.

*(d) In the meantime, **CTUIL will maintain the status quo with regard to the grant of connectivity/allocating the bays at Bhadla II PS** and reserve 2 No. 220KV bays at Bhadla II PS till the next date of hearing.”*

26. On 08.11.2023 and 09.11.2023 , Appellant – PNRPPL filed a separate Petition no. 387/MP/2023 and IAs in Petition Nos 268/MP/2023 & 269/MP/2023 seeking dismissal of Eden Renewables Petition and vacation of *Status-quo* order and to *“Direct CTUIL to take on very immediate and urgent basis further steps for ensuring expeditious grant of connectivity for a quantum of 450 MW to Petitioner’s Solar Projects at Bhadla-II Pooling Station through 2 no. of 220 kV line bays pursuant to the unequivocal decision taken and communicated during the 23rd Consultation Meeting for*

Evolving Transmission Schemes in Northern Region meeting dated 29.08.2023 for which the Minutes of Meeting were issued on 30.09.2023”;

27. CERC after hearing the matters on 09.11.2023 vide Record of Proceedings dated 22.11.2023 in Petition Nos. 269/MP/2023 and 268/MP/2023 filed by Eden Bercy and Eden Passy reserved the matter for order. On 19.01.2024, CERC passed the order and besides holding the reallocation process followed by CTUIL as non-transparent and on case-to-case basis, issued Practice direction *inter-alia* directing to consider all the grantees for reallocation within a State *based on the date and time stamp of its original Connectivity application.*

SUBMISSIONS- of Appellants and Respondents are summarized below:

APPELLANT-CTUIL

28. Learned senior counsel for CTUIL strongly contested the observation in the impugned order (i) with regard to non-transparent and case to case approach adopted by CTUIL in reallocation of bays and (ii) difficulties and repercussions in adopting state wise approach for reallocation of bays so directed by CERC as per para 47 of the impugned order.

29. With regard to issue (i) above, it was submitted that cluster / Vicinity/complex concept is not new and in fact on 28.10.2016, CERC had passed an Order in Petition No. 84/MP/2016, whereby it approved a proposal of CTUIL for utilization of the vacated margins (owing to relinquishment of LTA) which was based on:

A) Clustering of Applications/Projects requiring power flow in a particular direction (SR/ER/WR to NR);

B) Considering readiness of the project over and above the application priority (i.e. time and date stamp) for better utilization of the transmission margins.

30. Learned senior counsel appearing on behalf of the Appellant - CTUIL submitted that the same principles have been applied by CTUIL in cases of utilization of transmission margins and vacated bays in pooling/sub-stations. In fact, looking into huge renewable potential in the State of Rajasthan, on 11.09.2018, the Meeting of the Northern Region ('NR') Standing Committee on Transmission was held wherein, ISTS planning in Rajasthan and the establishment of different pooling substations in various complexes viz. Fatehgarh, Bhadla, Bikaner & Ramgarh were considered. Accordingly, as part of various Inter-State transmission schemes, a number of pooling stations/substations in Rajasthan (as also in other states) have been planned on a continuous basis, in cluster/complex approach, and are being progressively brought into commissioning and operation to meet the Renewable Energy ('RE') evacuation needs, namely:

- i. **Fatehgarh Complex**– Total Potential: 26700 MW
 - a. Fatehgarh-I -2200 MW
 - b. Fatehgarh-II -5500 MW
 - c. Fatehgarh-III(Section-1) – 1900 MW
 - d. Fatehgarh-III(Section-2) – 6000 MW
 - e. Fatehgarh-IV(Section-1) – 2100 MW
 - f. Fatehgarh-IV(Section-2) – 9000 MW
- ii. **Bhadla complex**- Total Potential: 14930 MW
 - a. Bhadla I – 3380 MW

- b. Bhadla II – 5050 MW
- c. Bhadla III – 6500 MW
- iii. **Bikaner Complex** – Total Potential: 21850 MW
 - a. Bikaner I -1850 MW
 - b. Bikaner II- 7000 MW
 - c. Bikaner III – 7000 MW
 - d. Bikaner IV – 6000 MW
- iv. **Ramgarh Complex** – Total Potential: 4000 MW
 - a. Ramgarh PS – 4000 MW
- v. **Barmer Complex**- Total Potential: 5500 MW
 - a. Barmer I – 5500 MW
- vi. **Sirohi Complex** – Total Potential: 3000 MW
 - a. Sirohi- 3000 MW

31. Learned senior counsel for CTUIL submitted that CERC has granted regulatory approval dated 09.08.2019 (in Petition No 23/MP/2017) & dated 12.05.2020 (in Petition No 269/MP/2017) to the transmission system so evolved with complex wise development of transmission system.

32. As a general planning practice, based on requirement of connectivity/ LTA application, after exhausting the capacity (as per technical consideration) of a substation at a particular location, new substation in the vicinity/complex is planned progressively, for example Fatehgarh I PS, Fatehgarh II PS, Fatehgarh III PS and so on have been planned. Commissioning schedule of Fatehgarh I PS would be earlier than Fatehgarh II PS, which in turn would be earlier than Fatehgarh III PS and so on. In line with the Connectivity Regulations, Application for Connectivity were dealt with based on the date and time of the application received. Sometimes, due to surrender of connectivity at a substation, some capacity gets available at

that station and in case, same is not reallocated to somebody, it has potential of being converted into stranded infrastructure. Thus, in order to optimally utilise the available/planned infrastructure, so that there is no stranded infrastructure, capacity so made available was taken up for reallocation. For doing so, first the existing connectivity grantee of other substations in the vicinity/complex (having commissioning schedule later) were offered this capacity and based on their willingness they were moved from later substation to earlier (i.e. from III to II to I). In case there are no takers, then capacity so available will be allocated to new Applicant, subject to their willingness, as per their application priority for a substation in vicinity/Complex. In reallocation meetings, representatives of SECI, CEA and all concerned grantees of connectivity in the vicinity/complex of the substation are invited and deliberations held in such reallocation meeting are enumerated in subsequent CMETS meeting.

33. Learned senior counsel for CTUIL submitted that there is a rationale in not allowing shifting of connectivity within the cluster/complex from older substation to new substation (reverse direction). If allowed, there will be constant demand for shifting in the reverse direction because of delays in the commissioning of power project for various reasons resulting in vacant bays in the earlier sub stations of the same complex and under utilisation of such ISTS system besides squatting practices being indulged. Accordingly, shifting from later sub-station to an earlier substation in the same cluster/complex, is allowed as it leads to utilization of ISTS commissioned earlier and therefore allowed without surrender charges. Thus, the shifting between complexes and shifting in the reverse direction within the cluster/complex is not allowed. In case, such reverse direction re-allocation is desired, the option available to the developer would be to surrender the connectivity, pay the charges and apply for fresh connectivity, namely to go

down in the list of the identified cluster/complex where it would like to set up the project.

34. Besides, this concept of reallocation is followed since 2018 and in fact Eden Bercy and Eden Passy themselves are beneficiary for such reallocation. In July 2020, Eden Bercy submitted its application for Stage-II Connectivity for its Project(300 MW) at Fatehgarh-III PS. Eden Passy has also applied for connectivity at Fatehgarh III PS for its 300 MW project in June 2020, in which Stage I connectivity was issued on 03.08.2020 and Stage II intimation was issued on 10.09.2020. In the meantime, 600 MW capacity became available at Fatehgarh II PS on account of revocation of capacity by M/s Rosepetal Pvt Ltd (RSEPL) and option to stage II grantees at Fatehgarh III PS to shift connectivity to Fatehgarh II PS was deliberated in a meeting on 18.08.2020 in accordance with application priority adopting vicinity/complex approach for such reallocation. Eden Passy vide its email dated 26.08.2020 expressed its willingness to shift their connectivity from Fatehgarh III PS to Fatehgarh II PS. Accordingly in the 37th meeting of Northern Region constituents regarding connectivity/ LTA application in NR held on 31.08.2020, 300 MW connectivity granted to Eden Passy at Fatehgarh III was shifted to Fatehgarh II PS and intimation was issued on 05.11.2020. In the same meeting, Eden Bercy, the fresh applicant, was also granted 300 MW connectivity at Fatehgarh II PS based on its willingness and having highest priority and intimation issued on 09.10.2020. Thus Eden Renewables are aware that the option of shifting to Fatehgarh II was restricted to the existing grantee or fresh applicant of Fatehgarh III only in order of priority of date stamping and no existing grantee or applicant in any other clusters/complexes (Bhadla or Bikaner) (howsoever prior the date stamping) was considered for Fatehgarh II PS.

35. Learned senior counsel for CTUIL submitted that in this reallocation process, grantees were shifted from Substation having later commissioning schedule to earlier commissioning schedule (i.e from IV to III to II) but never other way around (like II to III to IV) to avoid stranding of capacity.

36. Learned senior counsel for CTUIL further submitted that in the present case, meeting for reallocation of connectivity bays at Fatehgarh III PS, Bhadla PS & Bikaner II PS was held on 20.06.2023, wherein grantees in the vicinity of these substation (i.e at substation with commissioning schedule later than these substation) were invited to know their willingness apart from CEA, SECI, NRLDC, NRPC and Grid controller of India and agenda for the meeting was circulated to these concerned in advance. Eden Percy and Eden Bercy, grantees of connectivity at Fatehgarh II PS were not invited for this meeting and likewise no grantee of connectivity for Bhadla I PS and Bikaner I PS were invited. In the meeting, it was deliberated that 600 MW capacity along with two 220 KV bays available at Bhadla II PS, due to surrender of stage II connectivity granted to M/S Adani Renewables, shall be allocated to Grantees/ applicant at Bhadla III PS based on their priority and willingness with applicants with LTA and connectivity both over applicants with connectivity alone. Based on above, M/s Prerak opted to shift their 400 MW connectivity & LTA from Bhadla III PS to Bhadla II PS utilizing one 220 KV bay, however subsequently declined such shifting. M/s Jupiter Green though initially expressed to shift their 300 MW connectivity and LTA to Bhadla II PS, but during the course of the meeting declined for such reallocation considering the proximity of their project to Bhadla III PS and commissioning schedule. None of the other applicant in the que opted to reallocate their connectivity from Bhadla III PS to Bhadla II PS.

37. Regarding Fatehgarh III (sec II), it was deliberated that total 1200 MW capacity (900 MW at 400 KV – one bay & 300 MW at 220 KV –one bay) is available for reallocation to Grantees/applicants first at Fatehgarh IV PS (Sec 1) and then to Fatehgarh IV (Sec II) PS based on the priority. Matter of shifting of Connectivity of Eden Bercy and Eden Passy from Fatehgarh II to Fatehgarh III was discussed and it was informed by CTUIL that same can not be done on *suo moto* basis as GIB committee decision for all the developers at Fatehgarh II is yet to be received and their bays at Fatehgarh II PS are under advanced stage of implementation and would require directions from Ministry of Power. Based on insistence of SECI to keep allocation at Fatehgarh III PS for developers at Fatehgarh II PS, it was decided 300 MW capacity available at 220 KV at Fatehgarh III PS shall be only provisionally allocated to Fatehgarh IV PS grantees/ applicants. Based on the directions from Ministry of Power, connectivity of applicant opting to shift to Fatehgarh III PS will be restored to Fatehgarh IV PS. Accordingly, 250 MW at 220 KV level at Fatehgarh III PS was provisionally allocated to Khaba Renewables Energy Pvt Ltd having highest priority. It was also deliberated that after reallocation, if some margin is still available at Fatehgarh II (Sec II) PS, Bhadla II PS and Bikaner II PS and same shall be offered to new applicant based on their priority and willingness.

38. In the reallocation meeting on 03.08.2023, reallocation of bays at Fatehgarh III & Fatehgarh IV PS was deliberated, as reallocation of bays at Bhadla II and Bikaner II was already finalized in the meeting dated 20.06.2023. In this meeting, besides reallocation at 400 KV Fatehgarh III PS and Fatehgarh IV PS, in view of no specific direction received from Ministry of Power to CTUIL, the 250 MW connectivity provisionally allocated to Khaba Renewables Energy Pvt Ltd at 220 KV level in Fatehgarh III PS (in 20.06.20023 meeting) was finalized. During the meeting, it was also decided

that after the allocations so finalized now, remaining vacant bays and available margins shall be offered to new applicants based on their priority and willingness.

39. Learned senior counsel for CTUIL submitted that the conclusion on lack of transparency in the impugned order are vague and devoid of any specific detail. Each and every required detail of each and every ISTS substation, the bays/margins available is uploaded on the website of CTUIL. The activities of the reallocation meetings are also finally considered in the CMETS meeting and are dealt in the minutes of CMETS meeting, duly uploaded on the website.

40. The agenda and minutes of meetings dealing with reallocation are to consider the rights of the existing grantees in the cluster/Complex/solar zone to shift to the earlier substation (Fatehgarh III to Fatehgarh II and Bhadla III to Bhadla II) and not to consider the final allocation to the fresh applicant or even the final decision on shifting. In the above context, no fresh applicant or the existing grantee of other cluster/complex/ solar zone other than the existing grantee of later ISTS sub-station the same cluster/complex was required to be notified or allowed to participate in the reallocation meeting. If such other people have no right for consideration for shifting/reallocation, it cannot be said that there has been any lack of transparency by not inviting them for the meeting, or by disclosing the agenda or the minutes of the reallocating meeting. The concerned stakeholders, namely, the existing grantee in the cluster/complex of the later substations are duly invited for exercising the option. Now, as per direction contained in the impugned order, CTUIL has published reallocation meeting on its website.

41. Learned senior counsel for CTUIL further submitted that same procedure for reallocation has been followed since 2018 and nobody till date has objected to it. In the present case also, Eden Bercy and Eden Passy in their Petitions before CERC filed on 29.08.2023 has not raised any dispute with regard to reallocation process followed by CTUIL, it was more of a mercy petition seeking transfer of connectivity from Fatehgarh II PS to Fatehgarh III PS or Bhadla II PS. It was strongly contended by learned senior counsel, that CTUIL has adopted consisted approach in reallocation of bays for optimal utilization of infrastructure as no capacity should remain stranded in line with direction of CERC while granting regulatory approval to the various transmission scheme. CTUIL has never acted in non-transparent manner and on case to case basis. In fact, available capacity at each substation is uploaded on CTUIL website on monthly basis.

42. Learned counsel for CTUIL contended that the 23rd CMETS meeting for Northern Region was held on 29.08.2023, in which all the constituents of Northern region and developers were invited to discuss various issues including transition to GNA regulations 2022, and grant of LTA and Connectivity to new applicant along with taking cognizance of deliberation of reallocation meetings held on 20.06.2023 and 03.08.2023. During the 23rd CMETS meeting, in view of 600 MW capacity available at Bhadla II, it was agreed to grant connectivity of 450 MW to generation project of Appellant – PNRPPL at 220 KV level (2 bays) at Bhadla II based on their application priority and willingness, a new applicant for Bhadla III.

43. Through record of Proceedings dated 18.09.2023 of CERC, CTUIL was asked to maintain status quo with regard to allocation of bays/ space at Fatehgarh III PS and Bhadla II PS till the next date of hearing, and therefore intimation with regard to grant of connectivity was not issued to Grantees/

applicants for Fatehgarh III PS and Bhadla II PS, subsequent to the decision taken in 23rd CMETS meeting of NR. Through Record of Proceedings dated 26.09.2023 of CERC for the hearing held on 22.09.2023, CTUIL was asked to carry out a joint consultation (with Eden Bercy, Eden Passy and other developers) to explore the feasibility of accommodating Eden Bercy/ Eden Passy at Fatehgarh III or Bhadla II, in case other developers are willing to shift. Though there was no mention of maintaining *status quo* at Fatehgarh III & Bhadla II, however it was considered to be an extension of *status quo* and no intimation for grant of connectivity was sent, as CTUIL was specifically asked to explore option of shifting connectivity of Eden Passy/Eden Bercy to Fatehgarh III /Bhadla II. In the joint consultation meeting held on 05.10.2023, other developers refused to shift their connectivity allocation including khaba for 600 MW connectivity at 220 KV at Fatehgarh III PS and Appellant – PNRPPL for 450 MW at 220 KV at Bhadla II so decided in reallocation CMETS NR meetings dated 20.06.2023, 03.08.2023 and 29.08.2023. Further, Eden Bercy/ Eden Passy also mentioned that they are not willing to get connectivity at 400 KV level at Fatehgarh III and Bhadla II as well as other options offered were also not found suitable to them. CERC was apprised about the above outcome. During the hearing on 25.10.2023, Appellant–PNRPPL was impleaded and CTUIL was asked to maintain status quo only for Bhadla II till the next date of hearing. Accordingly, Intimation for Grant of connectivity was issued to Fatehgarh III grantees/applicant only. Subsequent hearing took place on 09.11.2023, record of proceedings of which were issued on 22.11.2023 and matter was reserved for order and there was no mention regarding the *status quo* or vacation of stay for Bhadla II PS. On mentioning the matter on 29.11.2023, no clear cut direction with regard to status quo/ vacation of Stay for Bhadla II was given except wait for the order, no intimation for Grant of connectivity was issued for Bhadla II PS.

44. In the impugned order, CERC has issued practice directions to CTUIL for reallocation of bays which becomes available at a substation, all connectivity Grantees which have been granted connectivity at any substation located within the State shall be eligible, till the amendments in the Regulations are carried out following due process of Law after due stakeholder consultation. Learned senior counsel for CTUIL submitted that Practice Direction under Impugned Order allowing RE Generators to reallocate anywhere within the State and not following the cluster/complex basis is wrong for the following reasons:

- a) The organised planning of development of ISTS system will be affected with vacancies in different substation across the State and constant changes being sought for;
- b) increase in squatting of connectivity, depriving bona fide applicants seeking connectivity in the cluster/complex. The objective cannot be only that the transmission charges are secured but that lines and system are effectively put to use;
- c) ISTS system are developed not based on State boundaries or district boundaries and are based on potential of the area and such area may be in adjacent State or adjacent district with substation in other state or district . There are cases of such nature in (ISTS substations for RE power evacuations with locations of generation projects in adjacent states such as Telangana & Karnataka or Maharashtra & Karnataka.
- d) It is irrational for RE Generator to lay down of dedicated transmission line for a long distance to get connectivity. It will lead to haphazard lines cross crossing and in any event is not techno economical for the generator. Even in case of Eden, while seeking connectivity to Bhadla II, it was represented in the proceedings that it would arrange for land in the vicinity

of Bhadla II in place of land near Fatehgarh II earlier arranged confirming the need for following cluster/complex vicinity for its own benefit.

45. Learned Senior counsel for CTUIL further submitted that Regulation 11(4) of GNA Regulations does not deal with allocation or reallocation of bays as sought to be contended by CERC or Eden. It deals with the adjustment of terminal bay(s) of the same ISTS sub- station entirely between the existing allottees of the said sub- station. It is the case of CTUIL that there is no gap in the Detailed Procedure. Even assuming that there is gap, the basic criteria being laid down, CTUIL can deal with the matter in exercise of its statutory powers under Section 38 of Electricity Act 2003. In view of above submissions, learned counsel for CTUIL prayed to set aside the order dated 19.01.2024 passed by CERC in Petition No 268/MP/2023 & 268/MP/2023.

APPELLANT- PNRPPL : Submissions of Learned counsel for PNRPPL is grouped under following heads :

a) Practice Directions have retrospective application, impermissible under Law & Electricity Act 2003, Practice Direction is in violation of Reallocation methodology followed by CTUIL ;

46. By Impugned Order, CERC has held that reallocation by CTUIL is not required to be done on the basis of cluster/complex/proximity principle but by way of considering the Connectivity grantees within a 'State, however no discernible rationale has been stated; why the parameter has been considered as 'State' and not the 'Country'. It was further submitted that neither "**Connectivity Regulations, 2009**" nor "**GNA Regulations**" provide

for the shifting of Connectivity from one sub-station to another. CERC, under the guise of minimum perturbation, has provided a new criterion for defining a Connectivity grantee under the GNA Regulations, which includes the entities who have obtained the in-principle grant of Connectivity under Regulation 7 of the GNA Regulations and submitted requisite Bank Guarantees. Furthermore, the CERC has held that reallocation of those entities who have not fulfilled the aforesaid stipulated threshold, will be subjected to further reallocation as per the Practice Directions. CERC under the pretext of exercising its regulatory power, issued Practice Directions allowing shifting of Connectivity of a Connectivity grantee under the Connectivity Regulations, 2009 or GNA Regulations from one sub-station to another within a State, based on the date and time stamp of the original Connectivity application. CERC gave effect to such amendments by retroactively applying Practice Directions through the Impugned Order to CTUIL's prior reallocation/allocation decisions, despite there being no provision for retrospective application in the Electricity Act or related regulations. During the entire process of hearing of Eden Renewables appeal from 15.09.2023 to 19.01.2024, PNRPPL has been dislodged from the process of its Connectivity at Bhadla-II PS. The Practice Directions issued by CERC in the Impugned Order have retrospective /retroactive application *vis-à-vis* decision taken by CTUIL to grant Connectivity to PNRPPL as on 29.08.2023 during 23rd CMETS-NR Meeting at Bhadla-II PS. Reliance is placed on "**State Bank's Staff Union (Madras Circle) v. Union of India**", (2005) 7 SCC 584 [Para. 21].

47. By enabling only Connectivity grantees within a State under the Connectivity Regulations, 2009 or GNA Regulations to request re-allocation of surrendered/vacant bays, Eden Renewables has been made eligible to shift its Connectivity from Fatehgarh-II PS to Bhadla-II PS, without

surrendering its Connectivity at Fatehgarh-II PS, despite Eden renewables not being an applicant at Bhadla-II PS. This eligibility granted by virtue of Practice Directions is in violation of GNA Regulations. In contrast, PNRPPL has been denied to even participate in the reallocation process as it could not qualify as Connectivity grantee in terms of the new parameters specified in Para 46 of the Impugned Order.

48. CTUIL has important roles and obligation under Electricity Act 2003, Indian Electricity Grid Code, IEGC 2023, as well as CERC connectivity Regulations 2009 & GNA Regulations and in discharge of its statutory obligations to ensure grant of Connectivity (which is a scarce commodity) in an efficient and economical manner so that no transmission asset remains stranded, undertook re-allocation of vacated/surrendered bays and shifting of Connectivity to such vacated/surrendered bays. The said exercise of reallocation has been carried out by CTUIL since 2018 on “*proximity*” or cluster/complex basis on an upward basis (i.e., climbing up the ladder) as per *inter se* priority and willingness of the Renewable Energy (RE) developer having Connectivity at a sub-station in the same cluster. It is a fact that procedure followed by CTUIL was not envisaged in the extant regulations, however CTUIL in view of its obligations under the Electricity Act read with IEGC was/is obliged to fill up the gaps in the said regulations by way of drawing out necessary process. Reliance is placed on “**Sant Ram Sharma v. State of Rajasthan**”, (1968) 1 SCR 111 [Para. 7] and “**J & K Public Service Commission v. Narinder Mohan (Dr)**”, (1994) 2 SCC 630 [Para. 7]. It is also a fact that no other generator has challenged CTUIL’s procedure, and no instances of reallocation having been against the procedure being followed by CTUIL has been highlighted. Rather, Eden Renewables has been a beneficiary of the same procedure adopted by CTUIL when Eden

Passy's Connectivity was transferred from Fatehgarh-III PS to Fatehgarh-II PS. In fact, if CTUIL had allowed Eden's request of shifting from Fatehgarh II PS to Fatehgarh III, it would have acted on a case-to-case basis, deviating from the consistent procedure being followed.

b) Connectivity Regulations, 2009 read with the Detailed Procedure, 2018 and the Detailed Procedure, 2021, and the GNA Regulations, the grant of connectivity is a step-by-step incremental process.

49. Consideration of application based on date and time stamp by CTUIL ensures initiation and accrual of a right in favor of the applicant seeking Connectivity at the nearest sub-station/ preferential point of ISTS with respect to the location of the proposed project. Each and every step stipulated in the regulations ensures incremental accrual of the right in favor of the applicant to get Connectivity at a particular sub-station.

50. In this regard, reliance is placed on: **(a) “State of Kerela and Ors. v. K.G. Madhavan Pillai and Ors.,” (1988) 4 SCC 669 [Para. 26, 29-30]**, in terms whereof, though the preliminary allocation of Connectivity to PNRPPL at Bhadla-II during the 23rd CMETS-NR Meeting held on 29.08.2023 does not itself entitle it to avail Connectivity at Bhadla-II PS, however, the said decision definitely conferred a right in its favour to seek continuance of the statutory procedural stream (i.e. further consideration of its application) in order to avail Connectivity at Bhadla-II PS. Furthermore, PNRPPL's right to avail Connectivity at Bhadla-II PS also emanates from the doctrine of legitimate expectation which as per the settled precedents can be invoked by individuals/entities to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. Reliance is placed on **“Manish Kumar v. Union of India”, (2021) 5 SCC 1 [Para. 402-403 and**

415] wherein it was held that a right of action is also a vested right. In the present case, the practice adopted by CTUIL in terms of the extant Regulations envisaged that the decision for grant of Connectivity finally takes place in the CMETS Meetings based on application priority (i.e., date and time stamp) and willingness.

51. CTUIL was reallocating bays following a specific criterion which was acceptable to the stakeholders and was not inconsistent with the GNA Regulations. However, CERC's directions to CTUIL to consider Eden's request for shifting its Connectivity to Bhadla-II PS without surrendering its connectivity Fatehgarh-II PS directly violates GNA Regulations. Notably CERC's representative in the Meeting dated 20.07.2023 highlighted that the shifting of Connectivity (as requested by Eden) is against the GNA Regulations and consideration of the same may lead to similar request from other generators and will lead to squatting of Connectivity.

52. The Hon'ble Supreme Court in ***PTC India Ltd v. CERC & Ors., (2010) 4 SCC 603 [Paras. 54 and 92.1]***, has held that once a regulation is framed, any exercise of regulatory power needs to be in consonance of the same.

c) Right of PNRPPL vis-à-vis Bhadla-II

53. PNRPPL made Application dated 28.04.2023 (rectified on 05.05.2023) seeking Connectivity of 450 MW under the provisions of the GNA Regulations. In terms of Regulation 5.8(ii) of the GNA Regulations, PNRPPL had to only provide preferred point of connection to ISTS and thus, PNRPPL provided Bhadla-III PS as the detail of the nearest sub-station. PNRPPL could not have applied for Bhadla II PS on 28.04.2023 as 600 MW margin

became available at Bhadla-II PS only during May 2023 post surrender of the said capacity. During the 23rd CMETS-NR Meeting held on 29.08.2023, Bhadla-II PS was offered to PNRPPL by CTUIL, which was accepted by PNRPPL. Notably, Renew Solar Power Private Limited also requested to avail Connectivity at Bhadla-II PS, however, CTUIL informed that the same has been allocated to PNRPPL on the basis of its application priority. Moreover, the fact that PNRPPL was invited in the Joint Consultation Meeting held on 05.10.2023, and PNRPPL was impleaded in Petition Nos. 268/MP/2023 and 269/MP/2023 (“**Eden Petitions**”) on 25.10.2023 itself shows that even as per CERC, certain right has been created in favour PNRPPL at Bhadla-II PS.

d) Conduct of Eden Renewables

54. Learned Counsel of PNRPPL also pointed out that Eden Renewables has signed LTA agreement for connectivity at Fatehgarh II on 18.08.2022 much after the issuance of Hon’ble Supreme Court order dated 19.04.2021, which necessitated laying of underground line up to Fatehgarh II PS falling under Potential GIB area. Eden never applied nor requested CTUIL / MNRE for shifting of its Connectivity at Bhadla-II PS, and the requests made by Eden (as late as on 04.08.2023) were limited to Fatehgarh-III PS only. Even the meeting held in MOP on 20.07.2023 and MNRE’s OM dated 02.08.2023 pertains to shifting of Eden’s Connectivity to Fatehgarh-III PS only. Accordingly, Eden was never in the zone of consideration for grant of Connectivity at Bhadla-II. Reliance is placed on “**R. Poornima & Ors. v. Union of India and Ors.,**” 2020 SCC OnLine SC 714 [Paras. 30 – 32].

55. Further, in the agenda for the 23rd CMETS-NR meeting circulated by CTUIL to all the stakeholders (including Eden) on 26.08.2023, it was categorically stated that 600 MW Connectivity at Bhadla-II PS will be offered to the new applicants whose applications have been received during April 2023 – June 2023 as per their priority and willingness. Despite being aware of the Agenda, Eden's representative participated in 23rd CMETS-NR Meeting on 29.08.2023 and *did not raise any objection whatsoever* on the allocation of connectivity at Bhadla-II PS to PNRPPL. However, Eden Renewables chose to file Petitions on 29.08.2023 wherein for the first time, it sought shifting of Connectivity at Bhadla-II PS. As per doctrine of election, a person may be precluded by way of his / her action or conduct or silence, when it is his duty to speak, from asserting a right which he / she would have had. Reliance is placed on ***State of Punjab and Ors. v. Dhanjit Singh Sandhu, (2014) 15 SCC 144 [Para. 26]***. Therefore, Eden has no right to seek the shifting of Connectivity from Fatehgarh-II to Bhadla-II on account of its own conduct.

e) Errors committed by CERC ;

56. Only broad points are enumerated below

- There was / is NO “*broader sectoral perspective*” adopted by CERC, while dealing with the present matter as it primarily focused on Fatehgarh-III PS and Bhadla-II PS, which were sought by Eden Renewables for seeking shifting of Connectivity. Re-allocation meetings dated 20.06.2023 and 03.08.2023 included Bikaner-II and Fatehgarh-IV (Section-I) sub-stations but no *status quo* directions were issued for them.
- By directing CTUIL to convene a joint consultation meeting to explore how Eden's Connectivity could be accommodated in itself shows that CERC had no issue with the procedure being followed

by CTUIL so far Eden's request of shifting Connectivity was taken care of.

- There was no intelligible differentia between the developers at Fatehgarh-III PS and Bhadla-II PS, as on 25.10.2023. Accordingly, the vacation of status quo directions *vis-à-vis* Fatehgarh-III only, was not justified. Khaba Renewable Energy Pvt. Ltd., which was re-allocated to Fatehgarh-III PS (at 220 kV) on 03.08.2023, was granted in-principle approval on 23.11.2023.
- During the present proceedings, CERC has submitted that *status quo* direction at Fatehgarh-III was vacated on account of CTUIL's submission in the Additional Affidavit dated 21.09.2023 that the Connectivity at 220 kV bays at Fatehgarh-III PS were finalized during the re-allocation meeting held on 03.08.2023. However if CERC was of the view that the Connectivity at Fatehgarh-III has been finalized on 03.08.2023, then why it directed CTUIL to convene a joint consultation meeting to explore shifting of Eden's Connectivity to Fatehgarh-III or Bhadla-II; and if the decision taken by CTUIL in the meetings was considered as finalized, then as to why PNRPPL was discriminated *vis-à-vis* its Connectivity at Bhadla-II PS allocated during the 23rd CMETS-NR Meeting held on 29.08.2023.
- In the impugned order, CERC has not addressed the submissions made by PNRPPL regarding non maintainability of Eden Renewables Petitions, while it is a well-established legal principle that preliminary concerns like maintainability/ jurisdiction need initial adjudication.
- By the conduct of CERC of issuing *status quo* directions at Bhadla-II, PNRPPL is the only generator which was granted Connectivity

during 23rd CMETS-NR and was prevented from retaining its Connectivity at Bhadla-II PS, as it was the sole entity which was unable to take subsequent steps *vis-à-vis* issuance of the in-principle grant of Connectivity and submission of the bank guarantees under the GNA Regulations. Such conduct is prima facie arbitrary and is therefore in violation of Article 14 of the Constitution of India, 1950. It was only and only on account of ex-parte status quo directions issued by CERC by way RoP of hearing dated 15.09.2023 and 25.10.2023, and subsequent directions after 09.11.2023.

- CERC in the present proceedings, has stated that it never intended to extend its *status quo* directions at Bhadla-II PS. However, CERC in its reply dated 01.04.2024 has admitted that it has not given any instructions in the mentioning and has directed PNRPPL to wait for the final judgment in the Eden Petitions. In this regard, it is submitted that CERC neither **(a)** while granting the *status quo* direction at Bhadla-II on 25.10.2023; **(b)** nor while purportedly vacating the *status quo* direction at Bhadla-II on 09.11.2023, has recorded any reasons. Similarly, while removing the *status quo* direction w.r.t. Fatehgarh-III and only continuing stay at Bhadla-II, no reason whatsoever has been given by Ld. CERC in its RoP dated 25.10.2023. Reliance is placed on ***High Court Bar Assn. v. State of U.P., 2024 SCC OnLine SC 207 [Paras. 14, 16, 19, 43, 44 and 52 – 54]***.
- Even assuming the argument of CERC that *status quo* direction was not extended by CERC while reserving the Order in Eden's Petitions, it is submitted that RoP for hearing dated 09.11.2023 in Petition No. 387/MP/2023 makes it abundantly clear that CERC

never intended to let PNRPPL get its Connectivity at Bhadla-II after reserving the order in the Eden's Petitions.

- Other generators, who were granted Connectivity at Fatehgarh-III PS during the reallocation meeting on 20.06.2023, 03.08.2023 and finalized on 29.08.2023 during 23rd CMETS-NR Meeting were granted in-principle approval by CTUIL and they had submitted bank guarantees after removal of status quo at Fatehgarh-III PS by CERC. However, CTUIL did not proceed *vis-à-vis* PNRPPL at Bhadla-II on account of the *status quo* directions by CERC.

57. In view of above submissions, learned counsel for the Appellant–PNRPPL requested to set aside the impugned order and direct CTUIL to take further steps to grant connectivity of 450 MW to PNRPPL at Bhadla II PS at 220 KV.

SUBMISSIONS BY APPELLANT- ACME

58. Learned counsel appearing on behalf of “**ACME**” submitted that it has applied for grant of connectivity of 850 MW at Fatehgarh-II PS on 29.11.2023 & 30.11.23 under the CERC “**GNA Regulations**” considering availability of margin at Fatehgarh-II PS reflecting in CTU website. ACME's applications were slated to be considered in the 27th “**CMETS**” held on 10.01.2024, however , the same was deferred for consideration in the next meeting since the available margin at Fatehgarh-II PS was firstly to be offered for reallocation to the connectivity grantees of Fatehgarh III and IV PS, followed by new applicants (such as ACME). The Reallocation meeting concluded on 19.01.2024 with no existing connectivity grantee opting for Fatehgarh II PS. Thereafter, allocation of capacity at Fatehgarh-II PS to

ACME was to be considered at the 28th CMETS Meeting to be held on 07.03.2024, however, this was rescheduled due to pendency of the present appeals. ACME is on top priority in terms of queue of fresh applications made at Fatehgarh-II PS. Learned Counsel has put forth following points:

a) *Impugned Order leads to retrospective reopening of concluded reallocation process*

59. 'Practice directions' issued by CERC in the Impugned Order, allowing connectivity holders of all sub-stations in the State of Rajasthan to apply for Connectivity at Fatehgarh-II PS has resulted in **retrospectively** re-opening of the reallocation exercise at Fatehgarh-II PS, which otherwise stood completed at the Re-allocation Meeting held on 19.01.2024. In the existing Regulations, there is no such provision of offering reallocation at a particular substation to all the entities in the State. CERC could not pass any orders beyond GNA Regulations and such an order is in nature of amending its own Regulations, which is not permissible without following due process of Law.

Regulation 3.6 read with Regulation 7.1 of the GNA Regulations provide for grant of connectivity on first-cum-first-serve basis, based on application date and time stamp. Therefore, priority is finalised on the date of application. Accordingly, when ACME submitted its applications, ACME was aware of its position in the priority list, on the basis of the application date and time stamp. The said position could not have been altered after making of the application. Therefore, ACME's right to be considered for grant of connectivity on the basis of its position in the priority list, got crystallised upon submission of its application and subsequent to decision of reallocation meeting on 19.01.2024, and being on top on the list of fresh applicant for Fatehgarh II PS, cannot be affected by the Impugned Order. The Impugned Order retrospectively permits other connectivity grantees in State of Rajasthan to now seek reallocation at Fatehgarh II PS, thereby reopening

the concluded reallocation process. The Impugned Order affects ACME's rights retrospectively and the Electricity Act does not permit retrospective application and relied on "**Manish Kumar v. UOI.**" (2021) 5 SCC 1 (Paras 408-410, 414)] & "**Ecoren Energy India Limited v. State of Andhra Pradesh**" 2022 SCC OnLine AP 601.

60. It was further submitted that there is a gap in the directions passed under Para 45 of the Impugned Order wherein protection was granted with respect to reallocation exercises which stood completed as on 19.01.2024, the entities crystallised their connectivity at the reallocated sub-stations by submitting Bank Guarantees, etc. It is submitted that Para 45 does not take into consideration those reallocation exercises which had been completed but no grantee opted for reallocation, thus creating a right in favour of the new applicants for consideration / grant of connectivity.

b). Practice Direction issued under Impugned Order is arbitrary and ought to be set aside

61. Exercise of regulatory powers by CERC under Section 79(1)(c) of the Act is akin to framing of regulations by CERC under Section 178 of the Act. Therefore, as far as the issuance of regulatory measures / Practice directions is concerned, the same ought to meet the same threshold, as applicable for framing of Regulations by CERC. Therefore, the Practice directions (under regulatory powers) issued under Para 47 of the Impugned Order ought to have been issued after consultation with the stakeholders or at the very least parties impacted by such a decision. Learned counsel appearing for ACME further submitted that **Practice directions suffer from manifest arbitrariness**. It has created a separate class, i.e., all connectivity grantees within a 'State' are eligible for seeking reallocation to another

substation. There is no discernible rationale in the Impugned Order for this. Subsequent to passing of the Impugned Order, CERC *post facto* sought to explain the basis for re-allocation at State level by relying on the definition of ‘electricity system’ under Section 2(25) of the Act. However, the said definition refers to a ‘State’ as well as ‘the Union’ and defines the ‘electricity system’ to mean the entire electricity system within the territory of a State or the Union, as the case may be, CERC is seeking to supplement the Impugned Order by now adding reasoning for why ‘State’ has been made the basis for reallocation. This is impermissible and relied on **“M.S Gill v. CEC”** (1978) 1 SCC 405 (Para 8); **“Rashmi Metaliks v. Kolkata Metropolitan Development Authority”** (2013) 10 SCC 95 (Para 14-15). There is no finding in the Impugned Order that the “cluster” principle is incorrect, there is no data or basis which CERC found fault with the CTUIL’s approach of carrying reallocation at the “cluster level”. In the absence of any data or information, rejection of the “cluster level” approach and adopting the a new “State level” approach is impermissible. He relies on the decision in **“Fortune Five Hydel Projects Ltd. v. KERC”**, Judgment dated 29.03.2019 in Appeal No. 42 of 2018].

C. Impugned Order is contrary to the Regulations

62. There is no provision either in the Connectivity Regulations, 2009 or the GNA Regulations, 2022 for shifting / reallocation of Connectivity from one sub-station to another as also recognised by CERC in the Impugned Order. In terms of Clause 11.4 of the Revised Procedure issued under Connectivity Regulations and Regulation 11.4 of the GNA Regulations, reallocation/rearrangement of Connectivity is only allowed across different bay(s) of the same sub-station. Accordingly, the ‘practice directions’ issued

by CERC under Para 47 of the Impugned Order in exercise of regulatory powers under Section 79(1)(c) of the Act, are contrary to the Connectivity Regulations and GNA Regulations.

63. Powers under Section 79(1)(c) of the Electricity Act are required to be exercised in conformity with the rules/regulations notified under Section 178 of the Electricity Act ("***PTC India Ltd. v. CERC & Ors.***") (2010) 4 SCC 603 (**Para 54**); ("***Energy Watchdog v. CERC & Ors.***") (2017) 14 SCC 80 (**Para 20**)].

64. Learned counsel of ACME supported the approach adopted by CTUIL for reallocation at cluster level as same is fair and reasonable and backed by technical justification. Any connectivity reallocated to another substation within the same cluster will not impact the project design, land requirements etc. for the project and transmission line. However, the practice direction suggested by CERC for offering all the entities in a State a chance for reallocation is completely baseless and will result in non-efficient implementation of RE projects as the entity who is located near the substation/cluster may not be able to get the reallocated substation but the entity who is situated far from the substation/cluster may get the reallocated substation.

SUBMISSIONS BY RESPONDENT - CERC

65. Per contra, learned senior counsel for CERC submitted that the impugned order originates from proceedings instituted by two sister companies, Eden Bercy Pvt. Ltd. & Eden Passy Pvt. Ltd. (referred as Eden Renewables), before the CERC. They have sought specific prayers seeking

for shifting of their connectivity from Fatehgarh-II PS to either Fatehgarh-III or Bhadla-II sub-station as connectivity from Fatehgarh-II PS has become unfeasible on account of the requirement of laying of underground cables, imposed as a result of the Hon'ble Supreme Court's orders and judgments in matters related to the Great Indian Bustard ['GIB']. The CERC, during the course of proceedings, attempted to resolve three substantial issues:

- A. Whether the Regulations and Statutory Procedures provided for reallocation/shifting of a Connectivity for a generator from one sub-station to another?
- B. Whether the procedure that was being followed by CTUIL to shift connectivity of a generator from one sub-station to another, was transparent?
- C. Whether the Respondent Commission was required to exercise Regulatory powers to deal with the situation at hand?

66. Learned senior counsel for CERC submitted that as per Connectivity Regulations 2009, GNA regulations as well as approved detailed procedures, the CTUIL is vested with the authority to rearrange the connectivity of a generator, with the generator's consent, within the confines of a particular substation. However, in case any grantee wishes to obtain Connectivity at a substation other than the one on which he has been granted connectivity, the only option under the Regulations is that he surrenders the Connectivity granted at a particular substation and seeks fresh Connectivity at the desired substation, which shall be considered as per the application date and time stamp as per the Regulations. In such a scenario, whether the Generator migrated to a nearby sub-station or a far away sub-station would not make any impact. In response to the query of CERC, regarding the methodology/procedure followed by CTUIL while

shifting a generator's Connectivity from one sub-station to another, it was learnt that CTUIL is following Vicinity/ complex approach for reallocation of bays and same is non standardized, not available in public domain and is done on case-to-case basis. CTUIL provided no deeper explanation for this concept during the hearings before the Commission, however, during the course of its pleadings and arguments before this Tribunal elaborated the said vicinity/complex concept by relying on the Minutes of the Meeting of the Northern Region Standing Committee, dated 11.09.2018 and orders of the Respondent Commission in Petitions filed by CTUIL seeking Regulatory approval for the Transmission system for Solar Energy Zones in Rajasthan. Learned counsel for CERC submitted that said minutes discuss the identification of Renewable Energy Potential Zones and Solar Potential Zones in four districts of Rajasthan. The minutes also discuss that CTUIL was in receipt of connectivity applications for four 'Complex/Pooling station'. Apart from the use of the nomenclature 'Complex', there is no discernible principle in the said minutes as to what constitutes a 'Vicinity/Complex' as a legally recognizable unit, how the same comes into creation, what limitations on its boundaries exist and most importantly how shifting/reallocation is provisioned within the said Vicinity/ Complex or a restriction of shifting/reallocation outside the Vicinity/ Complex. The said minutes or regulatory approval nowhere allows reallocation of a Connectivity grantee from one substation to another substation. The reliance of CTUIL on regulatory approval or Standing Committee Minutes does not establish any link with reallocation carried out within the said Complex, which is an undefined unit and whose expanse varies from case to case.

67. In so far as the CTUIL's reliance on the Respondent Commission's order dated 09.08.2019 and 12.05.2020 is concerned, the very description of the Case states that it is '*for Grant of Regulatory Approval for execution*

of the **“Transmission system for Solar Energy Zones in Rajasthan”** under Phases. The Petition was entirely premised seeking an approval of a ‘system’ which encompasses the ‘State’ of Rajasthan. This was necessarily so because ‘system’ is a defined term under Section 2(25) of the Electricity Act and can either be across the Union, a State or a Company/Utility. The mere mention of the term ‘Complex’ in the said orders does not in any way substantiate that CERC approved the concept of complex/ vicinity as contended by the CTUIL. Use of a particular nomenclature in its submissions before the CERC cannot ascribe knowledge to CERC of the legal sanctity of such a unit nor can it bestow any approval of such admittedly unknown rules concerning shifting/reallocation of the Connectivity. However, from the orders of CERC relied upon by CTUIL, it is clear that CERC has always been consistent in defining a ‘system’ on a state-wise basis as per Section 2(25) of the Electricity Act and therefore by now permitting shifting/reallocation on a ‘system’ wide basis (encompassing the state) as had been already approved, would suffer from no infirmity and would be wholly consistent with the earlier orders of the Respondent Commission.

68. Learned senior counsel for CERC pointed out that new words like ‘cusp’ introduced by CTUIL in the oral arguments before the Tribunal added additional caveats to the ‘vicinity/complex’ concept. CTUIL has not shown even a single document, even internal, that comprehensively defines what ‘vicinity/complex’ as a legal concept actually is and what specific rules govern ‘shifting/reallocation’. It is further submitted that given the information presented before CERC, there was no material to suggest that ‘vicinity/complex’ was a defined legal term having been bestowed a legal meaning through the exercise of any legislative/regulatory power and a decipherable legal construct cannot be distilled even on examination of the practice of CTUIL. In these circumstances, CERC was unable to give an

approval to the concept of vicinity/complex in absence of any Regulatory provisions or legal basis. Once a concept is used for reallocation where rights are given to Connectivity grantees to shift to another substation as per their date and time stamp of Connectivity Application, such concept has to be well defined based on objective parameters and should not be vague or subjective which may lead to disputes.

69. With regard to the contentions of CTUIL, that it was carrying out the reallocation/shifting exercise across sub-stations in reallocation meetings using vicinity/complex approach in consultation with CEA, SECI, RLDCs, and the decision taken during such reallocation meetings were finally approved in a subsequent "CMETS" meeting, however CERC observed that such reallocation meetings had limited invitees. It is also noticed that during reallocation meetings held on 20.06.2023 and 03.08.2023, there was no participation from CEA. Decision taken in such reallocation meetings were final decision as observed from the minutes of reallocation meeting dated 03.08.2023 given as under:

*"It was also informed earlier in the agenda that in case of no participation in the meeting by the applicant, it will be construed that the applicant is not willing for reallocation and therefore they will not be considered for the subject reallocation. **Further, it was also informed that the decision taken by the applicants in the meeting shall be considered as final and based on that the reallocation shall be finalized.** Accordingly, deliberations on reallocation took place as under.*

Summary of deliberations

After deliberations, the reallocation of bays is finalized as follows:

(A) Fatehgarh-III PS(Section-2)

(i) 1 no. of 400 kV line bay to M/s Renew [cumulative quantum 1100 MW (300+300+100+400)]

- (ii) 1 no. 400 kV line bay to M/s Serentica [cumulative quantum 600 MW (300 MW+300 MW)]*
- (iii) Sharing of 100 MW quantum [Azure] with already allocated 667 MW capacity on 1 no. of 400 kV line bay of Azure*
- (iv) One no. of 400 kV line bay remains unallocated*
- (v) one no. of 220kV line bay to M/s Khaba (250 MW)*

(B) Fatehgarh-IV PS(Section-1)

- (i) 1 no. 220 kV bay for M/s Juniper Green Steller [cumulative quantum 365 MW (150+150+65)]***
- (iii) 1 no. 220 kV bay for M/s Luceo [cumulative quantum 300 MW (200+100)]***
 - (iii) One no. of 220kV line bay is vacant with margin upto 300 MW”***
[Emphasis Supplied]

70. The aforementioned indicates that once a decision is finalized in the reallocation meeting, there is no remaining matter to be resolved in the CMETS meeting. Consequently, referring such a "final" decision to the CMETS meeting contradicts CTUIL's assertion that reallocations are finalized in the CMETS meeting.

71. On perusal of the CMETS minutes, it is noticed that there is no discussion with respect to reallocations of the Connectivity during the CMETS meeting with respect to who shall be offered such reallocation, what is the priority list, what shall be the commercial liability, who shall not be eligible to seek reallocation. CMETS only refers to the final decision taken in reallocation meetings for entities who “opted” for reallocation and accordingly only the date of start of connectivity, BG requirement etc. are indicated, implying that reallocations that have been decided under reallocation meeting are reflected in CMETS meeting for subsequent actions. Accordingly, CERC observed certain anomalies from the minutes provided by CTUIL such as:

- a. The meeting notice, Agenda and the minutes of meeting were not uploaded on Website of CTU.
- b. The procedure on alleged reallocations carried out by CTUIL was not defined and not available on website of CTUIL.
- c. All the stakeholders were not invited for the reallocation meeting. For instance, CTUIL's refusal to accede to SECI's request regarding inviting and consideration of Eden and other Fatehgarh-II grantees impacted by the GIB issue in the reallocation meeting.
- d. CTUIL stating that accommodation of Eden or any similarly placed renewable generator would be contingent on 'directions' of the 'Ministry'.
- e. Vacated bays being reserved for certain BESS whose status as an entity who have been granted Connectivity and being reallocated based on date and time stamp vis a vis fresh entity is not established in the minutes.
- f. Reallocation is not offered to entities that were granted Connectivity on the basis of Land and F&C routes.
- g. A priority distinction is being drawn between grantees who had both LTA and connectivity and with those who only had connectivity.
- h. No discussion on the commercial aspect/ liabilities arising out of such shifting from one sub-station to another.
- i. No reference made by CTUIL to get the process included in Regulations by way of comments on regulations or difficulty letters (a number of which has been communicated by CTU from time to time) to ensure a transparent process which does not violate the regulations.
- j. There were no participants from CEA in the alleged reallocation meetings in contrast to what was submitted by CTUIL.

72. Learned senior counsel for the Respondent also contended that there existed no rules/detailed procedure governing the reallocations/ shifting that has been carried out by the CTUIL. Further, what transpired from the reallocation meeting minutes that the proceeding in those minutes were only known to those who were invited in the said meetings. The invitee list was prepared on the basis of certain considerations, which would be unknown to most stakeholders. It appears that while no specific bar was ever spelled out that the reallocations were done in a unidirectional manner, in practice it appears that all the generators at an earlier sub-station were not invited to be considered for the reallocation. As the minutes of the said reallocation meeting were also not hosted on the website, so even when some outcome of the reallocation meeting was confirmed in a subsequent CMETS meeting, the other attendees of such CMETS meetings would have no information about what had already transpired in the reallocation meetings. CERC therefore, held that the procedure militated against the requirements of transparency and was in sense the proverbial black box. Furthermore, once the system was approved on a State wise basis, CERC found there to be no inherent logic in restricting reallocations to an undefined and nebulous concept called vicinity/complex specially when it was not defined on an objective criterion. There existed no material before CERC that could justify the exclusion of Eden or for that matter any similarly situated developer on account of a vicinity/complex formulation and no justification has really been produced before this Hon'ble Tribunal by CTUIL to justify the vicinity/complex formulation. The CERC found that regulations do not provide for reallocation, but considering the dynamism of the renewable sector, if the exercise of reallocation is the need of the hour, principles of such reallocation and the associated commercial liabilities are required to be included in the transparent Procedure /Regulations following due process

of law after due stakeholder consultation. For this Commission directed the staff of the Commission to process the required amendment in light of the above observations and CTUIL was directed to suggest the proposed amendments to be included in the Regulations, with due stakeholder consultation within a month of the issue of this Order. It is acknowledged that CTUIL submitted the aforementioned Procedure via its letter dated 12.04.2024, which is currently under consideration by CERC.

Exercise Of Regulatory Power

73. Learned senior counsel for CERC submitted that in above backdrop, CERC exercised its regulatory power. CERC recognising that reallocation/shifting of renewable energy developers is the need of the hour and given the fact that a large number of such shifting/reallocation had already taken place, CERC did not wish to cause any significant perturbation and therefore directions in paragraph 45 of the impugned order seeks to preserve what had already been done by CTUIL and for balance carry out the reallocation exercise as per the principles enunciated in the order. CERC observed that the process for reallocation should be defined by way of inclusion in Regulations. However, since finalisation of Regulations after following the due process takes some time, till such time either reallocations were required to be put on hold, which would have left some generating stations who could get such connectivity deprived of same and since once reallocations are done, balance available capacity is given to fresh applicants. Any such gap in timeline would have led to uncertainty in finalisation of Connectivity. Hence the need to issue interim procedure arose.

74. Learned counsel further submitted that the principles as contemplated in paragraph 47, albeit an interim procedure, valid until the appropriate

provisions are included in the Regulations, is wholly transparent since every party knows what to expect and further suffers from no glaring flaws.

75. CTUIL's objections to a State-wise concept as laid under the interim practice directions, which are only applicable for the reallocation of Connectivity and not for the fresh grant of connectivity, until the appropriate provisions are not made under the Regulations, are not fact based on hypothetical situations. Although the CTUIL is responsible for the optimal planning of the transmission lines, however, it is up to Generator to opt for its own location as it is a delicensed activity. Accordingly, it can shift its own location to connect to a substation that it has sought for and it is extremely unlikely that a Generator would seek connectivity at a substation where the length of the dedicated transmission line and implementation costs are exponentially higher or leads to increased difficulties in implementation and obtaining 'right of way' clearances etc. Further, if any generator that vacates an already allocated bay and is reallocated to another sub-Station would be liable for the bay charges till the same is occupied, accordingly the fears of CTUIL regarding squatting are suitably addressed.

76. The concern of CTUIL regarding 'RE potential' on one side of a State Border and sub-station on the other side is also unsubstantiated. It is reiterated that the directions issued in the impugned order are with respect to the reallocation of the Connectivity and not in regard to the fresh grant of Connectivity. Therefore, nothing in the practice Direction prevents any applicant from applying for a fresh grant of Connectivity or Connectivity in a second State while the project being in another State. The only restriction is on reallocation, wherein they will have to opt for reallocation at a sub-station within the State in which they have already been granted Connectivity. If a generating station seeks to shift its connectivity from substation on one state

to substation in another state, it can relinquish its connectivity and apply afresh.

77. The contention made by the Appellant-PNRPPL, asserting that CERC has infringed upon or exceeded its powers by encroaching upon a domain restricted for CTUIL as per Section 38 of the Electricity Act, is entirely contrary to the legal framework established by the Electricity Act. The authority to regulate is comprehensive and includes all aspects of the subject matter intended for regulation Power of CERC to enact Regulations is under Section 178(1) to carry out the provisions of the Act and the power to regulate is not circumscribed by the framing of regulations as decided by the Hon'ble Supreme Court in "***PTC India Ltd. V CERC***", (2010) 4 SCC 603.

78. The assertion of the Appellant - ACME and also that of PNRPPL that the Regulations and Procedures as framed, by limiting rearrangement to bays within a sub-station prohibit reallocation across sub-stations is not borne out from a simpliciter reading of the Regulations. The regulations only speak to 'rearrangement' and 'relinquishment', they do not address shifting/reallocation and therefore there is no express bar in the extant regulatory regime. It is only this vacuum that has been addressed in the impugned order till Regulations are framed to this effect with due consultation of stakeholders.

79. With regard to contention of Appellant-ACME that the exercise of Regulatory Power as done CERC is liable to be struck down for not following the 'requirement' of prior-publication or stakeholders consultation, it is submitted that it is an incorrect proposition of law and would render Hon'ble Supreme Court's decision in *PTC India Ltd. V CERC*, (2010) 4 SCC 603 a nullity since there would be no difference between a regulatory order

and an exercise under Section 178 of the Electricity Act. Further, once this Hon'ble Tribunal has been held to not have the power of judicial review it would not be feasible for this Hon'ble Tribunal to devise procedures or require the CERC to follow certain procedures not found in statute for the exercise of Regulatory Powers by CERC. The argument of Appellants is contradictory in nature since it wishes to continue with a procedure, which as admitted by CTUIL, which has never been codified, discussed or even available to the general public.

No Favouritism in the Impugned Order

80. Learned senior counsel for CERC strongly contested the assertion made by PNRPPL that CERC has unduly favoured Eden Renewables and submitted that the contours of the impugned order are sectoral in nature and CERC is unaware whether or not Eden Renewables will be entitled to any relief if and when the procedure as formulated is implemented.

81. Furthermore, during the course of hearing on 15.09.2023, the matter before CERC was to examine Eden's claims on two sub-stations Fatehgarh-III and Bhadla-II. As the record of proceedings indicates, the Respondent Commission issued a stay till the 'next date of hearing'. Stay order limited in time expires unless extended on or before the date mentioned in the order itself. The Hon'ble Supreme Court in the cases of "**Ashok Kumar & Ors. V State of Haryana & Anr.**," (2007) 3 SCC 470 (Paras 11-13) and "**Arjan Singh v Punit Ahluwalia**" (2008) 8 SCC 348 (Paras 16 & 17) has consistently adopted this approach. The Hon'ble Supreme Court in the recent Constitution Bench decision, dated 29.02.2024 "**High Court Bar Association, Allahabad v State of U.P.**", 2024 SCC OnLine SC 207 cited by the Appellants, was dealing with the limited question on whether the ratio

of *Asian Resurfacing* (2018) 16 SCC 299, in so far as directed automatic vacation of stay orders was valid, has also noted that the said cases where an injunction is limited in time by express orders stands on different footing (See Para 55).

82. In this backdrop, when CERC noted the allocation status at Fatehgarh-III PS and Bhadla-II PS, as submitted by the CTUIL in its affidavit dated 21.09.2023, did not extend the status quo qua any sub-station. It only asked CTUIL to see if any consensus can be reached with all parties to accommodate Eden keeping in view the difficulties expressed by the Eden in the said Petition. Thereafter, on 25.10.2023, Eden Renewables limited its contest to Badla-II and claimed a better right to connectivity qua Bhadla-II as opposed to PNRPPL, being a later and fresh applicant, status- quo qua Badla-II PS alone was re-imposed. Subsequently, on 09.11.2023 after hearing all sides, CERC reserved the judgment and chose not to extend any interim orders. It is submitted that on all occasions when this issue was raised in 'mentioning' proceedings, the CERC only indicated that it was in the process of issuing the final judgment and did not issue any direction to CTUIL to not to proceed with the grant of the Connectivity to the fresh applicants.

83. With the practice directions, where all grantees with a State are eligible for reallocation, Eden Renewables possibly has an edge over PNRPPL, however, this is only a consequence of the order generally and it is also possible that a third party has a superior claim to Eden Renewables as well. Therefore, the allegation that the Respondent Commission has favoured Eden is wholly incorrect and unsubstantiated. Learned counsel of CERC submitted reiterated that the exercise of regulatory power is not

retrospective, since in all cases where a vested right was created have not been disturbed.

RESPONDENT- EDEN RENEWABLES

84. Learned Senior counsel appearing on behalf of Eden Renewables submitted that CTUIL and PNRPPL have primarily raised following grounds to assail the validity of the Impugned Order:

- (a) The Petition filed by Eden before CERC seeking, *inter alia*, connectivity at Bhadla-II PS was an opportunist act and CERC erred in acceding to such request.
- (b) PNRPPL's right to Bhadla-II PS has also been fructified by CTUIL in the 23rd Consultative Meeting on Evolving Transmission Systems ("**CMETS**") held on 29.08.2023 and the same could not have been offered to Eden by CERC.
- (c) Question of considering Eden for Bhadla-II PS does not arise as the allocation/re-allocation being carried out by CTUIL is only on the basis of 'Cluster'/'Complex' and since Eden was not a part of the Bhadla Cluster, it could not be considered for such re-allocation.
- (d) Findings and Practice directions passed by CERC, in the Impugned Order, are unfounded and against the GNA Regulations. In case, the Practice directions are not set aside, it would impede the planned growth of the transmission network.

85. Learned senior counsel for Eden Renewables submitted that Eden Renewables had approached CERC, being the sectoral regulator, due to the vacuum in the existing framework, seeking, *inter alia*, a direction to CTUIL allowing Eden renewables to shift its Connectivity from Fatehgarh-II PS to either Fatehgarh-III PS or Bhadla-II PS (i.e., from one substation to another).

Its existing connectivity to Fatehgarh II PS, for reasons beyond its control, had been rendered physically, technically and financially unviable in view of Order dated 19.04.2021 passed by the Hon'ble Supreme Court in W.P. No. 838 of 2019 ("**GIB Order**") whereby Fatehgarh-II PS area had been earmarked as a 'prioritized area' for the Great Indian Bustard ("**GIB**"), necessitating laying of underground lines. As such, Technical Expert committee constituted by Ministry of Power ("**MoP**") has made a clear finding that the undergrounding of transmission lines of 66kV and above voltage levels was not technically feasible for evacuation of bulk power on account of various constraints. Request of Eden Renewables to GIB committee for laying overhead line with alternative routes was not accepted as overhead transmission line presents a very high risk to the GIB. GIB Committee proposed that Eden should explore the feasibility of either **(a)** re-routing the proposed lines in such a way that the length of line in 'prioritised area' is minimized; or, **(b)** connect its Projects to Fatehgarh-III or any other substation outside the 'prioritised area'.

86. Eden Renewables approached CTUIL and the Ministry of Renewable & New Energy ("**MNRE**") requesting both to consider shifting/transferring/reallocating the Connectivity to Fatehgarh-III PS. However, no solution could be provided and thereafter Eden Renewables approached CERC and Bhadla-II PS was included as an alternate location having come to know about such availability through 23rd CMETS-NR meeting Agenda circulated by CTUIL on 26.08.2023. Representative of Eden renewables in the said Agenda/ meeting was with respect to another project, i.e., Eden Renewable Alma Private Limited.

87. Learned senior counsel further submitted that in the Impugned Order, there is no direction, whatsoever, for allowing Eden to shift its connectivity to Bhadla-II PS or any other substation. CERC, in its role as sectoral regulator has issued the Impugned Order after following a detailed process of fact finding & noted the past practice and has been careful to ensure that the Order does not disturb closed transactions. The Impugned Order does not discuss the aspect of grant of Connectivity to Eden renewables, rather it proceeds on the larger premise of the reallocation process being followed by CTUIL being non-transparent and being carried out on a case to case *ad hoc* basis. Once it is held to be illegal on account of being non-transparent and arbitrary, CERC was fully justified to put a stop to it and prescribe a new procedure, pending formal amendment to the legislation.

88. The contention that Eden Renewables has benefitted from the flawed procedure in the past is wrong, as Impugned Order, while holding that the procedure is illegal, does not disturb the grants already made prior to the Impugned Order. In any event, Eden did not challenge the procedure followed by CTUIL while seeking change of location. Learned counsel of Eden Renewables made further submission regarding :

Customs/past practice not established by CTUIL

89. CTUIL has heavily emphasised that the allocation/re-allocation process on the basis of 'cluster/complex' is a prevalent one and has been in force since 2018. However, this concept of re-allocation is completely missing in the DoP of 2018 as well as the subsequent DoPs. There is no document in the public domain that defined the process of re-allocation. The alleged reallocation philosophy has surfaced for the first time, when CERC directed CTUIL to place on record the methodology being followed for

reallocation. As noted by CERC, the meetings under which such re-allocations happened were not even available in public domain and the findings of CERC to the extent that there is no transparency in the methodology being followed by CTUIL cannot be called unreasoned and unfounded.

90. Further, CTUIL's contention that the above methodology being followed by it is based on past practice and Eden itself has been a beneficiary to the said practice. The threshold for a prior custom to be applied uniformly and transparently is very high in terms of the law laid down by the Supreme Court. In the case of "**Gokal Chand v. Parvin Kumari**", (1952) 1 SCC 713 [**Para. 18**], it has held that there is no presumption that a particular person or class of persons is governed by custom, and a party who is alleged to be governed by customary law must prove that he is so governed and must also prove the existence of the custom set up by him. Thus, the argument of CTUIL is not sustainable in the eyes of law and does not hold any water.

91. Therefore CERC, could not have permitted CTUIL to devise or rely upon such arbitrary and whimsical methodology for reallocation of bays especially when the CERC, being the regulator of ISTS in terms of Section 79(1)(c), is unaware of any such methodology. The methodology is arbitrary for it seeks to only protect the investments made in the transmission sector, which is anyway a monopoly, by enabling the filling up of bays and the said methodology, in terms of CTUIL's submissions, only allows shifting from one substation to another unidirectionally, only to ensure that there are no vacant bays. It does not factor the concerns of generators like Eden to grant connectivity, which has become inoperational/impossible for reasons not

attributable to the generator, the protocol does not come to the aid of such generator. Therefore said procedure, being followed by CTUIL, is flawed and discriminatory.

CTUIL's submissions before the Hon'ble Tribunal regarding adopting State wise approach for reallocation

92. CTUIL has contended that such exercise will lead to haphazard and un-coordinated laying of transmission lines and hence, the said directions are unimplementable. Such direction shall affect the planned growth of generating and transmission system, particularly the RE generators. Learned counsel of Eden Renewables submitted that said contentions of CTUIL are highly misconceived and misleading as:

- The aforesaid submissions are made without any material basis or evidence and are vague and presumptuous.
- In discharge of its functions under section 38 of Electricity Act 2003, CTUIL is required to ensure development of an efficient, coordinated and economical system of inter-state transmission for smooth flow of electricity from generating station to load centres. However, it did not give any efficient, coordinated and economical solution to ensure flow of electricity from Eden's generating station based on its original location.
- In terms of Electricity Act 2003 and the GNA Regulations, CTUIL is only responsible to facilitate the evacuation of power from the generating companies. CTUIL is not empowered under the Act to undertake any functions of regulating or controlling the dedicated transmission lines from a generating station and the same is the sole responsibility of a generator.
- As such, the entire cost of laying down of the dedicated

transmission lines for projects is on account of the Generating Company. So nobody would like to choose far away substation and lay long dedicated line and increase its cost. There is no scientific study or a rational argument given by CTUIL to justify as to how such direction of CERC impedes the planned growth of transmission network and therefore cannot be faulted with.

- CERC, in the practice Direction, has safeguarded the interest of CTUIL by holding that option of reallocation shall be subject to payment of commercial liabilities pertaining to existing connectivity as per the Sharing Regulations, 2020. Thus, the issue of stranding of bays raised by CTUIL has been adequately dealt with.

Rights of PNRPPL *vis-à-vis* Eden Renewables

93. Regarding the contention of PNRPPL, that Eden had never requested for shifting of Connectivity to Bhadla-II PS prior to its Petitions before CERC, and implementation of Impugned Order would lead to the singling out of PNRPPL, as it would be prevented from getting Connectivity at Bhadla-II PS, it is imperative to understand that the grant of connectivity, being a regulated activity, is strictly governed in terms of the Regulations framed by CERC. Applicant seeking connectivity to the ISTS has to follow the process stipulated under such Regulations and only subject to fulfilment of the conditions therein, a right is created in favour of such applicant.

94. In the present case, PNRPPL is merely an applicant seeking connectivity and no rights whatsoever has been created in its favour. PNRPPL has vehemently contended that, on account of Status-quo Order

by CERC, it was impeded from submitting BGs which impeded it from obtaining the connectivity. However, this submission of PNRPPL is highly misleading as main question is to decide; whether PNRPPL can, in law, claim a right over the bays at Bhadla-II and even if it can, does it have a better right over Eden. In this regard, it is important to understand the creation of right over a bay under the extant regulations. Eden Renewables had been granted Connectivity and Long Term Access (“LTA”) to the ISTS under the framework of the Connectivity Regulations, 2009, in which connectivity is granted in two stages; Stage I & Stage II. As per Clause 7.4 and 7.5 of the DOP, 2018 and Clause 7.3 of the DOP, 2021, grant of Stage-I Connectivity shall not create any right in favour of the Grantee / Applicant. In the GNA Regulations notified by CERC on 07.06.2022, repealing the connectivity Regulations 2009, there is no provision for Stage-I or Stage-II Connectivity. The GNA Regulations simply provide that on an Application being made, firstly, an in-principle grant of connectivity shall be issued to the Applicant in terms of Regulation 7 and, secondly, a final grant of connectivity shall be issued to the Applicant, once the said Applicant complies with the requirement of submitting Connectivity Bank Guarantees as provided for in the GNA Regulations. CTUIL vide its Affidavit dated 23.10.2023 has categorically stated that in-principle grant of connectivity is yet to be issued by CTUIL for applications discussed in 23rd CMETS held on 29.08.2023 including that of PNRPPL and therefore PNRPPL was not even called upon to submit Conn BG-1, Conn BG-2 and Conn BG-3, which are a pre-requisite for the grant of final connectivity under Regulation 9 of the GNA Regulations. Therefore, at this stage, there is no vested right with PNRPPL regarding the bays allocated to it at Bhadla-II PS.

95. It is a settled position of law that a “*vested right*” is a right having the character or given in the rights of absolute ownership; not contingent; not

subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights'. Reliance for the same is placed on the following Judgments:

- (a) ***MGB Gramin Bank v. Chakrawarti Singh***, (2014) 13 SCC 583 [Paras. 11-13]
- (b) ***Howrah Municipal Corporation &Ors. v. Ganges Rope Co. Ltd &Ors.***, (2004) 1 SCC 663 [Para. 37].

96. Therefore, it is evident that even the in-principle grant of connectivity shall not mean that a "vested right" is available to PNRPPL at this stage. PNRPPL contention that it was barred from furnishing the Conn BGs due to the *status quo* Orders passed by CERC does not have any merit as the framework of GNA Regulations, the requirement of furnishing Conn BGs only arises once an applicant has been intimated its in-principle grant of Connectivity.

97. Learned senior counsel for Eden Renewables asserted that Eden Renewables has a better right than PNRPPL, even under the framework of the GNA Regulations. It was a Connectivity 'grantee' under the framework of the Connectivity Regulations, 2009 and as per GNA Regulation notification, the applicants and grantees could apply for transition in terms of Regulation 37.3(2)(b) of the GNA Regulations within a period of thirty (30) days from the effective date, i.e., 05.04.2023. Being a prudent utility, on 03.05.2023, Eden Renewables duly applied for transition of their connectivity granted under the Connectivity Regulations, 2009 to the GNA Regulations

and said Applications of Eden Renewables were considered by CTUIL in the 22nd CMETS held on 21.08.2023.

98. CTUIL, while discharging its statutory functions, cannot mandatorily hold that shifting is possible only within the cluster/complex and the same is unidirectional. CTUIL, prior to Eden Renewables proceeding before CERC, had rejected the Eden's request for shifting without having given any reason for the said inability of CTUIL to allow Eden's request. In case, the practice followed by CTUIL was inflexible, then what was the rational of CTUIL for awaiting directions of MOP as stated by them. CTUIL did not even consider to escalate the matter to CERC, to resolve an alleged regulatory issue. PNRPPL is a case of a fresh application, that was under consideration. The change in location needed correction in the application itself and it cannot be said that the same is a case of re-allocation. Learned counsel of Eden Renewables submitted that even if the aforesaid date is considered for determining the priority of the Applications for connectivity of Eden, the same is still prior to the Application filed by PNRPPL, which was made on 05.05.2023. Therefore, in any case, Eden would be higher on the priority list than PNRPPL. The obligation of CTUIL does not stop/end with a mere grant of Connectivity and extends to the entire process of facilitating evacuation of power from Projects connected to the ISTS.

Status Quo Orders issued by Ld. CERC

99. PNRPPL has contended that the *status quo* directions issued by CERC by way of its RoP dated 25.10.2023 was extended beyond 09.11.2023, and it was obstructed to submit the requisite Connectivity BG's to crystallise its right for Connectivity at Bhadla-II. Learned senior counsel of

Eden Renewables submitted that the *status quo* directions by CERC came to an end on 09.11.2023 when the Subject Petitions were reserved for orders. It is a settled law that unless there is a clear and specific direction from the court indicating otherwise, the party against whom the injunction is granted can assume that the restraint no longer applies once the specific period ends. Reliance was placed on the following:

- (a) Judgment of the Hon'ble Supreme Court in the case of ***Ashok Kumar &Ors. v. State of Haryana &Anr. (2007) 3 SCC 470 [Paras. 11-13]***
- (b) Judgment of the Hon'ble High Court of Madras in ***Searle (India) Limited, rep. by its President Dr. K.K. Maheswari v. M.A. Majid, (2003) (1) CTC 397 [Paras. 12-14]***

100. In fact, it was PNRPPL's own understanding also in issuing a letter dated 23.11.2023 to CTUIL, that there was no impediment on CTUIL from allowing PNRPPL to take further steps with respect to its application for Connectivity. In fact, CTUIL has failed to adhere to the timelines as stipulated in the GNA Regulations as processing of PNRPPL's application for Connectivity was to be completed much prior to the filing of the Petitions before CERC.

DISCUSSIONS AND ANALYSIS

101. We have heard learned counsel for the parties and perused the records. After going through the elaborate submissions of Appellants and Respondents, following questions emerge for consideration:

a) Is practice directions issued by CERC aligned to prevailing Connectivity Regulations

102. Learned counsel for ACME and PNRPPL have raised a common issue that Practice Direction issued by CERC in the impugned order are not aligned with existing connectivity Regulations and it is in violation of GNA Regulations. Lets us look at the relevant clauses in the existing Regulations. Clause 4.2 of approved Detailed Procedure 2021 provides that:

“4.2 The generation capacity already connected to grid (Inter-State Transmission System or Intra-State Transmission System) or for which connectivity is already granted under the present Regulations, cannot apply for additional connectivity for the same project capacity.”

Clause 11.4 of approved “Detailed Procedure 2021” states that :

“ On a specific request of stage II Connectivity grantee(s), and for the purpose of optimal utilization of transmission infrastructure, CTU, may after consultation with stage II Connectivity grantee (s) concerned, carry out rearrangement or shifting of the stage-II Connectivity across different bay (s) of the same ISTS sub-station”

Clause 11.4 of GNA Regulations provides that

“ For optimal utilization of transmission system, the Nodal Agency, with consent of the concerned Conectivity grantee(s), may rearrange the Connectivity across different terminal bay(s) of the same ISTS sub-station”

103. It is a fact that each substation within a complex/cluster/State is considered individually and as per clause 11.4 of “Detailed Procedure 2021”, rearrangement of the connectivity is allowed only across different bays

within the same substation and there is no provision to shift connectivity from one ISTS to another ISTS.

104. Thus, in case, any Grantee wishes to obtain connectivity at a substation other than the one on which he has been granted connectivity, the only option available under the existing Regulations is that he surrenders the connectivity granted at a particular substation and seeks fresh connectivity at the desired substation, which shall be considered as per the application date and time stamp as per the Regulation. Thus, present regulation do not address the procedure for reallocation of bays in a substation within a complex/ Cluster/State/ Pan India without surrendering existing connectivity. There is no doubt that CERC is authorized to issue practice directions using its regulatory power, based on existing Regulations and frameworks, until any amendments are officially enacted. This process ensures that necessary actions can be taken promptly to address operational requirements within the electricity sector while adhering to legal and regulatory framework.

105. As part of the practice directions issued by CERC, using its regulatory power, for carrying out future reallocation, it has directed that besides transparently making the information available on the website of CTUIL, **“Any Connectivity grantee (Stage-II grantee under the Connectivity Regulations 2009 or Connectivity Grantee under GNA Regulations) shall be eligible to request said bay based on the date and time stamp of its Original Connectivity application”**. Practice direction also directs that **“all the connectivity Grantees who have been granted Connectivity at any substation located within the State shall be eligible to place a request for reallocation to another substation within the same state”**

106. Besides transparent disclosure on the website of CTUIL, regarding bay falling vacant due to surrender, two main directions emerges from such practice direction:

- i) all the grantees within a State are eligible for reallocation instead of confined to vicinity/complex
- ii) all such eligible grantees can ask for such spare bay under reallocation without surrendering existing connectivity based on the priority of its original application.

107. As stated by learned senior counsel of CERC that the Electricity Act, 2003 does not confer the power of judicial review, of the validity of the regulations made by the CERC under Section 178 of the Act, on the Appellate Tribunal for Electricity. Such Regulations are made under the authority of delegated legislation, they are in the nature of subordinate legislation, and have general application. Consequently, its validity can be tested only in judicial review proceedings before Courts, and not by way of appeal before the Appellate Tribunal. However, as Appellate authority, this Tribunal can adjudicate the directions issued by the Central / state commission as part of adjudicatory order using regulatory power, whether same is in consonance with existing Regulation until amended. Our views are therefore limited on the practice direction issued by CERC as part of adjudicatory order.

108. We observe that under existing connectivity regulations, there is no provision to seek connectivity at a different substation without surrendering existing capacity and priority at different substation sought shall be as per date and time of revised connectivity application. However, the practice directions issued by CERC allows Grantees within a State to seek connectivity at different substation without surrendering existing capacity as

well as retaining their priority as per original application. Order of the adjudicatory authority should be self explanatory, however, CERC in the impugned order, has not deliberated on the issues involved in the practice followed by CTUIL of vicinity/ cluster/ complex approach and also reasons for adopting State wise approach and not all India for such reallocation to be adopted as per Practice Direction. Justification provided by learned senior counsel of CERC during the proceedings before this Tribunal is that there is no mention of vicinity/ cluster/complex concept in Electricity Act 2003 or Regulations, while electricity system definition in section 2(25) mentions State as reproduced below :

“Sec 2(25) - “electricity system” means a system under the control of a generating company or licensee, as the case may be, having one or more—

- (a) generating stations; or***
- (b) transmission lines; or***
- (c) electric lines and sub-stations,***

and when used in the context of a State or the Union, the entire electricity system within the territories thereof;”

109. We are not convinced with the justification provided by learned senior counsel of CERC as the referred sub-section also mentions Union and furthermore the issue involved is concerning inter-State transmission system which as per section 2(36) of Electricity Act 2003, reproduced as under, covers transmission system cutting across State boundaries and on Pan India basis.

“Sec 2(36) “inter-State transmission system” includes –

- (i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;***

- (ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;**
- (iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility.”**

110. We also find some force in the submissions made by Senior counsel of CTUIL that as such vicinity/cluster/complex wise approach has been adopted in planning/implementation of Inter-State transmission system and CERC has accorded regulatory approval to the Inter-State transmission system so developed.

111. CERC, in the impugned order, has rightly acknowledged that reallocation of bays is the need of the hour and to be carried out transparently and the Practice Directions is to be followed until appropriate amendments to the regulations are issued after stakeholders consultation. Thus, stakeholders consultation is very important in framing new Regulations as well as for amendments to the said Regulation. CERC itself has stipulated a very detailed procedure for framing regulation involving publication of staff paper, invitation of comments, open hearing, publication of draft regulation and order for comments and Final regulations and order after considering the comments. So for framing of Regulations and its amendment views/comments of all stakeholders are taken and suitably incorporated based on Sector requirement. Though there is no such requirement to issue practice directions using Regulatory power as part of adjudicatory order but the fact remains such Practice Direction do not have considerations of the views of stakeholders. In the instant case, CTUIL, one of the important stakeholder, in its appeal before this Tribunal as well as

during Proceedings before this Tribunal, has pointed out various issues involved in adopting State wise approach for such reallocation as enumerated below :

- a. The organised planning of development of ISTS system will be affected with vacancies in different substation across the State and constant changes being sought for;
- b. increase in squatting of connectivity, depriving bona fide applicants seeking connectivity in the cluster/complex. The objective cannot be only that the transmission charges are secured but that lines and system are effectively put to use;
- c. ISTS system are developed not based on State boundaries or district boundaries and are based on potential of the area and such area may be in adjacent State or adjacent district with substation in other state or district . There are cases of such nature in (ISTS substations for RE power evacuations with locations of generation projects in adjacent states such as Telangana & Karnataka or Maharashtra & Karnataka.
- d. It is irrational for RE Generator to lay down dedicated transmission line for a long distance to get connectivity. It will lead to haphazard lines cross crossing and in any event is not techno economical for the generator. Even in case of Eden, while seeking connectivity to Bhadla II, it was represented in the proceedings that it would arrange for land in the vicinity of Bhadla II in place of land near Fatehgarh II confirming the need for following cluster/complex vicinity for its own benefit.

112. We also observe, that as per existing Connectivity/GNA Regulation, grant of connectivity for a substation covers generation projects/ applicant across the States and Applicant need to give proposed coordinate of its

project and indicate nearest substation (though optional). However, for reallocation of bays, as per practice direction, grantees of that particular State are only eligible where the substation is located, excluding the grantees who were considered during Grant of Connectivity for substations in the vicinity/ Cluster/Complex, but in other State, as per their application priority. We feel, that there could be a situation that Grantees in a particular State may not be interested in such reallocation of bays in a substation, say Substation 1, could be due to distance/commissioning schedule, while a generation project located in close proximity to this substation 1 having connectivity to a substation with later commissioning schedule, but in nearby State is interested, however non eligible as per Practice Direction. In this scenario, the capacity available in this Substation 1 (having earlier commissioning schedule) can only be allocated to fresh Applicant as per present connectivity/GNA regulations (with no bar on state wise allocation), which may also not find it suitable due to large gap in commissioning schedule of their generation project and that of station 1 having early commissioning schedule and may lead to stranding of capacity at Substation 1 .

113. The Existing connectivity Regulations, itself bars a Grantee to apply / seek connectivity at a different substation for the same capacity of generation project without surrendering its Existing capacity. It is a settled law that any commission in its exercise of regulatory power in an adjudicatory order issued under Section 79 1 (f) of Electricity Act 2003, cannot supersede the Existing Regulations issued exercising its power under section 178 of Electricity Act 2003 because the regulations are at a higher pedestal. Any order of the Regulatory Commission cannot run contrary to the provisions of existing regulations, including the connectivity/ GNA Regulations in the present case, which have been notified pursuant to

legislative powers of the Respondent Commission. This issue has been settled in the judgment of the Constitutional Bench of the Hon'ble Supreme Court in "***PTC India Limited v. CERC & Ors***" (2010) 4 SCC 603, as under:

"54. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178."

114. In view of above deliberations, we find that Practice Direction issued in para 47 as part of impugned order is not in conformity with existing connectivity / GNA regulations and are therefore liable to be set aside. Further, the deficiencies pointed out by CTUIL (as detailed earlier in this order), in the Practice Directions issued by CERC, may well result in such Practice Directions creating more problems than resolving the lacunae in the procedure being followed by CTUIL. As reallocation of bays is need of the hour, the existing Regulations may need amendment. The important question before this Tribunal is what is to be done in the inter-regnum, and the same is dealt with in subsequent Para.

b) Is the procedure/practice followed by CTUIL in reallocation of bays non transparent and on case to case basis.

115. CERC in the impugned order has held that CTUIL has offered reallocation of bays on a case to case basis in a non-transparent manner and the criteria followed is not provided in any regulation/ directions of the commission and it has also not been put on the website of CTUIL transparently. Besides, all the stakeholders are not invited for the reallocation meetings and Agenda & Minutes of Meetings are also not available on the CTUIL Website. Before deliberating on the issue, let us first see the relevant regulations/detailed Procedures. Clause 4.2 of Detailed Procedure 2021 has been reproduced in previous issue. Few other clauses are reproduced below:

“7.1 upon receipt of the application for grant of connectivity, CTU shall carry out necessary study for grant of connectivity in the available margin in the nearest existing ISTS substations or in new Sub-station under implementation / planning stage.”

“10.2 The applications for Stage-II Connectivity with time and date stamp shall be displayed on website of CTU. The inter-se priority for grant of Connectivity to applications received during same month shall be as per the date and time of receipt of the applications complete in all respects after rectification of deficiencies, if any.”

116. It is observed that based on renewable energy generation potential of a particular area, inter State transmission system consisting of transmission lines and substations has been planned in stages adopting complex wise/ cluster wise approach. For Example, considering an overall

generation potential of 26700 MW in Fatehgarh Complex, various pooling substations based on technical considerations are planned like Fatehgarh I - 2200 MW, Fatehgarh II -5500 MW, Fatehgarh III (Section -1) 1900 MW, Fatehgarh-III(Section-2) – 6000 MW, Fatehgarh-IV(Section-1) – 2100 MW and Fatehgarh-IV(Section-2) – 9000 MW . Likewise considering overall potential of 14930 MW in Bhadla Complex, Bhadla I – 3380 MW, Bhadla II – 5050 MW and Bhadla III – 6500 MW have been planned and similarly for Bikaner, Ramgarh, Barmer and Sirohi complex.

117. Subsequently, based on the applications received for Connectivity and LTA (subsequently GNA), sequentially the pooling substations are finalized and further processing for its implementation is taken up. Like wise, evacuation transmission facilities from each substation/ complex is planned/ developed based on generation potential of that complex & phase wise requirement and regulatory approvals by CERC are also granted accordingly. Such substations in a complex/ cluster or vicinity may not be congruous to each other or confined to one district alone as location of substations is also dependent upon availability of land. Various substations so planned to be developed sequentially, their commissioning schedules are also like first Substation No I, then No II and so on.

118. It has been contended by Appellate-CTUIL that in the event of availability of some margin in a substation with earlier commissioning schedule due to surrender/revocation of connectivity, same is offered to other grantees from that complex sequentially as per priority based on their application. In case, none of the grantees are willing to shift, then it is allocated to new Applicant based on their priority as existing regulations provides *for grant of connectivity in the available margin in the nearest*

existing ISTS substations or in new Sub-station under implementation / planning stage". We find force in this argument of Appellant – CTUIL. In case this surrendered capacity is not allocated to other grantee/ applicant then though the transmission asset would get commissioned, but full utilization shall not be there leading to its sub-optimal utilization, non recovery of its full transmission charges, and thus stranding of capacity, contrary to the function of CTUIL. As per Section 38 (2) c of Electricity Act 2003 CTUIL ***"to ensure development of an efficient, Coordinated and an economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres"***.

119. It has also been observed that CERC while granting Regulatory approval to transmission system for Renewable energy generation projects have directed CTU that as far as possible endeavor to match construction of transmission system with COD of generation projects and if required, may even defer construction of transmission system so that no transmission system remains unutilized. So by reallocating the capacity at the substation with earlier commissioning schedule, so made available due to surrender by other Grantee, shall lead to optimal utilization of capacity at that substation as well as implementation of other substation in that complex/cluster can be deferred for some time

120. Before further deliberating whether practice followed by CTUIL for reallocation is case to case and non transparent, Let us see whether practice followed is as per extent Regulations. Theoretically, in case there is no limitation/ constraint on the capacity of a substation, there may not be need to develop more than one substation in the complex and connectivity/ LTA requirement can be fulfilled from one substation like only Fatehgarh substation (unlike Fatahgarh I, II,III, IV), Bhadla substation (unlike Bhadla

I, II) etc. In that situation, reallocation of different bays within the same substation would be as per Clause 11.4 of **Detailed Procedure 2021** “***On a specific request of Stage-II Connectivity grantee(s) and for the purpose of optimal utilization of transmission infrastructure, CTU may, after consultation with the Stage-II Connectivity grantee(s) concerned, carry out rearrangement or shifting of the State-II Connectivity across different bay(s) of the same ISTS sub-station.***” However, we can’t be oblivious to the fact that presently number of substations, albeit technical consideration, are developed to cater to the potential of that complex, and each substation is an independent entity. The reallocation exercise followed by CTUIL using vicinity/complex approach can be considered closer to the provisions of existing Regulations than the Detailed Procedure laid down by CERC in the impugned Order.

121. Regarding contention of CERC that case to case and non-transparent approach has been adopted by CTUIL in such reallocation exercise, we note that these reallocation meetings have been held not alone by CTUIL but in consultation with various other important stakeholders responsible for planning, development and operation of electricity system, optimal utilization of resources including development of renewable energy sources like CEA, SECI, Grid Controller of India, respective Load dispatch centres. In case of non-participation of CEA in the reallocation meetings dated 20.06.2023 & 03.08.2023, as pointed out by CERC, decision taken in such meetings cannot be held to be non-transparent / case to case basis on this account, as it is seen that neither the Agenda for such meetings or the process followed have been questioned by CEA before the meeting. A fact also emerged that such a practice has been followed by CTUIL since 2018. We are surprised to note the objections of Eden Renewables

regarding the practice of reallocation followed by CTUIL and legal proposition submitted before this Tribunal while, Eden Bercy and Eden Passy themselves have been beneficiary of such reallocation. We observe from the submissions of CTUIL, that initially Eden Passy was granted connectivity in Sept 2020 for its project at Fatehgarh III (300 MW), based on it's application, however subsequent to availability of capacity at Fatehgarh II PS, as part of reallocation exercise using vicinity/complex/cluster approach, they opted for shifting its connectivity from Fatehgarh III to Fatehgarh II PS. Likewise, Eden Bercy, an applicant for Fatehgarh III were allocated capacity for its project (300 MW) at Fatehgarh II PS, as per their willingness, having highest priority over fresh applicants. It is also a fact that Eden Renewables, has also not raised any issue regarding the practice followed and the manner of reallocation by CTUIL in their Petitions before CERC in the instant case. It is surprising on their part to make submissions now before this Tribunal ***“that reallocation philosophy has surfaced for the first time when CERC categorically directed CTUIL to place on record the methodology being followed by it during the process of re-allocation”*** .

122. We have been informed that till date, no representation has been made against this practice of reallocation of bays by CTUIL. In legal terms, 'Case –to-case-basis refers to a practice of making decisions based on specific facts of each individual case. However we observe that agenda for the meetings, for reallocation of bays across substations adopting vicinity/Complex approach, was circulated to CEA, SECI, respective LDC and grid controller of India besides concerned grantees, and meetings were held accordingly since 2018 across all Regions with no objections raised. Though no deliberation regarding what is meant by case to case approach have been made in the impugned order, the learned senior counsel of CERC

has indicated that by case to case it refers to priority distinction between grantees with both LTA and connectivity and with those who had only connectivity, reallocation not offered to entities that were granted connectivity on the basis of Land and F&C route. We feel that all these criteria refers to optimal utilization of available infrastructure and as submitted by CTUIL, that CERC in its Order in Petition No. 84/MP/2016, itself has approved a proposal of CTUIL for utilization of the vacated margins (owing to relinquishment of LTA) based on:

- a) Clustering of Applications/Projects requiring power flow in a particular direction (SR/ER/WR to NR);
- b) Considering readiness of the project over and above the application priority (i.e. time and date stamp) for better utilization of the transmission margins.

123. In view of above observation and deliberation, in our view approach adopted by CTUIL in reallocation of bays cannot be considered as case to case approach.

124. Transparency plays a crucial role in ensuring accountability, fostering trust and promoting fair and effective governance specially in Regulatory regime. When processes, rules and outcomes are transparent, it becomes easier to identify and address any instances of misconduct, favoritism or inefficiency. It is a fact that “Detailed Procedure 2018” and “Detailed Procedure 2021” does not specify the criteria for reallocation of bays across substations in the vicinity/ Complex and neither has the procedure followed by CTUIL, in reallocation of bays across the substations adopting vicinity/complex, been uploaded on the website of CTUIL nor are the Agenda and Minutes of such reallocation meetings available on the website

of CTUIL. However, a fact also emerged that decision taken in these reallocation meetings are included as part of Agenda of subsequent Regional CMETS meetings, Agenda and MOM of which is uploaded on the website of CTUIL as well as circulated to all the constituents of that region and all concerned, giving opportunity to them to raise concerns/ objection or even approach CERC for adjudication. In the instant case also, the decisions made in reallocation meeting of 20.06.2023 & 03.08.2023 were incorporated in the agenda of 23rd CMETS-NR meeting held on 29.08.2023 and intimation of grant of connectivity (reallocation from Fatehgarh IV to Fatehgarh III) to Khaba Renewables, was issued after the 23rd CMETS – NR meeting. In fact, Eden Renewables filed petition before CERC after the 23rd CMETS –NR meeting, where reallocation exercise undertaken in previous meetings was included in agenda and deliberated, and as such it had not questioned the reallocation exercise followed by CTUIL and sought adjudication by CERC. On the issue of transparency, another important aspect is misconduct, favoritism and inefficiency, for which neither CERC nor the petitioners Eden Bercy & Eden Passy have made any observation/ allegation against CTUIL.

125. We are, therefore, of the view that process followed by CTUIL in reallocation cannot be held totally non transparent, but agree with the views of CERC regarding non transparency as far as disclosure of procedure, Agenda and Minutes of such reallocation meeting on the website of CTUIL is concerned. We endorse the direction given by CERC to upload agenda and Minutes of such reallocation meeting on the website, which CTUIL confirmed is now being complied with.

126. It has been held in previous para that Practice Direction issued as part of impugned order are to be set aside as being not in consonance with

existing Regulations and is fraught with the problems indicated by CTUIL. What should be done in the inter-regnum, in case need for reallocation arises and Regulations are not amended by then. It has been observed, that Practice of reallocation of bays followed by CTUIL, considering cluster/vicinity approach has been followed since 2018 with no objections raised so far and no discerning views have been expressed by CERC on the same in the impugned order. As non-transparency issue has now been taken care by uploading the Reallocations meeting agenda and minutes of meeting on CTUIL website, we feel it prudent to let the current practice followed by CTUIL for reallocation of bays be allowed to be continued, till amendment to the Regulations are made by CERC. We would, however, like to clarify that the above directions in no way should be construed as our view on the process of reallocation.

c) Is operating directions issued by CERC retrospective in nature; whether the Appellant – PNRPPL singled out on this account. Would Practice Directions Impact Appellant –ACME.

127. Having arrived at the decision to set aside the Practice Direction issued by CERC in the impugned order as per above deliberation, this issue is of no relevance, but is deliberated below for completeness.

128. Appellant - PNRPPL , besides contending that issue of Practice Direction by CERC in the impugned order is not in consonance with Existing Regulation and therefore bad in law, has made observation with regard to its retrospective application and in the process singling out PNRPPL, which was already allocated 450 MW connectivity at Bhadla II during 23rd CMETS –NR meeting held on 29.08.2023 and could not proceed with subsequent stages of obtaining connectivity, on account of *ex-parte status quo*

directions issued by CERC from 15.09.2023 onwards till issuance of impugned order on 15.09.2023.

129. To deliberate this issue we would like to list, as below, sequentially various dates of hearing and direction of CERC with regard to status quo of Fatehgarh III 220 KV and Bhadla II 220 KV and what is inferred out of it:

i) ROP dated 18.09.2023 (hearing date 15.09.2023) - CERC directed CTUIL and Eden Renewables to submit some information and as per para 5 (e) CERC directed “ ***in the meantime, CTUIL will maintain Status-quo with regard to the allocation of bays/space at Fatehgarh III & Bhadla II till next date of hearing***”; meaning no action to be taken with regard to intimation of connectivity to Khaba Renewables (for Fatehgarh III) and PNRPPL (for Bhadla II)

ii) ROP dated 26.09.2023 (hearing date 22.09.2023) - Desired information was submitted by CTUIL, according to which CTUIL informed that available margins at Fatehgarh III have been offered to Connectivity Grantees / applicant at Fatehgarh IV to shift to Fatehgarh III based on application priority and willingness during the meetings held on 20.06.2023, 03.08,2023 (minutes of which were placed on record) and 29.08.2023 (23rd CMETS –NR), minutes of which are yet to be issued. Regarding Bhadla II, surrendered 220 KV bays (with 600 MW capacity) were offered to new applicant during 23rd CMETS-NR meeting held on 29.08.2023 and PNRPPL has opted for stage II connectivity (450 MW) at Bhadla II as per its application priority. CERC directed “ ***the CTUIL and Petitioners to carry out a joint consultation (with Petitioners and other project developers) to explore the feasibility/ possibility of shifting Connectivity of the***

Petitioners to the Fatehgarh III or Bhadla II, pooling station maintaining the Petitioners priority and to file the outcome of such consultation within two weeks. The commission also instructed CTUIL to appraise the Petitioners about the obligation of transmission charges associated with such shifting as per extent Regulation”. However no direction with regard to either continuation of Status-quo or Vacation of status quo direction (given via ROP dated 18.09.2023) with regard to Fatehgarh III and Bhadla II was given in hearing/ ROP: As submitted by CERC, along with placing reliance on various legal propositions, there is no *stay* regarding issuing grant of connectivity for Fatehgarh III (Khaba Renewables) & Bhadla II (PNRPPL). However, since CTUIL was directed to undertake a consultative process. CERC evidently proceeded on the premise that CTUIL would not act pursuant to its earlier decision.

iii) ROP dated 31.10.2023 (hearing date 25.10.2023)- CERC took note of the submissions of CTUIL that after the joint consultation meeting (held on 05.10.2023), no developer is willing to shift its connectivity from Bhadla II and Fatehgarh III as well as Petitioners are not willing to opt for the connectivity at the alternate location and insist on being provided at Bhadla II PS. CERC directed to implead PNRPPL as a party and submit its comment on the submissions of Petitioners that in facts and circumstances, shifting of Petitioners Existing connectivity at Fatehgarh II to Bhadla II to be prioritized over PNRPPL’s from Bhadla III to Bhadla II. CERC further directed “ ***in the meantime, CTUIL will maintain the status quo with regard to the grant of connectivity /allocating the bays ay Bhadla II PS and reserve 2 No 220 KV bays at Bhadla III PS till next date of hearing;*** meaning thereby that further action with regard to grant of connectivity

can be taken for Fatehgarh III (Khaba Renewables) only and not for Bhadla II PS. Eden renewables, during the consultation meeting on 05.10.2023, reiterated that they are willing to get connectivity at 220 kV voltage level at Fatehgarh III PS or Bhadla II PS only and not at 400 kV. It is relevant to note here that, from the reallocation meeting agenda, it is clear that at Fatehgarh III, out of total 1200 MW for reallocation, 900 MW was at 400 KV and only 300 MW at 220 KV.

iv) ROP dated 22.11.2023 (hearing date 09.11.2023) - reserved the matter for order. No specific direction regarding continuation of Status quo or vacation of stay or Bhadla II PS; As clarified by CERC now, there was no stay for Bhadla II also but could action be taken regarding issue of grant of connectivity for Bhadla II when matter is reserved for order. CTUIL did not proceed with grant of connectivity for Bhadla II to PNRPPL

v) Mentioning by CTUIL on 29.11.23 and by PNRPPL on 12.12.2023 & 05.01.2023 - As per submissions by both CTUIL and PNRPPL, there were oral directions not to proceed and CERC stated, wait for final order. However CERC in its affidavit dated 01.04.2024 has stated that matter of stay was mentioned by CTUIL on 29.11.23 and CERC issues its decision through record of proceedings, interim order and final orders and no decisions are conveyed verbally in mentioning.

130. It is the contention of PNRPPL that, due to the prolonged granting of stay concerning Bhadla II, further processing of their connectivity application could not happen and they could not submit bank guarantee and have been excluded from the exclusions provided in Para 45 of the impugned order.

131. We observe that finalization of connectivity to both Khaba Renewables for Fatehgarh III and PNRPPL for Bhadla II was before filing of Petitions by Eden Renewable. Learned senior counsel of CERC vide its affidavit dated 01.04.2024 submitted that though initially stay was granted for grant of connectivity for both Fatehgarh III and Bhadla II, however since allocations at Fatehgarh III were finalised in a meeting held on 03.08.2023, the Bhadla II remained the only feasible option for Eden Renewables, and accordingly vide ROP dated 31.10.2023 for the hearing dated 25.10.2023, status quo for Bhadla II was imposed till next date of hearing. After Hearing of the matter on 09.11.23, when matter was reserved for order, Status quo was not extended for Bhadla II. Therefore prior to issuance of status quo direction by CERC on 15.09.2023 as well as post vacation of stay on 09.11.23, there was sufficient time for CTUIL to process the application of Appellant-PNRPPL. Learned Counsel for the Respondent CERC referring to the judgment in “**Ashok Kumar & Ors. v. State of Haryana & Anr.**” (2007 (3) SCC 470) contended that stay order limited in time, if not extended further, expires on or before the date mentioned in the order itself. Learned counsel submits that the said approach is adopted by the Hon’ble Supreme Court in the judgment in “**Arjan Singh v Punit Ahluwalia & Ors.**” (2008 (8) SCC 348).

132. However, learned Counsel for the Appellant drawing our attention to the judgment of the Hon’ble Supreme Court in “**High Court Bar Assn. v. State of U.P. & Ors.**” (2024 SCC OnLine SC 207) submits that the stay order once granted cannot be vacated other than by a speaking order recording the required reasons for such vacation of the order. Further, it is also stated that the stay order granted in a proceeding would not stand vacated automatically on the expiry of a particular period until and unless an

application to that effect has been filed by the other side and is decided by the Court by a speaking order.

133. We have no quarrel with the submission of Mr. Nikhil Nayyar, learned Senior Counsel appearing on behalf of the Respondent CERC, that stay orders, if not extended, expire on the date mentioned in the order itself. What is of relevance is the conduct of CTUIL which we must consider in the context of several orders passed by CERC in its record of proceedings. While *status-quo*, with regard to allocation of bays in both Fatehgarh III PS and Bhadla II PS, was directed to be maintained till the next date of hearing vide ROP dated 18.09.2023, the said order of *status-quo* was not extended on the next date of hearing and instead, by ROP dated 26.09.2023, CTUIL (in the Petitions filed by Eden Renewables) was directed to undertake a joint consultation exercise with all those involved. Failure of CTUIL to grant connectivity, pursuant to the decision taken in the CMETS-NR meeting held on 29.08.2023, despite the *status-quo* order not being extended, is evidently because they had been directed by CERC to conduct a joint consultation exercise, and proceeding with their earlier decision to grant connectivity to PNRPPL would have rendered the joint consultation process, undertaken by them, an exercise in futility. Though the order of *status-quo* granted on 18.09.2023 was not extended in the subsequent order dated 26.09.2023, the CERC, by its order in ROP dated 31.10.2023, again directed CTUIL to maintain *status-quo* with regard to connectivity at Bhadla II PS till the next date of hearing. The next date of hearing was on 09.11.2023, when orders were reserved without a specific direction regarding continuation of the earlier order of *status quo*, as is evident from ROP dated 22.11.2023.

134. The stand taken before us, on behalf of CERC, is that, since they did not extend the *status-quo* order, CTUIL could have proceeded to grant connectivity to PNRPPL at Bhadla II PS. It is relevant to note that CTUIL made an oral mention before the CERC, on 29.11.2023, seeking clarification as to whether or not the status quo order granted earlier continued to remain in force. While it was open to the CERC to clarify and inform CTUIL that they could proceed with the process of granting connectivity at Bhadla II PS, as there was no order of *status-quo* in force, they instead informed CTUIL to wait for the final order. CTUIL understood these observations as requiring them not to proceed with grant of connectivity to PNRPPL at Bhadla II PS.

135. The very fact that, in its final order passed on 19.01.2024, the CERC had faulted the CTUIL in following the cluster approach for reallocation (subsequent to such reallocation exercise, intimation for connectivity was to be issued to PNRPPL for Bhadla II PS) also goes to show that the CERC never intended for CTUIL to proceed with the grant of connectivity for Bhadla II PS, till final orders were passed in the Petitions filed by Eden Renewables. In any event, PNRPPL had no say in the matter, as it was for CTUIL to take further action, pursuant to the CMETS-NR meeting held on 29.08.2023, to grant connectivity to PNRPPL at Bhadla II PS.

136. We further observe that CERC in its impugned order has not cited any reason for the difference in status of the decision taken in reallocation meeting on 03.08.2023 and CMETS –NR meeting on 29.08.2023, which necessitated vacation of stay for grant of connectivity at Fatehgarh III alone. Both were placed in a similar situation as far as absence of intimation of grant of connectivity is concerned to Khabra Renewables for Fatehgarh III PS and Appellant –PNRPPL for Bhadla II PS. In various ROP's issued by

CERC subsequent to hearing, there is no specific mention for vacation of status-quo for grant of connectivity at Fatehgarh III PS, and continuation of status-quo for Bhadla II PS. It is also observed that, in the mentioning by CTUIL on 29.11.2023 as well as through affidavit submitted by CERC before this Tribunal, there has been no clear cut direction on the part of CERC that there was no stay for Grant of connectivity at Bhadla II PS post hearing on 09.11.2023, when judgement was reserved, which is unequivocally submitted by CERC during the proceedings before this Tribunal.

137. Even going by contentions put forth by learned senior counsel of CERC, there seems to be no extension of stay for both Bhadla II PS & Fatehgarh III PS subsequent to hearing on 22.09.2023, stay only on Bhadla II PS subsequent to hearing on 25.10.2023 and no stay even for Bhadla II PS subsequent to hearing on 09.11.2023 when order was reserved. It is not hard to imagine the repercussions, had CTUIL gone ahead and issued intimation for grant of connectivity to Appellant – PNRPPL for Bhadla II PS in the intervening period from 22.09.23 to 25.10.23 & from 09.11.23 till 19.01.2024 when order was pronounced, more so as no clear cut direction was given during the mentioning on 29.11.2023, and CTUIL's action was faulted by CERC in its order dated 19.01.2024. The fact remains that CTUIL, in the absence of clear cut direction regarding status-quo situation for Bhadla –IIPS even after mentioning the same on 29.11.2023, did not issue intimation for grant of connectivity to Appellant - PNRPPL, as decided in 23rd CMETS-NR meeting dated 29.08.2023, and PNRPPL could not proceed further for submitting Bank Guarantee, and was ousted from the exemptions granted in Para 45 of Impugned order.

138. Learned counsel of ACME, submitted its argument that impugned order is arbitrary and has been issued contrary to the Regulations, the

Practice directions suffers from manifest arbitrariness and could not have been issued without stakeholder consultation, besides contesting that practice direction have retrospective application and shall impact ACME. Other issues have already been dealt with in previous paras, impact of Practice Direction on Appellant ACME is being discussed herein. ACME is a fresh applicant seeking grant of connectivity of 850 MW at Fatehgarh II having submitted its application in November 2023. Before considering grant of connectivity for fresh applicant for Fatehgarh II, CTUIL undertook reallocation exercise as per vicinity/ complex approach and, in the reallocation meeting held on 19.01.2014 (date of impugned order), no existing grantee opted for relocation to Fatehgarh II. Having concluded the reallocation exercise for Fatehgarh II on 19.01.2024, in the subsequent meeting of CMETS-NR, fresh applicant like ACME may have been considered for grant of connectivity at Fatehgarh II PS, if their submission that they were on top priority amongst fresh applicant for Fatehgarh II is true. However, in view of the practice direction issued as per impugned order, decisions taken in reallocation meeting of 20.06.2023, 03.08.2023 or any subsequent meeting has not attained finality except for those grantees/applicant who qualify under exemptions provided under para 45 of impugned order. It is apparent, that even on the facts stated by them, ACME would not qualify under exemption provided under para 45 of the impugned order as it is a fresh applicant. In case reallocation is to carried out as per practice direction, it is unlikely that some other grantee having more priority then ACME may stake its claim for relocation to Fatehgarh II PS, considering that it is falling in potential GIB area, but such a possibility cannot be ruled out.

139. From the impugned order, it does appear that it was the endeavor of CERC to cause minimum perturbation, and it therefore provided some

exemptions in para 45 for the applicability of practice directions. While the practice directions, according to CERC, has prospective application, it has the effect of unsettling some of the decisions taken in reallocation meetings/CMETS meetings on & prior to the date of the impugned order i.e. 19.01.2024, resulting in some decisions being re-opened.

140. Right of Respondent Eden Renewables Vis a Vis Appellant PNRPPL.

Learned senior counsel of Eden Renewables has contended that there is no vested right with PNRPPL regarding the bays allocated to it at Bhadla II PS as no intimation for grant of connectivity was sent to it and no connection BGs submitted compared to Eden Renewables right therein, being a grantee and already submitted application for transition to GNA regulation on 03.05.2023 earlier than PNRPPL application on 05.05.2023. Learned senior counsel also submitted few legal propositions regarding when vested rights are created. It is not necessary to delve on this issue now, as the present lis is not confined to the vested right of Eden Renewables viz-a-viz PNRPPL. It is relevant to note that, under existing connectivity regulations, there is no provision to seek connectivity at a different substation without surrendering existing capacity and priority at different substation sought shall be as per date and time of revised connectivity application. Eden Renewables can be eligible for shifting of its connectivity from Fatehgarh II PS to Bhadla II PS (or any other substation in Rajasthan State), retaining its priority as per original date of application and without surrendering its connectivity at Fatehgarh II PS, only in the event, Practice Directions issued by CERC as part of impugned order are implemented. However, as dealt in previous paras, Practice Direction are, for reasons stated therein, required to be set aside.

141. In view of the above deliberations, we set aside the impugned order. The existing practice of reallocation considering vicinity/complex approach adopted by CTUIL shall continue, if need arises for reallocation of capacity/bays, till the exercise now being undertaken by CERC to amend the regulations is taken to its logical conclusion. Needless to state, as directed by CERC, CTUIL shall henceforth publish the agenda and minutes of such reallocation meeting on its website.

142. The Appeals are, accordingly, disposed of. All the pending IAs, if any, shall stand disposed of. No order as to costs.

Pronounced in open court on this the 28th Day of May, 2024

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

ts/ag

REPORTABLE/~~NON-REPORTABLE~~