

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1882 of 2020.

In the matter of:

Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 72 of the GERC (Conduct of Business) Regulations, 2004 for review of Order No. 03 of 2020 dated 08.05.2020 for Tariff framework for procurement of power by distribution licensees and others from Solar Energy Projects and other commercial issues for the State of Gujarat.

Petitioner : Kutch Sea Water Desalination Private Limited
Co-Petitioner : Bhavnagar Desalination Private Limited
Co-Petitioner : Dwarka Sea Water Desalination Private Limited
Co-Petitioner : Gir Somnath Desalination Private Limited

Represented by : Learned Advocates Shri Kunal Nanavati and Shri Nisarg Desai along with Shri Prayag Bhavsar, Shri Neeraj Nair & Shri Anant Sant

V/s.

Respondent No. 1 : Energy and Petrochemicals Department, GoG.
Represented by : Nobody was present.

Respondent No. 2 : Paschim Gujarat Vij Company Limited
Represented by : Learned Advocate Ms. Ranjitha Ramachandran and Shri J. J. Gandhi

Respondent No. 3 : Dakshin Gujarat Vij Company Limited
Represented by : Nobody was present.

Respondent No. 4 : Madhya Gujarat Vij Company Limited
Represented by : Nobody was present.

Respondent No. 5 : Uttar Gujarat Vij Company Limited
Represented by : Shri R.P. Patel and Shri K. D. Barot

Respondent No. 6 : Gujarat Water Infrastructure Limited
Represented by : Nobody was present.

CORAM:

Shri Anand Kumar, Chairman
Shri Mehul M. Gandhi, Member
Shri S. R. Pandey, Member

Date: 15/03/2021.

DAILY ORDER

1. The Petitioners through the present Petition are seeking review of the Commission's Order No. 3 of 2020 dated 08.05.2020, wherein the Commission has determined the Tariff Framework for Procurement of Power by Distribution Licensees and Others from Solar Energy Projects and Other Commercial issues for the State of Gujarat on the ground that the Commission in the aforesaid Order has not taken into account the provisions of GR No. SLR-11-2018-1602-B1 dated 15.05.2019 issued by Energy and Petrochemicals Department, Government of Gujarat with regard to 'Desalination Plants within Integrated power generation units in the State of Gujarat', whereby as a special case, in respect of water desalination plants to be set up through Narmada, Water Sources, Water Supply and Kalpsar Department, Government of Gujarat, the ceiling norms regarding capacity of Solar power projects are to be relaxed and allowed up to 400% of contract demand with distribution licensees.
- 1.1. It is submitted that the Respondent No. 1, Energy & Petrochemicals Department, Government of Gujarat vide GR No. SLR-11-2015-2442-B has issued Gujarat Solar Policy 2015 dated 13.08.2015 which stipulated the limit of solar plant capacity up to 50% of contract demand of the consumers. Moreover, policy for development of Small Scale distributed Solar PV Power Projects, 2019 was also issued vide G.R. No. SLR/11/2019/51/B1 dated 06.03.2019. The provisions of the said Policy have also been considered by the Commission while passing Order No. 3 of 2020. The Energy & Petrochemicals Department, Government of Gujarat has also issued Policy for

Desalination Plants within integrated power generation units in the State of Gujarat vide G.R. No. SLR-11-2018-1602-B1 dated 15.05.2019.

- 1.2. It is submitted that the above G.R. dated 15.05.2019 for the Desalination Plants was amended by the Government of Gujarat vide its subsequent G.R. No. SLR-11-2018-1602-B1 dated 19.07.2019, wherein the State Government has given relaxation to the Desalination Plants established through tender published after the date of G.R. dated 19.07.2019 and an agreement made thereto and also to the projects for which tenders have been issued but no agreement has been signed so far between project developer and Narmada Water Resources, Water Supply & Kalpsar Department for providing drinking water to the public at large. It is submitted that the Petitioners' case is covered by the aforesaid amended G.R. dated 19.07.2019.
- 1.3. It is submitted that the E & P Department, Government of Gujarat has also issued G.R. No SLR-11/2015/2442/B1 dated 26.09.2019 relaxing the installation capacity of solar power projects established by the Micro, Small and Medium Enterprises (MSME) consumers wherein such consumers may install any capacity of the solar power projects irrespective of sanctioned load/contract demand. The Government has observed in the said amendment that since the notification of the Solar Power Policy, 2015, there has been significant technological development in the field of solar power generation and the cost associated to the installation of solar power project.
- 1.4. The Commission passed Order No. 3 of 2020 dated 08.05.2020 regarding tariff framework and other commercial issues associated with it for procurement of power by Distribution Licensees and others from Solar power projects. The said Order provides that MSMEs can establish the solar power projects irrespective of the sanctioned load/contract demand.
- 1.5. It is further submitted that the Gujarat Water Infrastructure Limited (GWIL), Government of Gujarat floated four tenders for development of desalination plants at different places with different capacities. The RFQ of tenders provides that the bidders shall have to make arrangement for the electric power supply. To achieve the objective, the bidders are required to examine all policies announced by the

State/Central Government for promotion of generation, distribution and consumption of non-conventional power in the State.

- 1.6. While passing the Order No 3 of 2020 dated 08.05.2020, the Commission has considered the provisions of the Electricity Act, 2003, National Electricity Policy, Tariff Policy, State Government Policy etc. It is provided in para 3.3 of the Order that the maximum capacity for solar power projects shall be up to maximum of 50% of consumers sanctioned load/contract demand for captive use, third party sale, power projects set up under NSM with sale of power to consumers within the State with the only exception of MSME Enterprise allowed to set up solar projects irrespective of their sanctioned load/contracted demand. While observing the same, the Commission has not considered the GR dated 15.05.2019 wherein as a special case, in respect of water desalination plants to be set up through Narmada, Water Sources, Water Supply and Kalpsar Department, Government of Gujarat wherein the ceiling norms with regard to capacity of Solar Power Projects are to be relaxed and allowed up to 400% of contract demand with distribution licensees. It is submitted by the Petitioners that the banking facilities should also be permitted for desalination plants sourcing power from Solar Power Plants to meet its entire energy demand with clarity on energy settlement and calculation of banking charges, if any, and open access charges. Further, waiver of Cross Subsidy Surcharge and Additional Surcharge on the entire energy consumed by the desalination plants from Solar Power Plants set up either by captive route or third-party installation be permitted.
- 1.7. It is further submitted that subsequent to Order No. 3 of 2020, the Commission upon the receipt of several representations of stakeholders regarding removal of difficulties in signing of the PPAs under policy, eligibility criteria and applicability of Cross Subsidy Surcharge and Additional Surcharge, vide public notice dated 30.06.2020 issued the draft Suo-motu Order proposing modifications in the said Tariff Order No. 03 of 2020 as the Order No. 3 of 2020 dated 08.05.2020 having error apparent on the face of record and therefore, the same deserves to be reviewed to the said extent.

1.8. Based on aforesaid submissions, the Petitioners requested that the Commission may review the Order No. 3 of 2020 dated 08.05.2020.

2. The present matter was listed for hearing on 19.08.2020 and 21.01.2021 through virtual hearing by Video Conferencing, physical presence being not insisted on account of prevailing COVID 19 pandemic and containing its spread.

3. Learned Advocate Shri Kunal Nanavati, on behalf of the Petitioners, submitted that the Petitioners through the present Petition are seeking review of the Commission's Order No. 3 of 2020 dated 08.05.2020, wherein the Commission has determined the Tariff Framework for Procurement of Power by Distribution Licensees and Others from Solar Energy Projects and Other Commercial issues for the State of Gujarat but in the aforesaid Order the Commission has not taken into account the provisions of GR No. SLR-11-2018-1602-B1 dated 15.05.2019 issued by Energy and Petrochemicals Department, Government of Gujarat with regard to 'Desalination Plants within Integrated power generation units in the State of Gujarat', whereby as a special case, in respect of water desalination plants to be set up through Narmada, Water Sources, Water Supply and Kalpsar Department, Government of Gujarat, the ceiling norms regarding capacity of Solar power projects are to be relaxed and allowed up to 400% of contract demand with distribution licensees. He further submitted that the Petitioners were selected through tendering process for setting up water desalination plants at four different locations and energy generated from the Solar Power Plants set up by the Petitioners be utilised for desalination plants. He submitted that as far as the present Petition is concerned, the Petitioners are seeking review of the Order No. 3 of 2020 dated 08.05.2020 passed by the Commission. He further submitted that the Petitioners are seeking review of the aforesaid Order with regard to following three issues:

ISSUES:

- (i). Capacity of Solar power plant to be set up by Petitioners be allowed up to 400% of their contract demand with distribution licensee,
- (ii). Banking period be allowed for one year in place of one month,
- (iii). Exemption/Waiver of Cross Subsidy Surcharge and Additional Surcharge

- 3.1. The issue (i) above pertains to allow to set up solar power plant capacity to be 400% of contract demand of the Petitioner is not disputed by the Respondent No. 2, PGVCL in its reply filed vide affidavit dated 01.09.2020 in the present Petition. Hence, there is no further submission required on that issue. Other two issues are pertaining to (i) banking for 1 year in place of one month and (ii) applicability of Cross Subsidy Surcharge and Additional Surcharge is not accepted by the Respondent PGVCL stating that, the GRs dated 15.05.2019 and 19.07.2019 issued by Government of Gujarat for desalination plants be applicable in totality.
- 3.2. The second issue with regard to Banking is concerned, since the desalination plants of the Petitioners are of public importance whereby essentially clean drinking water is to be provided to very vast area, if the banking period is permitted for one entire year instead of the present provision of allowing set-off on monthly basis, it will help in averaging the seasonal variations in generation of solar energy and thereby in seasons where there is less generation could be off-set with seasons with high generation. However, Respondent PGVCL in its reply has stated that banking shall be as per the norms provided in the aforesaid GR of the State Government wherein the stipulation for banking cycle is on monthly basis.
- 3.3. While replying to the query from the Commission regarding the reason for seeking the banking on annual basis, Learned Advocate Shri Kunal Nanavati, submitted that the Solar generating plants will be set up at a distant location from the desalination plant but variation in solar generation on daily basis as well as seasonal basis occurs due to climatic changes. Hence, banking is required on annual basis so as to enable the Petitioners to have average consumption corresponding to the average annual generation such that the seasonal variations and daily variations in generation can be off-set which will also be beneficial for the Petitioner's desalination plants. On a further query from the Commission regarding the capacity of the Petitioners' Solar plants, Learned Advocate Shri Kunal Nanavati submitted that if the desalination plants operate on full capacity, then power requirement will be around 65 MW.
- 3.4. He submitted that with regard to third issue of waiver of Cross Subsidy Surcharge and Additional Surcharge sought by the Petitioners is concerned it is not accepted

by the Respondent PGVCL. It needs to be appreciated that the desalination plants have locational importance since they will be providing clean drinking water in such areas that have less availability of clean water resources. Therefore, if any additional benefits can be given to such projects the same would be provide added advantage for survival of such projects. He further submitted that as per Gujarat Solar Policy, if the project is set up for captive consumption then these benefits are otherwise available, but the Commission may consider the request of the Petitioners and clarify about the same.

3.5. On a query from the Commission regarding the physical progress of these plants, it was submitted that currently there is no physical progress as the Petitioners have recently received the environmental clearances, whereas other requisite approvals are pending and therefore, actual construction will be commenced after receipt of the same. On a further query of the Commission as to whether these approvals are for the Solar Power Plants or the desalination plants, it was submitted that both these projects come under the same company and first the construction of the desalination plants will be completed and thereafter, Solar Power project will be set up so that the power requirements of desalination plants can be availed from these solar facilities. It was further submitted that the total combined contract demand of all these four plants will be around 65 MW and therefore, as per the provisions of the GR, the Petitioners can set up Solar capacity of 400% of contracted demand which comes to 250 MW in case of these four plants.

4. Learned Advocate Ms. Ranjitha Ramachandran, on behalf of the Respondent PGVCL, submitted that the present Petition filed by the Petitioners is a Review Petition for seeking review of the Order No. 3 of 2020 dated 08.05.2020 wherein at relevant time the issues before the Commission were duly considered and thereafter, an Order was passed by the Commission. Therefore, the present Petition in which the prayers have been sought for first time on an Order that was already passed by the Commission after deciding all relevant issues, benefits, exemption etc. which is now challenged by the Petitioners through filing review Petition in which the scope is very limited. The Commission needs to decide as to whether the review sought is permissible in terms of provisions of Order XXXXVII, Rule-1 of CPC, 1908 with the consideration of the grounds provided therein. She submitted that the Petitioners

have not shown any of the grounds for review with regard to the issues submitted for consideration of this Commission except the Solar capacity which can be installed which is provided in the GR issued by Government of Gujarat. She submitted that as such the date of the GRs is before the Order dated 08.05.2020 passed by the Commission but it is not clear as to why the same was not brought to the notice of the Commission prior to passing of the said Order. Since the policy was existing prior to the Commission's Order, the Petitioners ought to have made their submissions after producing the same before the Commission and not after the Order was passed by the Commission. Therefore, Petitioners have not pointed out any error apparent on the face of record or that the said GR is subsequent documents which could not be produced at the relevant time or any other sufficient cause.

- 4.1. She submitted that the Petitioners in their Petition as well as in the arguments advanced are relying more upon the benefits needed to be given to them which otherwise could have been submitted/argued or brought to the notice of the Commission for its consideration when the comments/suggestions were invited by the Commission prior to passing of the aforesaid Order. She further submitted that if at all the Commission is desirous of considering the prayers of the Petitioners, the same cannot be done through review Petition and the Petitioners are required to file a fresh Petition for the consideration of the Commission on completely fresh issues and amendment of the Order dated 08.05.2020.
- 4.2. She further submitted that as far as the issue of capacity is concerned, there is GR of the Government wherein it is provided the maximum capacity of Solar project is permissible up to 400% of the contracted demand with the distribution licensee for the desalination plant. She further submitted that it is incorrect on the part of the counsel for the Petitioners to say that the Respondent PGVCL has accepted the prayer of the Petitioners with regard to Solar capacity because Respondent PGVCL has rather than accepting the same in its reply has submitted that if Commission decides to grant any reliefs/relaxations with regard to the Solar power plant capacity that can be installed then the same has to be considered subject to the conditions provided in the GR of the GoG and the provisions therein need to be

considered in their entirety. She submitted that with regard to the Petitioners' submissions that they are satisfying the conditions of the GR, the same have not been verified by the Respondent at this stage and in case if the Petitioners are satisfying the relevant conditions provided in the GR, the same can be examined and considered at relevant time. However, since the GR issued by Government of Gujarat provides regarding Solar capacity be permitted upto 400% of the contract demand with the distribution licensee, the Commission may decide the same.

4.3. She submitted that in respect of annual banking facility being sought by the Petitioners, there is no mention of the same in the Petition filed by them. She submitted that there is a policy of the Government which provides regarding the norms of banking which is to be allowed and accordingly, reference is given in the GR to the monthly billing cycle. Hence, there is no question of allowing anything beyond what is stated in the GR whereas the Petitioners are seeking the extension of benefits or additional benefits which is not even provided in the policy itself. The Petitioners cannot be allowed to take the benefit of the Solar capacity as provided in the policy GR alongwith simultaneously extension of benefit of yearly banking, which is otherwise not even pleaded in the Petition. Therefore, the question of any review regarding banking facility does not arise and whatever is provided in the GR needs to be considered by the Commission because the Respondent has not accepted any change beyond what is provided in the GR. Hence, annual banking facility as raised by the Petitioners is not proper and permissible.

4.4. She further submitted that when the Government decided the benefits to be given to desalination plants, the Commission has to restrict itself in permitting the same for desalination plants. Although, the Commission has not considered the provisions of the GR Policy and has already passed the Order yet the Petitioners are making submissions beyond the provisions of the GR. She submitted that now there is no reason to raise the same issues again particularly when there is no prayer or pleadings in respect of annual banking. Therefore, the same has not to be considered by the Commission and even if the Commission has to consider the banking facility the same shall be as per the Government GR which states 'banking cycle as per prevailing norms'. Accordingly, all conditions stated in Order dated

08.05.2020 still apply and there is no need for any review. Therefore, the contention of the Petitioners that banking is accepted by PGVCL is not correct as it is already stated in policy and Order and therefore the question of accepting the same by PGVCL does not arise and banking applies to the Petitioners as per the Order dated 08.05.2020 and norms provided therein and not beyond it.

- 4.5. She submitted that in so far as the issue of Cross Subsidy Surcharge and Additional Surcharge is concerned, the same is not provided in the Government of Gujarat GR at all since the said policy does not make any reference to it. The Electricity Act, 2003 provides regarding certain exemptions to captive generating plants and accordingly rules regarding its qualifying criteria are already in place. Even, the Commission's Order itself recognises certain exemptions for captive and if the Petitioners ultimately end up to satisfy themselves as captive in that case issue of Cross Subsidy Surcharge and Additional surcharge may not arise. Therefore, Respondent PGVCL is not required to address the same and also cannot insist the Petitioners if otherwise criteria for captive consumption is met. Hence, there is no need of any clarification or review on the issue of Cross Subsidy Surcharge and Additional Surcharge. She further submitted that if the Petitioners qualify for such exemptions then it will be available as per law but not otherwise. Therefore, under review jurisdiction, the Petitioners cannot seek such additional reliefs as raised in the present petition.
- 4.6. She submitted that the Government of Gujarat in 2020 has issued new Solar Power Policy for which separate Petition is filed before the Commission in which there is no restriction of Solar capacity and the issue of Cross Subsidy Surcharge/Additional Surcharge is covered but it will altogether be separate proceedings.
- 4.7. She also submitted that if the present review is to be considered independently then it has to be decided on very limited points and the only issue that can be considered by the Commission is the Solar power plant capacity since the capacity restriction as per the GR for desalination plants differs from the relevant provision in Commission's Order dated 08.05.2020 and if the Commission decides to allow the same, then in that case the other conditions of the GR also need to be accordingly incorporated because there cannot be any blanket approval. The Petitioners prayer

for permitting Solar capacity upto 400% of contract demand is permissible only if other conditions provided in the GR are also satisfied by them. As far as other two issues are concerned, even the other Solar projects follow the prevailing norms and there is no need for any review of the same, since the Commission while issuing the Order dated 08.05.2020 has already covered the same and while exercising review jurisdiction, the Commission has very limited scope. Therefore, there is no need or requirement of any clarification as far as issues that are already covered under the Solar Order dated 08.05.2020 and the said Order does not provide any exemptions to be allowed to desalination plants.

5. On a query from the Commission that since the present Petition filed by the Petitioners for review, it is necessary for the Petitioners to justify and prove the grounds for review because in the absence of any of the grounds for review viz. error apparent on the face of record, any subsequent document which could not be produced earlier or any other sufficient cause how review jurisdiction can be exercised in the present matter and particularly when submissions regarding banking facility were made in original proceedings based on which the Commission has taken the decision whereas now the Petitioners are seeking annual banking for which the Petitioners are required to give cogent reasons as to why the present banking facility is not sufficient for them and when there is no data available in the present Petition, Shri Kunal Nanavati on behalf of the Petitioners, submitted that essentially the Commission's Order dated 08.05.2020 covers mostly all the aspects except the Solar capacity that can be set up by desalination plants up to 400% of their contract demand with distribution licensee. The said Order has provisions in general applicable to all but does not specifically cover provisions with regard to desalination plants. He further submitted that there is no error on face of the record in the said Order dated 08.05.2020 passed by the Commission. He submitted that with regard to the banking facility upto one-year period, the Petitioners are not asking the same as a right but only requesting the Commission to extend the monthly banking to annual banking. Although, the GR for desalination plants provides that banking facility shall be as per prevailing norms, but if the Commission deems appropriate to allow yearly banking so that seasonal variations can be off-set, then the same may be considered and allowed. He also submitted that

in so far as the applicability of Cross Subsidy Surcharge and Additional Surcharge is concerned, the same is exempted for captive use and requested that the Commission may accord its approval to GR dated 15.05.2019 to be made applicable and to provide clarity in this regard in review jurisdiction.

6. Learned Advocate Ranjitha Ramachandran objecting to requirement of any clarity with regard to banking facility and exemption from applicability of Cross Subsidy Surcharge and Additional Surcharge for the desalination plants of the Petitioners submitted that no clarification is necessary since the GR for desalination plant and Order of the Commission clearly covers these issues.
7. We note that when the matter was called out on 21.01.2021, nobody was present on behalf of the Respondents No. 1, 3, 4 and 6, despite hearing intimation notice being served through post as well as email and link for hearing shared with them. Further, no written communication about their inability to remain present during the hearing has been received to the Commission.
8. We have considered the submissions made by the parties. It is an admitted fact that the Commission passed the Order No. 3 of 2020 dated 08.05.2020 in the matter of 'Tariff Framework for Procurement of Power by Distribution Licensees and Others from Solar Energy Power Projects and Other Commercial Issues for the State of Gujarat'. The Commission has also passed Suo-motu Order No. 6 of 2020 dated 05.08.2020 for removal of difficulty in the matter of Order No. 3 of 2020 dated 08.05.2020. It is also admitted fact that the Government of Gujarat has issued Gujarat Solar Policy 2015 dated 13.08.2015. The Government of Gujarat has also issued amendment in the aforesaid Policy vide G.R. No. SLR-11/2015/2442/B1 dated 26.09.2019 for MSME Manufacturing Enterprises. The Government of Gujarat has also issued G.R. No. SLR-11-2018-1602-B1 dated 15.05.2019 and has amended the same vide G.R. No. SLR-11-2018-1602- B1 dated 19.07.2019.
- 8.1. The reliefs sought by the Petitioners in Order No. 3 of 2020 dated 08.05.2020 and Suo-motu Order No. 6 of 2020 dated 05.08.2020 are on the following grounds:
 - i) Error apparent on the face of record,

- ii) Subsequent development after the order passed by the Commission,
- iii) Sufficient reasons.

8.2. The Respondent contended that the aforesaid grounds raised by the Petitioners are not valid and legal and therefore, the same deserve to be rejected. The Respondents have also contended that the Order No. 3 of 2020 dated 08.05.2020 and Suo-motu Order No. 6 of 2020 dated 05.08.2020 for removal of difficulty passed by the Commission after inviting comments and suggestions on the discussion paper issued by the Commission and considering such objections and suggestions. The Petitioners have not made any submissions in the aforesaid proceedings and therefore, now they are not permitted to raise the aforesaid grounds for review of the aforesaid Orders.

8.3. The present Petition is filed under Section 94 of the Electricity Act, 2003 read with Regulation 72 of the GERC (Conduct of Business) Regulations, 2004. It is necessary to refer the aforesaid provisions which are reproduced below:

“.....

Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

.....”

Section 94(1)(f) of the Electricity Act provides that the Commission is vested with powers under the Code of Civil Procedure, 1908 in respect of review of its decision, direction and orders.

- 8.4. Further, Regulation 72 of the GERC (Conduct of Business) Regulations, 2004 also provides that the Commission has power to review its Order which is reproduced below:

“

72(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent from the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/order to the Commission.

(2) The provision as to the forms and procedure with regard to such review application shall apply mutatis mutandis as in case of filing the petition.

(3) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.

(4) When the Commission is of the opinion that the review application should be granted, it shall grant the same, provided that no such application shall be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of decision or order, the review of which is applied for.

.....”

The aforesaid Regulation provides that any person aggrieved by a decision or order of the Commission may apply for review of such order within 60 days of the date of the decision/ order of the Commission on following grounds:

- i) Error apparent or mistake from the face of record;
- ii) Or any sufficient reason;

- iii) Discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission.
- 8.5. We note that the Commission had issued a Discussion Paper on 'Tariff framework for procurement of power by distribution licensee and others from Solar energy Projects and other commercial issues for the State of Gujarat' dated 04.02.2020 with consideration of the provision of Electricity Act, 2003, National Electricity Policy 2005, Tariff Policy 2016, Gujarat Solar Power Policy, 2015 and amendments made in it from time to time and invited comments/suggestions from the stakeholders. In response to the aforesaid, the Commission received objections/suggestion from 16 stakeholders who were also invited for public hearing wherein 14 stakeholders had participated and submitted their objections/suggestions. The Commission had considered the same and given its decision on such objections/suggestions with reasoned Order No. 3 of 2020 dated 08.05.2020. The Petitioners had neither made any submissions or objections/suggestions on the discussion paper issued by the Commission nor during the hearing.
- 8.6. The Commission had also issued draft Suo-Motu Order dated 30.06.2020 and invited comments/suggestions from the stakeholders by 15.07.2020. In response to the aforesaid public notice and draft Suo-motu Order, the Petitioners have filed their objections / suggestions and also participated in the public hearing. The Commission had considered the suggestions/objections of the 32 stakeholders and passed Suo-Motu Order No. 6 of 2020 dated 05.08.2020.
- 8.7. The review Petition was filed by the Petitioners on 06.07.2020. Thus, review Petition is filed within the stipulated time period of 60 days. Hence, there is no delay in filing of the review Petition. As recorded in earlier para, the Petition is for review of Order No. 03 of 2020 dated 08.05.2020 for tariff framework for procurement of power by the distribution licensee and others from Solar Energy Projects and other commercial issues for the State of Gujarat passed by the Commission after considering the objections and suggestions on the discussion paper dated 04.02.2020 issued by the Commission wherein the objections were filed by 16 stakeholders and in the public hearing 14 stakeholders have participated. Further,

in the Suo-motu proceedings of Order No. 6 of 2020, the Commission had also invited comments and suggestions from the stakeholders by issuing public notice wherein objections/suggestions received from 32 stakeholders and in the aforesaid public hearing through video conference (virtual) 19 stakeholders have participated and thereafter, the Commission passed Suo-Motu Order No. 6 of 2020 dated 05.08.2020.

- 8.8. We note that the Review Petition is filed by the Petitioner on the ground that the Government of Gujarat issued Policy for 'Desalination Plants within integrated power generation units in the State of Gujarat' vide G.R. No. SLR-11-2018-1602-B1 dated 15.05.2019 of the Energy & Petrochemicals Department, Government of Gujarat and subsequently also issued amendment vide G.R. No. SLR-11-2018-1602-B1 dated 19.07.2019. However, the same was not considered by the Commission while passing the Suo-Motu Order No. 6 of 2020 dated 05.08.2020 though the aforesaid Policies were issued by Energy & Petrochemicals Department, Government of Gujarat. We also note that the aforesaid policy dated 15.05.2020 also provides for relaxation for installation of Solar Power Plants for utilization of energy in Desalination Plants to be set-up by the Project Developers and it would be helpful for providing drinking water to the public at large. The Petitioners have now filed the aforesaid policies of Government of Gujarat which were in existence prior to the Suo-Motu Order dated 05.08.2020 passed by the Commission in the present review Petition which were not considered by the Commission while passing the said Order which is ground for review. We are of the view that the aforesaid Policy of the Government is with a view to providing drinking water to the public at large and for such activities the Desalination Plants are permitted to set up the Solar power project capacity upto 400% of their contract demand with the distribution licensee. However, the same was not considered by the Commission while passing the Suo-Motu Order dated 05.08.2020 is ground of review.
- 8.9. As the present proceeding is for review of Order No. 3 of 2020 dated 08.05.2020, it is necessary to hear the public/stakeholders, prior to taking any decision. The Petitioners are, therefore, directed to join the stakeholders who have originally made submissions/objections/suggestions in the aforesaid proceedings as Respondents and amend the memo of parties to the Petition by joining the above

objectors/stakeholders as party to the present Petition and provide copy of the Petition to such objectors/stakeholders and file amended memo and service on affidavit. The objectors/stakeholders are thereafter, at liberty to file their submissions, if any, in five copies with affidavit to the Commission with copy to the Petitioners and other Respondents within 15 days from the date of receipt of Petition. The Petitioners and the Respondents are at liberty to file their reply/submissions/response on affidavit, if any, within 10 days from date of receipt of the objections/suggestions from the stakeholders with copy to the objectors/stakeholders. The staff of the Commission is directed to issue hearing intimation notice to all parties as decided above.

9. The next date of hearing is on 20.04.2021 at 11:30 AM.

10. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anand Kumar]
Chairman

Place: Gandhinagar.

Date: 15/03/2021.