

**BEFORE THE GUJARAT ELECTRICITY REGULATORY
COMMISSION
GANDHINAGAR**

Petition No. 1954/2021.

In the Matter of:

Petition under Section 86 (1) (b) and 86 (1) (e) of the Electricity Act, 2003 for incorporating provision regarding 'Change in Law' in the Power Purchase Agreements to be executed by State DISCOMs with Project Developers under the Government of Gujarat's Policy for Development of 'Small Scale Distributed Solar Projects, 2019' notified vide GR No. SLR/11/2019/51/B1 dated 06.03.2019 and approval of draft PPA.

Petitioner	:	Gujarat Urja Vikas Nigam Limited
Represented By	:	Ms. Sailaja Vachhrajani, Shri Parthik Joshi, Shri Kandarp Mistry, Ms. Girija Dave, Shri Kishor Lakhani
Co-Petitioner No. 1	:	Madhya Gujarat Vij Company Limited
Represented By	:	Nobody was present
Co-Petitioner No. 2	:	Uttar Gujarat Vij Company Limited
Represented By	:	Shri I. G. Katara and Shri K. D. Barot
Co-Petitioner No. 3	:	Paschim Gujarat Vij Company Limited
Represented By	:	Shri J. J. Gandhi
Co-Petitioner No. 4	:	Dakshin Gujarat Vij Company Limited
Represented By	:	Shri N. D. Chaudhari and Shri P. M. Patel
Co-Petitioner No. 5	:	Gujarat Energy Transmission Corporation Limited
Represented By	:	Shri B. N. Trivedi, Shri K. R. Solanki, Shri N.P. Jadav, Ms. Venu Birappa V/s.
Objector No. 1	:	Fourson Solar
Represented By	:	Nobody was present

Objector No. 2 : Ravi Engineering
Represented By : Nobody was present
Objector No. 3 : Federation of Renewable and Consumers of Energy
Represented By : Shri Kirtikumar Shah, Shri Vikram Shah and Shri Rajesh Joshi
Objector No. 4 : J.J. PV Solar
Represented By : Shri Darshak Akabari
Objector No. 5 : National solar Energy Federation of India
Represented By : Shri Pranav R. Mehta
Objector No. 6 : Shree Mahalaxmi Solar
Represented By : Shri Naresh Ramavat
Objector No. 7 : GWE Infra
Represented By : Shri Darshil Vora
Objector No. 8 : SG Solar Association
Represented By : Nobody was present
Objector No. 9 : Jai Mahalaxmi Electrical
Represented By : Nobody was present
Objector No. 10 : Arth Power
Represented By : Nobody was present
Objector No. 11 : Saanvi Solar
Represented By : Nobody was present
Objector No. 12 : Oum Solar
Represented By : Nobody was present
Objector No. 13 : Bhaktibag Solar
Represented By : Nobody was present
Objector No. 14 : Arth Solar Power

Represented By : Nobody was present
Objector No. 15 : Arth Solar
Represented By : Nobody was present
Objector No. 16 : Arth Green Power
Represented By : Nobody was present
Objector No. 17 : Kisan Digital
Represented By : Nobody was present
Objector No. 18 : Unisource Engineering LLP
Represented By : Nobody was present
Objector No. 19 : New Age Fire Solutions Pvt. Ltd.
Represented By : Nobody was present
Objector No. 20 : Pashava Energy Pvt Ltd.
Represented By : Shri Bhargav Anand
Objector No. 21 : Drashta Power Consultant Pvt. Ltd.
Represented By : Shri Ajay M. Shah
Objector No. 22 : Gujarat Solar Association
Represented By : Shri Nikhil H. Savaliya
Objector No. 23 : Green Electrical Pvt. Ltd.
Represented By : Nobody was present
Objector No. 24 : Green Solar Farm
Represented By : Nobody was present
Objector No. 25 : Yash Swisstech
Represented By : Nobody was present
Objector No. 26 : Jyona Power
Represented By : Nobody was present

Objector No. 27 : Jyona Green Energy
Represented By : Nobody was present
Objector No. 28 : Kaldeep Power
Represented By : Nobody was present
Objector No. 29 : Raj Electricals
Represented By : Nobody was present
Objector No. 30 : Harekrishna Power
Represented By : Nobody was present
Objector No. 31 : Shivam Power
Represented By : Nobody was present
Objector No. 32 : Shivam Solar
Represented By : Nobody was present
Objector No. 33 : Utility Users Welfare Association (UUWA)
Represented By : Shri Bharabhai Gohel

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 25/03/2021.

1. The present Petition is filed under Section 86 (1) (b) & (e) of the Electricity Act, 2003 (for short, "the Act") whereby the Petitioner - Gujarat Urja Vikas Nigam Ltd. (hereinafter referred to as "GUVNL"), other Co-Petitioners namely, (1) Madhya Gujarat Vij Company Ltd. (hereinafter referred to as "MGVCL"), (2) Uttar Gujarat Vij Company Ltd. (hereinafter referred to as "UGVCL"), (3) Paschim Gujarat Vij Company Ltd. (hereinafter referred to as "PGVCL"), (4) Dakshin Gujarat Vij Company Ltd. (hereinafter referred to as "DGVCL"), and (5) Gujarat Energy Transmission Corporation Ltd. (hereinafter referred to as "GETCO"), have made the following prayers:

“20) PRAYER.....

(a) To admit this petition

(b) To approve the proposed provision of “Change in Law” to be incorporated in the proposed Power Purchase Agreements (PPAs) to be executed by State DISCOMs with Project Developers under the Government of Gujarat’s “Policy for Development of Small Scale Distributed Solar Projects – 2019” notified vide G.R. No. SLR/11/2019/51/B1 dated 06.03.2019 and approve the draft PPA proposed at Annexure E of the Petition.

(c) The petitioner craves leave of the Hon’ble Commission to allow further submissions, prayers, additions and alterations to this petition as may be necessary from time to time.

(d) Pass any other Order(s) as the Hon’ble Commission may deem fit and appropriate under the circumstances of the case.”

The hearing has been done through Video Conferencing.

2. Pursuant to Interim Application No.04 of 2021 filed by the Petitioner praying for impleading GETCO as Co-Petitioner and for approval of the draft PPA by amending the Petition, that prayer was, after hearing, allowed by Order dated 26.02.2021.
3. The brief facts giving rise to this Petition are summarized thus:
 - 3.1. Pursuant to the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme 2003, Gujarat Electricity Board has been reorganized and its functions have been vested in different entities. The activities of generation, transmission, distribution, bulk power purchase and supply have been entrusted to separate entities. The distribution activity is assigned to four distribution companies, i.e. Co-Petitioners, namely, (1) UGVCL, (2) MGVCL, (3) DGVCL and (4) PGVCL. The distribution companies are mandated to procure power from renewable energy sources as per the provisions of section 86 (1) (e) of the Act and in terms of GERC (Procurement of Energy from Renewable Energy Sources) Regulations as amended from time to time. The function of bulk purchase and bulk sale of power is assigned to Petitioner Gujarat Urja Vikas Nigam Ltd. (GUVNL) as per the reorganization scheme. The GUVNL, on behalf of four distribution companies, i.e. Co-Petitioners No. 1 to 4 herein, has been entering into Power Purchase Agreements (PPAs) with various renewable energy generators for procurement of power from time to time.

- 3.2. The Government of Gujarat has notified the “Policy for Development of Small Scale Distributed Solar Projects” vide G.R. No. SLR//11/2019/51/B1 dated 06.03.2019 (hereinafter referred to as “the Policy of 2019”) for procurement of power from Small Scale Distributed Solar Projects of 0.5 MW to 4 MW capacity. In accordance with this Policy of 2019, any individual, company or body corporate or association or body of individuals, co-operative society of individuals/farmers whether incorporated or not, or artificial juridical person shall be eligible for setting up small scale solar projects exclusively for the purpose of sale to obligated entities i.e. distribution licensees, for fulfillment of RPO of such obligated entities. It is also provided that the obligated entities shall buy solar power under the Government of Gujarat’s Policy of 2019 for meeting their RPO. In this context, the GUVNL along with Co-Petitioners No. 1 to 4 had filed Petition No. 1802 of 2019 before this Commission for approval of the mechanism of applicable tariff for purchase of power under the said Policy of 2019. This Commission vide Order dated 08.08.2019 had acknowledged that the aforesaid Policy of 2019 is for promotion of distributed solar energy generation in the State where the small generators have an option to set up the plant and sell energy to the distribution licensees at a rate which is comparatively higher than the rate discovered under the competitive bidding process and accordingly the Commission had approved the mechanism of tariff stipulated under the Policy of 2019.
- 3.3. Thereafter, Government of Gujarat notified the “Guidelines for implementation of Policy for Development of Small Scale Distributed Solar Projects 2019” vide G.R. No: SLR/11/2019/51/B1 dated 15.11.2019.
- 3.4. After due consultation with the State Government, the Petitioner GUVNL along with Co-Petitioners No. 1 to 4 had issued a public notice in newspapers on 03.10.2020 inviting applications from eligible entities under the Policy of 2019, initially within a period of two months which was subsequently extended upto 15.01.2021. Further, the said Policy for Development of Small Scale Distributed Solar Projects 2019 dated 06.03.2019 and the Guidelines for implementation of Policy for Development of Small Scale Distributed Solar Projects - 2019 dated 15.11.2019 were also uploaded on the website of the Petitioner for information of stakeholders. A draft Power Purchase Agreement to be executed with such small-scale solar project developers was also uploaded on the website. The tariff as per tariff mechanism under the Policy and as approved by the Commission came to Rs. 2.83 per unit and the tariff payable under the proposed PPAs to be executed by the distribution companies till 31.3.2021 is Rs. 2.83 per unit. The State distribution companies received total 12404 applications aggregating to 7959 MW capacity and after scrutiny, GETCO has granted technical feasibility report for 7361 applications aggregating to 4646 MW capacity as on 11.02.2021.

- 3.5. It is averred in the Petition that certain provisions in the standard PPA being executed by the Petitioners under Competitive Bidding were not incorporated in the draft PPA to be executed with such small-scale solar project developers, considering implementation and operational challenges at DISCOM level due to numerous number of project developers and multiplicity of PPAs. Besides, provisions regarding liquidated damages, performance bank guarantee, timelines of commissioning and submission of land documents, term of PPA, replacement of modules, change in ownership of PPA, termination compensation etc. were kept in alignment with the provisions of the Government of Gujarat Policy and Guidelines for Small Scale Distributed Solar Projects 2019. Moreover, the draft PPA also provided for provision of “Change of Law” allowing the project developers to approach the Regulatory Commission for relief for specific change in law events covering changes in taxes, surcharge, cess etc. levied on generation or sale of electricity. It was thus felt that “Change in Law” provisions are more relevant to the competitive bidding projects where the bidders need to quote most competitive tariff duly factoring the implications, if any, on account of changes in legal and taxation structure of economy. Accordingly, the provision for “Change in Law” incorporated by the Petitioners in its recent solar competitive bids providing for pass-through of changes in the rates of safeguard duty and/or anti-dumping duty and/or custom duty after bid submission deadline was not incorporated in the PPA proposed to be executed by the State DISCOMs under the Small Scale Distributed Solar Projects, 2019.
- 3.6. It is further the case of the Petitioners that the Government of Gujarat vide letter dated 08.02.2021 has informed the Petitioners that the State Government principally agreed for inclusion of ‘Change in Law’ under the PPA for Policy for Development of Small Scale Distributed Solar Projects 2019 as the tariff is indirectly linked to the tariff discovered under competitive bidding process wherein ‘Change in Law’ is allowed under the PPA. It has also been mentioned that to protect the interest of smaller developers against the risk/uncertainty arising from change in Indirect Tax structure is to be implied to include ‘Change in Law’ provision under the PPA for Policy for Development of Small Scale Distributed Solar Projects 2019. The Government of Gujarat has also directed the Petitioners to take necessary actions in the matter.
- 3.7. It is in the above background the Petitioners have filed the present Petition seeking approval regarding incorporation of the following clause for “Change in Law” in the PPA proposed to be executed by the State DISCOMS under the Small Scale Distributed Solar Projects 2019:

“Change in Law” shall refer to the occurrence of any of the following events notified after the date of signing of PPA. –

- a) The enactment, bringing to effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Government Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*
- b) Introduction /modification / changes in rates of safeguard duty and/or anti-dumping duty and/or custom duty including surcharge thereon which have direct effect on the cost of solar PV modules.”*

Relief for Change in Law

- (i) In case Change in Law on account of (a) above results in the Power Producer's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of GERC.*
- (ii) In case of Change in Law on account of (b) above, the Power Producer shall be allowed an increase / decrease in tariff of 1 paise / unit for every increase / decrease of Rs. 2 Lakh per MW of Project Capacity (AC capacity) in the Project Cost incurred upto the Scheduled Commercial Operation Date upon submission of proof of payment made by the Power Producer towards safeguard duty and/or anti-dumping duty and/or custom duty to the concerned Authority and with due approval of GERC. This increase / decrease in tariff due to this change in cost of solar PV modules shall be limited to actual DC capacity or 150% (One hundred & fifty percent) of contracted AC capacity, whichever is lower.*
- (iii) The Power Procurer / GUVNL or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.*

(iv) *The revised tariff shall be effective from the date of such Change in Law as approved by Commission.*"

- 3.8. The Petitioner was directed to file an affidavit that the terms and conditions in the draft PPA are in conformity and consonance with the Solar bidding guidelines notified by the Central Government as amended from time to time and also as per relevant deviations earlier approved by the Commission and to also provide the relevant details regarding the Petition No., date of Order passed by the Commission, deviations proposed therein and approved by the Commission.
- 3.9. The Petitioner was also directed to work out the quantum required to be procured in the present matter on basis of balance capacity required for fulfilment of RPO trajectory notified by the Commission with consideration of provisions of RPO Regulations. Further, it has been directed that the Petitioner after duly taking into consideration Solar capacity which is already tied up till date irrespective of whether commissioned or not and capacity for which tenders are issued/likely to be issued by the Petitioner, respective CUF stated in PPAs, renewable energy of non-obligated entities etc. work out Solar capacity which may be required for fulfilment of RPO of distribution licensees on basis of approved/proposed total energy requirement.
- 3.10. The Commission also directed the Petitioner to file submissions justifying the quantum proposed to be procured out of applications received for aggregate 7959 MW and technical feasibility granted for 4646 MW and the tariff of Rs. 2.83 per unit in the present matter, with consideration of its earlier stand in Petition No. 1906 of 2020 pertaining to tariff discovered for Dholera Solar Park based projects.
- 3.11. GETCO has agreed to file the criteria considered for issuing TFRs, its observations / findings based on load flow studies carried out in this regard, line loading conditions, transformer loading, transfer of power, if any, with consideration of existing load, capacity factors considered for Solar energy and other aspects pertaining to the applications received with regard to granting TFR or non-granting of the same with technical reasoning, analysis of load flow studies under different scenarios within 7 days. GETCO was also directed to file its submissions with regard to whether any ongoing / planned transmission system, if any, is considered while granting TFR, its time frame of

completion, 'n-1' criteria, redundancy in regard of transmission elements etc. is also requires justification for consideration of the Commission.

- 3.12. It was also directed to the Distribution licensees to submit the details of technical feasibility undertaken by them with consideration of number of applications, aggregate capacity of such applications, relevant substation details, transformation capacity, average annual peak load catered from such substation during last three years, anticipated load growth etc.
- 3.13. After hearing the Petitioners, it was directed to issue a public notice, within one week in two daily Gujarati newspapers and one English newspaper having wide circulation in the State level containing all the details of the petition. The Petitioner was also directed to upload the present Petition along with additional submissions, submissions filed by the Co-Petitioner and all other documents on the website of the Petitioner and Co-Petitioners and invite comments, objections from the stakeholders on affidavit within 15 days from the date of issuance of the public notice..
4. In compliance to the aforesaid directives given by the Commission vide Daily Order dated 02.03.2021, the Petitioner GUVNL made following submissions on affidavit dated 10.03.2021.
- i) Certain provisions of the standard PPA being signed by the Petitioner through Competitive Bidding namely; (a) Financial Closure, (b) Part Commissioning, (c) Minimum Generation Compensation, (d) Compensation for off-take constraints, (e) Letter of Credit are not kept in the draft PPA to be executed with Small Scale Solar Project Developers considering the implementation and operational challenges at distribution licensee level due to multiplicity of PPAs. The terms and conditions in the draft PPA are in conformity and consonance with the Solar Bidding Guidelines notified by the Central Government as amended from time to time and relevant deviations.
 - ii) The provisions regarding (a) Liquidated Damages, (b) Performance Bank Guarantee, (c) Timelines of project commissioning and submissions of Land Documents, (d) Term of PPA, (e) replacement of modules, (f) change in ownership of project, Termination Compensation, etc. are kept in consonance with the provisions of the State Government's Policy for development of Small Scale Distributed Solar

Projects – 2019 notified by State Government on 06.03.2019 and Guidelines for implementation of Policy notified by State Government vide GR dated 15.11.2019.

- iii) The State Government has decided to revise the time period for commissioning of solar projects under the policy from 12 months to 18 months and the same was conveyed vide Energy & Petrochemicals Department's letter No. SLR/11/2019/51(P2)/B1 dated 08.02.2021. Based on the above, the definition of Scheduled Commercial Operation date (SCOD) in the draft PPA.
- iv) With regard to details of deviations from Competitive Bidding Guidelines issued by Central Government previously approved by the Commission, it is submitted that the Commission vide Order dated 15.03.2018 in Petition No. 1076 of 2018 has approved deviations regarding 'Change in Law' and 'Payment Security Mechanism'. In the said Orders, the following clause was approved in the context of 'Change in Law'.

“any Changes in Law that result in additional tax, duty, cess etc on generation of electricity (leviable on the final output in the form of energy) or sale of electricity shall only be allowed as pass through under Change in Law provisions”.

- v) The above clause did not cover the implication of impositions of Safeguard Duty/Anti-Dumping Duty as pass through in tariff at time when such imposition was under consideration of Government of India. The tender invited by Petitioner through RFS dated 08.02.2018 (Phase II) with the above clause resulted in to discovery of high tariff of Rs 2.98 – 3.09 / unit in the reverse auction conducted on 28.03.2018. The discovery of high price was primarily due to ambiguity regarding safeguard duty/anti-dumping duty. Thereafter, the above tender was scrapped and re-tendering was carried out by the Petitioner vide RFS dated 04.06.2018 under intimation to the Commission vide letter dated 28.05.2018 in accordance with Clause 3.1.1 (c) of the MoP Guidelines dated 03.08.2017, wherein the following revised clause for “Change in Law” was incorporated and the same was specifically informed to the Commission. The revised bid documents incorporating the above Clause were also forwarded to the Commission.

- vi) The Petitioner in its RfS dated 04.06.2018 made amendments as per Clause 3.1.1 (c) of MoP Guidelines dated 03.08.2017 in 'Change in Law' and informed to the Commission the said Clause which reads as under:

"9.1.1 "Change in Law" shall refer to the occurrence of any of the following events after the Bid Deadline.

a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.

b) Introduction of safeguard duty and/or anti-dumping duty which has direct effect on the Project cost."

- vii) The Commission has accorded the approval to the tariff stated in the PPA signed with above mentioned 'Change in Law' clause while adopting tariff of Rs 2.44 / unit discovered in the above re-tendering process vide Order dated 19.06.2019 in Petition No. 1768/2018 by adoption of the tariff. In the subsequent tenders, the Petitioner, GUVNL retained the provisions regarding safeguard duty / anti-dumping duty and included the custom duty in the ambit of 'Change in Law' clause in the bid documents along with other minor clarifications pursuant to discussions during pre-bid meetings of tenders. Accordingly, the 'Change in Law' provision in the draft PPA filed by the Petitioner, GUVNL under the present Petition is in consonance with the latest bid documents of competitive bidding process for which the tariff has been approved by the Commission vide Order dated 08.01.2021 in Petition No. 1923 / 2021.

- viii) The Commission vide Order dated 13.01.2020 in Petition No. 1848 of 2019 has approved deviations on the aspect of 'Force Majeure' and the Petitioner has been retaining the 'Force Majeure' clause approved by the Commission in the tenders for Competitive Bidding process and the draft PPA filed by the Petitioner, GUVNL under the present Petition is in consonance with the same.

- ix) The Petitioner submitted that the draft PPA filed by Petitioner with the present Petition is prepared broadly based on the Central Government's Solar Bidding Guidelines issued vide notification dated 03.08.2017 and in consonance with State Government's Policy notified vide GR dated 06.03.2019, Guidelines issued by State Government vide GR dated 15.11.2019 and deviations approved by the Commission from Central Government's Solar Bidding Guidelines. Further, it is submitted that the definition of SCOD under the PPAs to be signed under the Policy may be read as under.

*“Scheduled COD” or “Scheduled Commercial Operation Date” shall mean the date (Insert a date within **18 (eighteen) months** from the date of execution of the PPA.)”*

- x) With regards to query of the Commission seeking clarification on RPO and tariff the Petitioner submitted that the Commission has notified RPO Regulations upto FY 2021-22 only and is yet to notify the trajectories beyond FY 2021-22. The Commission has directed to the Petitioner to work out the quantum required to be procured in the present matter on basis of balance capacity required for fulfilment of RPO trajectory notified by the Commission with consideration of provisions of RPO Regulations.
- xi) The Petitioner submitted that the gestation period for commissioning of Solar Projects is around 12 to 18 months and accordingly the generation benefit therefrom is made available only after such period. Accordingly, the generation benefit from Projects under SSDS Policy shall be available only after March-2022, for which the RPOs are yet to be notified by the Commission.
- xii) As per the prevailing RPO Regulations, the Solar RPO for FY 2020-21 is 6.75% against which GUVNL / DISCOMs have achieved the RPO of 4.59% (up to Quarter 3). There shall be likely shortfall in Solar RPO Compliance in FY 2020-21.
- xiii) The target Solar RPO notified by the Commission for FY 2021-22 is 8%. The Petitioner has granted 5 (five) months extension to all RE Projects under implementation in accordance with MNRE's Office Memorandum for granting 5 month's blanket extension due to Force Majeure on account of outbreak of pandemic of Covid-19. Thus, the expected capacity addition from the Solar Projects tied-up

through Competitive Bidding has been deferred by 5 months. Accordingly, it is likely that there shall be shortfall in Solar RPO Compliance even in FY 2021-22.

- xiv) The Solar RPO notified by the Commission for FY 2021-22 is 8% while that specified by Government of India is 10.50%. MNRE, Government of India from time to time has been seeking that all the SERCs to align the RPO trajectories with Government of India's trajectories.
- xv) In the Order dated 08.08.2019 in Petition No. 1802 of 2019, while approving the tariff mechanism by the Commission, no issue of limitation of capacity for the applicability of the scheme was considered. Further, it is submitted that RPO stipulated by the Commission is a minimum requirement and power in excess of RPO can be procured, if the same is commercially viable.
- xvi) With regards to query on quantifying the procurement of power and tariff discovered for Dholera Solar Park based projects and the tariff of Rs. 2.83 per unit proposed and stand of the Petitioner for same, the Petitioner has submitted that it is difficult to quantify the exact capacity / quantum of power required from the SSDS Policy for fulfilment of RPO of Distribution Licensees, which is yet to be notified by the Commission and the Commission had in Order dated 08.08.2019 upheld the procurement of power under the Policy.
- xvii) The Commission vide Order dated 08.08.2019 has already approved the mechanism including the tariff mechanism as per Small Scale Distributed Solar Policy 2019.
- xviii) As per aforesaid Order, the tariff is based on the simple average of the tariff discovered in the competitive bid along with additional Rs. 0.20 per unit benefit to them. The tariff discovered in the Competitive bid including the tariff of Rs. 1.99 per unit would be reflected in the tariff computed for the appropriate period for the projects under SSDS Policy.
- xix) The tariff of Rs. 2.83 per unit is based on the simple average of the lowest prevalent tariff of Rs. 2.63 plus addition of 20 paise as per the approved tariff mechanism under the SSDS Policy in accordance with Order dated 08.08.2019 passed by the Commission. Based on the above, the Petitioner had invited applications during the

period from 03.10.2020 to 15.01.2021 or aggregating to 8000 MW capacity whichever is earlier as per EPD, GoG's letter dated 08.01.2021 under the Policy specifying that the applicable tariff for the PPAs to be executed by DISCOMs during the period from 01.10.2020 up to 31.03.2021 shall be Rs. 2.83 / unit.

xx) In addition to the above, there are various other important factors which have been considered under the SSDSP Policy for tie up of power and Petitioner's submissions thereon are as under.

a) The State Government has implemented Kisan Suryodaya Yojana (KSY) to facilitate the farmers to avail power-supply for irrigation purpose during day-time. Under the KSY Scheme, power is being supplied to Agriculture Sector during the period from 5 am to 9 pm instead of the former arrangement of supplying power to them under various groups during day and night period. Accordingly, the additional generation from solar projects would be beneficial to cater the incremental load of Agriculture Sector during the day-time period on account of the KSY Scheme. Further, the distributed nature of the solar generation under the SSDS Policy would also be beneficial for the above.

b) Government of India has set an ambitious target of achieving RE capacity of 450 GW by the year 2030. Accordingly, Gujarat has been making all efforts in garnering more and more Renewable Energy and contributing in the National RE capacity expansion program.

c) That the GoG's SSDS Policy aims to facilitate development of Small Scale Distributed Solar Projects with size 0.5 MW and above but up to 4 MW in the Distribution Network of Licensees and promote speedier development of solar projects in multiple small pockets of barren and uncultivable land in the State as well as to mobilize local resources, enhance skill development, create employment opportunities in the Solar Sector by promoting small scale entrepreneurs, encourage growth of local manufacturing facilities, etc.

d) In case of availability of excess solar power in upcoming years, the newly launched green energy trading platform at Indian Energy Exchange and other avenues available for supply / sale of power to other States can also be explored by Petitioner.

5. In response to the directives given by the Commission in its Daily Order dated 2.3.2021 in Petition No. 1954 of 2021 GETCO has filed an affidavit dated 9.3.2021 through e-filing mode reproduced below:
- 5.1. In pursuance of the directives given by the Commission vide Daily Order dated 02.03.2021, the Co-Petitioner No. 5 has filed the submissions which read as under:
- “.....
- (a) *That in accordance with the GoG’s “Policy for Development of Small Scale Distributed Solar Projects – 2019” dated 06.03.2019, “Guidelines for implementation of Policy for Development of Small Scale Distributed Solar Projects 2019” dated 15.11.2019 and Hon’ble Commission’s order dated 08.08.2019 approving the mechanism for tariff under the said Policy, the Co-Petitioners No. 1 to 4 had invited applications for development of Small Scale Distributed Solar Projects with size 0.5 MW and above upto 4 MW.*
- (b) *In accordance with the same, applications were received by the Co-Petitioner Companies No. 5 for Technical feasibility. As per the “Guidelines for implementation of Policy for Development of Small Scale Distributed Solar Projects 2019”, the applications are being processed on first-come-first-served basis. Further, Co-Petitioner Companies No. 1 to 4 had forwarded the applications along with their respective ‘priority number’ to GETCO (Co-Petitioner No. 5) for undertaking the technical feasibility analysis.*
- (c) *Broadly the feasibility has been granted by GETCO on following principle*
- *It is necessary to access Tentative Technical Feasibility for RE Integration of Power (in MW) at 11 KV/ 22 KV level at various substations and cluster shall be taken into account to access net feasibility.*

Methodology for cluster feasibility is as under:

- *Group/ cluster substations related to their source EHV substation.*
- *Calculate minimum load of each substation & RE load can be taken as per N-1 criterion and nos. of new panels to be installed in substation.*
- *Calculate total RE integration i.e., already connected & feasibility given @ 11/22/66 KV level.*

In few cases GETCO has also granted Conditional Feasibility on the following grounds considering the planned network:

- *In case control room extension is approved and it fits the time frame on connectivity as per PPA, then conditional consent can be given.*
- *If Transformer Augmentation is already approved in the timeframe on connectivity required in terms of PPA signed with DISCOM, then conditional consent can be given.*
- *All the substation which are forward charges and pending for commercial operations but ready with required infrastructure, conditional consent may be given.*
- *Upcoming substation where associated line is completed and land acquired for substation is without any litigation and also assurance that the substation will be completed in the time frame of PPA requirement, then conditional consent may be granted.*
- *Upcoming substation where LoI of associated line and LoI of civil works and approved link line were LoI has been issued than conditional consent may be granted.*

(d) Pursuant to the receipt of Technical Feasibility Reports (TFRs) the DISCOMs have registered the feasible applications and conveyed to Gujarat Energy Development Agency (GEDA) under intimation to respective Applicants.

(e) Further the Commission has also asked for details of the line loading and transformer loading of each substation the same is also included in the data submitted in the Annexure C. The system study has been considered by considering the N-1 criteria for Transformer but not for line.

<i>Total Applications</i>		<i>TFRs approved & conveyed by GETCO</i>	
<i>No.</i>	<i>Capacity (MW)</i>	<i>No.</i>	<i>Capacity (MW)</i>
<i>12358</i>	<i>7923.41</i>	<i>7362</i>	<i>4646</i>

(f) It is to further humbly submit that the above are subject to change, since the process of scrutinizing the applications with respect to technical feasibility by GETCO is still on-going.

5.2. Further, Co-Petitioner No.-5, GETCO has later through email dated 10.03.2021 has made submissions vide affidavit dated 09.03.2021 and also stated therein that the earlier submission filed through e-filing mode dated 09.03.2021 as withdrawn and the submissions made through email dated 10.03.2021 be considered and the same are reproduced below:

“.....

c.) Broadly the feasibility has been granted by GETCO on following principle.

- *The Tentative Technical Feasibility for RE Integration of Power (in MW) at 11 KV/22 KV level at various sub-stations and cluster is assessed taking into account net feasibility.*

Methodology for cluster feasibility adopted by Co-Petitioner no. 5 is as under:

- *Grouping / cluster of sub-stations related to their source EHV substation.*
- *Calculation of minimum load of each substation & RE load can be taken as per N-1 criterion and nos. of new panels to be installed in substation.*
- *Calculation of total RE integration i.e. already connected & feasibility given @ 11/22/66 KV level.*

In support of the above, GETCO has relied on the relevant circulars dated 02.01.2021 with example for calculating the resultant connectivity to be granted.

In few cases GETCO has also granted feasibility on various grounds viz., in case of control room extension is approved and it fix the time frame of connectivity as per PPA, if Transformer Augmentation is already approved in the timeframe of connectivity required in terms of PPA signed with DISCOM, the substations which are ready with required infrastructure but pending for commercial operations, upcoming substation where associated line is completed and land acquired for substation is without any litigation, upcoming substation where LoI of associated line and LoI of civil works has been issued and it is clear that there is no RoW in work of line etc.

d). Pursuant to the receipt of Technical Feasibility Reports (TFRs) the DISCOMs (Co-Petitioner Companies 1 to 4) have registered the feasible applications and conveyed to Gujarat Energy Development Agency (GEDA). The list of each DISCOM where approvals have been given has been produced. Moreover, the Commission has also asked for details of the line loading and transformer loading of each substation the same is also included

in the data submitted along with the list. The system study has been considered by considering the 'N-1' criteria for Transformer but not for line.

e). The details of total applications and TFRs approved and conveyed by GETCO as on 10.2.2021 is as under:

Total Applications		TFRs approved & conveyed by GETCO	
No.	Capacity (MW)	No.	Capacity (MW)
12358	7923.41	7362	4646

The details of application as on 6.3.2021 is as under:

Total Applications		TFRs approved & conveyed by GETCO	
No.	Capacity (MW)	No.	Capacity (MW)
12404	7959	7552	4755

f). It is further submitted that the above figures are subject to change, since the process of scrutinizing the applications with respect to technical feasibility by GETCO is still on-going.

.....”

We record that the GETCO has made the above submissions in response to the directives given by the Commission vide Order dated 2.03.2021.

6. In compliance to the directions given to DISCOMs in the Order dated 2.03.2021 the DISCOMs have made following submissions:

a) In accordance with the Government of Gujarat (GoG) “Policy for Development of Small Scale Distributed Solar Projects – 2019” dated 06.03.2019, “Guidelines for implementation of Policy for Development of Small Scale Distributed Solar Projects – 2019” dated 15.11.2019 and Commission’s Order dated 8.8.2019 approving the mechanism for tariff under the said Policy, the Petitioner, Gujarat Urja Vikas Nigam Ltd. (GUVNL) had invited applications for development of Small Scale Distributed Solar Projects with size 0.5 MW and above but up to 4 MW the applicable tariff for the PPAs to be executed by the State DISCOMs the period from 01.10.2020 up to 31.03.2021 shall be Rs. 2.83 per unit. The last date for receipt of the applications was 15.01.2021.

- b) As per the “Guidelines for implementation of Policy for Development of Small Scale Distributed Solar Projects – 2019” the applications are being processed on first-come-first served basis. Further, the Distribution Licensees have forwarded Nos. of applications along with their respective ‘priority number’ to GETCO, the State Transmission Utility (STU) for undertaking technical feasibility analysis.
- c) Pursuant to the receipt of Technical Feasibility Reports (TFRs) from GETCO, the DISCOMs are conveying to the applicants regarding technical feasibility. Further, the applications that are not feasible are not abandoned completely but are kept on ‘waiting list’ and are processed in order of their eligible priority in the scenario where any feasible application within that particular sub-station does not materialize and the wait listed application can be considered for feasibility in its place.
- d) DISCOMs are conveying to GEDA regarding confirmation of technically feasible applications, for registration of the Projects. As per the timeline stipulated in the GoG’s Guidelines, GEDA is processing the applications within 15 days from the date of receipt of application and issuing necessary registration certificates to the Applicants.
7. All the Co-Petitioners have furnished the status of details of total applications received till date with capacity (MW) and TFRs approved, as below:

	Total applications		TFRs approved & conveyed by GETCO	
	No.	Capacity (MW)	No.	Capacity (MW)
MGVCL	659	381.35	465	270.745
UGVCL	3540	2502	2244	1503
PGVCL	7953	4899	4616	2818
DGVCL	252	177	227	163
GETCO	12404	7959	7552	4755

- e) The DISCOMs submitted that the above are subject to change, since the process of scrutinizing the applications with respect to technical feasibility by GETCO is still

on-going. Besides, as mentioned in foregoing paras, the above are also dependent on processing of applications under the 'waiting-list' in order to their eligible priority.

- f) The sub-stations being owned and maintained by the State Transmission Utility (GETCO), the exact details regarding sub-station including its transformation capacity, load catered from sub-stations, anticipated load growth, etc. are not available with the DISCOMs.
8. Ms. Sailaja Vachhrajani, on behalf of the Petitioner - GUVNL, submitted that the present Petition has been filed in pursuance to the Policy of the State Government for Small Scale Distributed Solar Projects issued vide GR No. SLR/11/2019/51/B1 dated 06.03.2019. The said policy aims at facilitating development of Small Scale Solar Projects with size of 0.5 MW and above up to 4 MW to be connected to the distribution network of licensees of Gujarat. She submitted that the tariff mechanism as per the aforesaid Policy is already approved by the Commission vide its Order dated 08.08.2019 in Petition No. 1802 of 2019. The Petitioner - GUVNL had earlier approached the Commission through the above Petition for approval of the tariff contracted in the Competitive Bidding Process conducted by GUVNL in which PPAs are to be signed for procurement of Solar Power from projects located at the Non - Solar Park prevailing as on 31st March (computed based on simple average of such tariff discovered and contracted over six months ending on 31st March) of any given year with an addition of Rs. 0.20 per unit to be the applicable tariff at which the PPAs are to be signed during the immediately succeeding period of April to September by the Obligated Entities with these Solar Projects under the policy and similarly the contracted tariff prevailing as on 30th September of any given year (computed based on simple average of such tariff discovered and contracted over six months ending on 30th September) with an addition of Rs. 0.20 per unit shall be the applicable tariff for PPAs to be signed during the immediately succeeding period of October to March.
9. The Petitioners have approached the Commission for approval of the proposed provision of 'Change in Law' to be incorporated in the proposed PPAs to be executed with the State DISCOMs and for approval of the draft PPA. She also submitted that the proposed provisions of 'Change in Law' pertains to any implication of introduction/modification/changes in rates of safeguard duty, antidumping duty, custom duty including surcharge thereon.
10. It is further submitted during the hearing that out of two aspects, one aspect regarding tariff mechanism which is already approved by the Commission through public participation

process in Petition No. 1802 of 2019 vide Order dated 08.08.2019, therefore, the public hearing was not required again for approval of draft PPA at this juncture. However, with regard to other aspects of quantum of power, its price, sources etc., she appraised the Commission that the quantum of power and terms of Agreement are not yet decided at present. She briefly summarized the entire process to be followed starting from receipt of applications from the developers, its technical feasibility, registration with GEDA, issue of estimate, providing connectivity etc. and accordingly as per the policy of the Government, the applicant is required to submit the applications at respective DISCOM level and thereafter, DISCOMs forwarded these applications to GETCO for verification of technical feasibility to inject the power into the system and once GETCO granted technical feasibility report, the said applications were sent to GEDA for registration of the project and estimate was issued to the applicant by the DISCOMs. However, granting connectivity and execution of PPA specifying quantum is pending.

11. It is also submitted that the State DISCOMs received total 12404 applications in number aggregating to 7959 MW capacity. Out of such applications, GETCO had issued Technical Feasibility Report (TFR) for 7361 applications aggregating to 4646 MW capacity and since the process is still going on, it is difficult for GUVNL to provide the details of the quantum for which PPAs are to signed by the DISCOMs with project developers till date.
12. It is further submitted that, so far as the quantum required to be procured is concerned, on the basis of balance capacity required for fulfilment of RPO trajectory notified by the Commission up to FY 2021-22 with consideration of notified Regulations of the Commission after duly taking into consideration Solar capacity which is already tied up till date irrespective of whether commissioned or for which tenders are issued/likely to be issued by the Petitioner, she submitted that the Commission has notified the Solar RPO targets up to FY 2021-22 and what could be the trajectory beyond that is not known at present.
13. She further submitted that the Petitioner in consultation with the State Government issued Public Notice in newspapers on 03.10.2020 inviting applications from eligible entities under the Policy for Development of Small Scale Distributed Solar Projects 2019, initially within a period of two months which was subsequently extended upto 15.01.2021. Further, as per decision of Government of Gujarat conveyed to the Petitioner, applications were to be invited through public notice up to 15.01.2021 or until applications for 8000 MW are received, whichever is earlier and based on the same, the Petitioner issued public notice for inviting applications, wherein; the State DISCOMs received total 12404 number of the applications aggregating to 7959 MW capacity. Although, all these applications have not technically

qualified but only applications totalling to 4646 MW are qualified as per TFR of GETCO but there is possibility on account of various conditions to be fulfilled by the Solar Project Developers like acquisition of land, consents, approvals etc., that PPAs for all 4646 MW may not eventually materialize.

14. It is further submitted that the provisions incorporated are based on PPAs executed under competitive bidding which basically provide for this particular provision of 'Change in Law'. She submitted that since the entire provisions of the draft PPA are based on competitive bidding documents and the tariff mechanism is also linked with tariff discovered based on same, therefore, it was envisaged that the said provisions also need to be incorporated in the draft PPA because as such large projects coming up through the competitive bidding process will be getting benefitted of such provision of 'Change in Law' like safeguard duty, antidumping duty, custom duty, surcharge etc. then same benefit be provided to small developers. She further submitted that the tariff of Rs. 2.63 per unit was discovered in one of its Non-solar park based competitive bidding process undertaken by GUVNL and the same is adopted by the Commission, which is the average tariff as per the tariff mechanism approved by the Commission and adding Rs. 0.20 per unit, the tariff proposed was Rs. 2.83 per unit as per the mechanism approved by the Commission for which applications aggregating to around 8000 MW were received. Therefore, when the competitive bidding process for 300 or 500 MW was taken up wherein developers selected are to set-up Solar project and will be getting benefits of safeguard duty, antidumping duty, custom duty etc., hence it was felt that the same benefits should be passed on to small projects developers under this policy.
15. In short, the Commission has already approved the mechanism of applicable tariff for purchase of power under the Government of Gujarat Policy for Development of Small Scale Distributed Solar Projects – 2019 as proposed by the Petitioners with certain directions by passing a detailed Order dated 08.08.2019 in Petition No. 1802 of 2019. The present Petition seeks approval regarding incorporation of Clause for "Change in Law" in the PPA proposed to be executed by the State DISCOMs under the Small Scale Distributed Solar Projects 2019 and for approval of draft PPA annexed to the Petition. The "Change in Law" shall mean as stated in the foregoing paras.
16. In response to the query of the Commission for joining SLDC as a party, it is submitted by GUVNL that SLDC is not a necessary party.
17. On behalf of Co-Petitioner No. 5 GETCO, it is submitted that the role of GETCO is limited only to providing connectivity to the project developers based on technical feasibility. Since the

DISCOMs have scrutinized the applications received by them, GETCO has only carried out the feasibility study as per CEA criteria and thereafter issued TFR only in cases which are technically feasible. He further stated that as per CEA Planning Criteria, GETCO has given various circulars to its field offices and based on the same, the field offices have undertaken feasibility studies and TFR was granted to only such applications which were technically feasible whereas certain other developers were not granted TFR due to the technical criteria being not met as per the CEA planning criteria. It is submitted that applications were received by this Co-Petitioner from Co-Petitioners No.'s 1 to 4 for technical feasibility with their respective 'priority number' for undertaking the technical feasibility analysis. Further, it has submitted details of the line loading and transformer loading of each substation.

18. It is submitted on behalf of the State DISCOMs that the above status is subject to change, since the process of scrutinizing the applications with respect to technical feasibility by GETCO is still on-going. Besides, the above are also dependent on processing of applications under the 'waiting list' in order of their eligible priority. `

19. The Objections/comments/suggestions received in response to the public notice and response thereon by GUVNL and others which are briefly summarized as under:

- At the outset, it is stated that most of the objectors have requested to extend the time for signing of the proposed PPAs for one month. Some have requested for two months. GUNL has responded that there has been procedural delay in the PPAs which were meant to be executed before 31.3.2021, the Commission may pass the direction as deemed fit, but it may be made applicable only for those projects which are registered by GEDA on or before 31.3.2021.

Other objections/suggestions are as under:

- Objection against incorporation of "Change in Law" provision in the policy and draft PPA and power procurement price from the solar generators.
- Any reduction in the tariff or imposition of charge/tax/duty/levy affects the project viability. Any loss to the project developer is objected.
- Any change in the SSDSP Policy after two years and Power Purchase Agreement is objected.
- The PPA should be prepared by the Distribution Licensee jointly with the representative of Solar Power Project Developer and get approved from the Commission instead of simply following to PPA with the successful Bidder of Competitive Bidding Process by the DISCOMs.

- If Solar Power Project Developer does not wish to sign PPA, amount paid by them towards provisional estimate for line supervision and connectivity charges should be refunded immediately on their application.
- With regard to the above, GUVNL has clarified that relief under Change-in-Law can only be granted only in cases where any Party is actually affected by such a change, for which the affected Party has to substantiate the same by furnishing documentary evidence of payment towards safeguard duty / anti-dumping duty / customs duty. Further, the reasonableness of mitigation and relief under Change-in-Law has to be dealt on case-on-case basis only and with due approval of Commission. It is also submitted and clarified that there is no question of granting any relief to Generators who procure from local suppliers, where there is no levy of safeguard duty / anti-dumping duty / customs duty. Accordingly, the aforesaid objection/submission is without any merit and is liable to be rejected. GUVNL has further responded that change in law has also been applying to large scale projects awarded under competitive bidding and there is no question of granting any relief to the generators who procure from local suppliers where there is no levy of safeguard duty/anti-dumping duty/custom duty. Further, the mechanism of tariff under the Policy has already been determined in the earlier petition.
- With regard to the objection/ query over the terminology 'estimated revenue' referred in 'Change in Law' provision under the Draft PPA with a request that the commission may define the same, it is clarified that the estimated revenue for the contract year shall be calculated at the contracted CUF% of 30%. Besides, the applicability of effective revised tariff will have to be examined on case to case basis upon submission of sufficient proof of cost incurred on account of Change in Law.
- With regard to the objection/submission that most of the Solar Projects under the SSDSP Policy being of 500 KW capacity would be out of the purview of Forecasting and Scheduling Regulations and have accordingly requested the Commission to exempt them from the applicability of Forecasting and Scheduling Regulations and Article 4.1.7 - Forecasting and Scheduling and Article 4.3.1 – Dispatch and Scheduling be modified by specifically stating that these provisions shall be applicable only for installed capacity of 1 MW and above, it is submitted that presently the Forecasting and Scheduling Regulations are applicable to Generators of capacity of 1 MW and above and in future it may even be applicable to all the Generators, irrespective of their capacities. Further, it is also submitted that the SSDSP Policy envisages even group of Solar Projects with collective capacity of 1 MW and above and evacuation of power shall be from such group of generators. The Draft PPA (Article 4.1.7 and

4.3.1) specifically stipulates that the Power Producer shall be required to follow Forecasting and Scheduling procedures as per Regulations issued by the Commission from time to time. Moreover, the cluster of adjoining Solar Projects with capacity aggregating to 1 MW and above shall also have to abide by the Forecasting and Scheduling Regulations.

- With regard to the objection of inclusion of 'Change in Law' provision suspecting that there could be levy of new charges / taxes / duties / levies on the Power Project Developers and incorporation of such provision could affect their Project viability, it is submitted that the intent of incorporation of 'Change in Law' provision in the PPA is misconceived and incorporation of 'Change in Law' provision in the PPA is intended to keep the Small Scale Projects at equal-footing with the Projects awarded under Competitive Bidding and passing on the impact on account of introduction / modification / changes in the rates of safeguard duty and/or anti-dumping duty and / or custom duty including surcharge thereon occurring after the date of signing of PPA.
- With regard to the submission that the "Change-In-Law" may not be construed to lower the agreed tariff of Rs.2.83 per unit, it is submitted that the intent of incorporation of 'Change in Law' provision in the PPA is misconceived and the provision in the PPA is intended to keep the Small Scale Projects at equal-footing with the Projects awarded under Competitive Bidding and passing on the impact on account of introduction / modification / changes in the rates of safeguard duty and/or anti-dumping duty and / or custom duty including surcharge thereon occurring after the date of signing of PPAs.
- As regards the submission that the tariff of Rs. 2.83 per unit payable by DISCOMs is important considering non-viability of Project at the tariff of Rs. 2.19 per unit being effective after 1st April 2021 and, therefore, the tariff of Rs. 2.83 per unit is in the larger interest of consumers, it is submitted that the same has already been clarified in the additional submission dated 10.03.2021.
- With regard to the suggestion to amend the definition of "*Contracted Capacity*" shall mean(*insert capacity*) MW AC contracted with DISCOMs for supply by the Power Producer at the Delivery Point from the Solar Power Project. In any 15 minute time block during the entire term of PPA, the injected power shall not exceed the Contracted AC Capacity as well as the inverter capacity shall not exceed Contracted AC Capacity" in the Draft PPA by deleting the words "In any time-block, the inverter capacity shall not exceed Contracted AC capacity", it is submitted by GUNL that due to technical grounds, the same cannot be accepted.

- With regard to the submission for amending Article 3 (xiii) of the Draft PPA – Obligations of the Power Producer by allowing them to replace the solar modules, whether damaged or otherwise, with intimation to DISCOM, so as to enable them to supply contracted power as stipulated under the Draft PPA, it is submitted that Article 3 (xiii) of the Draft PPA already provides for replacement of solar modules with prior consent of the DISCOM. This clause has been incorporated in line with the GoG’s Guidelines dated 15.11.2019 for implementation of the SSDSP Scheme which provides as under:-

“Para 22. Post commissioning of the solar power plant, during the entire period of the PPA, the applicant shall not replace the solar modules, whether damaged or otherwise, without prior consent of GUVNL / DISCOM.”

Moreover, there is no obligation under the PPA on the project developers with respect to minimum CUF to be achieved and the CUF of 30% is only an upper-ceiling. Further, since the replacement of modules increases volatility of generation of solar power which is of infirm nature, prior consent of DISCOMs is necessary.

- With regard to the suggestion to delete the word “GETCO” from Article 3 (x) of the Draft PPA “For evacuation of facility and maintenance of transmission, the Power Producer shall enter into separate agreement with GETCO / DISCOM”, it is submitted that the aforesaid clause already provides for the alternative viz. DISCOM or GETCO, as the case may be.
- With regard to modification in Article 4 – Early Commissioning of the Draft PPA stating that in case the Power Producer declares to commission its Project early, DISCOM shall commission the Project within 15 days of such written declaration and in case of failure to do so, the Power Producer may be entitled for compensation considering energy at 20% CUF upto the actual date of commissioning, it is submitted that the Project Developers are required to obtain requisite evacuation approval from GETCO and charging permission from CEIG and thereafter approach GEDA to ascertain and certify successful commissioning of their Project and the role of DISCOMs is to witness commissioning of the Project on the date which is organized & finalized by the involved Parties. Accordingly, it requires necessary co-ordination amongst the involved Parties viz. Project Developer, GEDA, GETCO, CEIG and DISCOM. Moreover, there is no such provision in Competitive Bidding Guidelines / Bidding Documents, nor in the GoG’s SSDSP Policy and GoG’s Guidelines for Implementation of the SSDSP Scheme for compensation / deemed generation. The Project Developer also has the option to provide any date within a period of 18 months as the SCoD of their Project and are free to provide an earlier date, depending upon the planning of progress / implementation of their Project.

- With regard to change in ownership of project allowed after expiry of COD as per the GoG's Guidelines dated 15.11.2019 with prior approval of DISCOM and without any fees / charges for facilitating such change, Article 5.5 of the Draft PPA provides for levy of an amount of Rs. 1 Lakh per transaction plus GST @ 18% as facilitation fees in the event of Change in Shareholding / Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity and suggestion to modify Article 5.5 of the Draft PPA to the effect that change in ownership of project may be allowed within one year from COD by levying facilitation charges / fees, while after the expiry of one year from COD, the same may be allowed without any fees / charges for facilitating such change, it is submitted that, if Change in Shareholding / Substitution of Promoters is allowed prior to one year from COD, it is likely that some of the Developers may take shelter of such a provision and opt to step-out of the Project by selling it to New Parties and indulge into trading or squatting of land and/or connectivity. Accordingly, in order to dis-incentivise non-serious Projects Developers, a lock-in period of one year from COD is kept in the Draft PPA. This lock-in period of 1 year from COD is also in accordance with Competitive Bidding Documents and standard industry practice. Accordingly, the suggestion of allowing change in ownership of project within one year from COD by levying facilitation charges / fees of Rs. 1 lakh per Project plus 18% GST cannot be accepted. Further, change in ownership / shareholding of the Project is allowed after one year from COD with prior consent of the DISCOM and only in case of change in Shareholding/Substitution of Promoters triggered by the Financial Institutions, an amount of Rs. 1 Lakh per Project per Transaction as Facilitation Fee (non-refundable) is payable to DISCOM.
- With regard to the suggestion to modify Article 5.6 regarding applicability of Intra-State ABT by specifically stating that these provisions shall be applicable only for installed capacity of 1 MW and above, it is submitted that the aforesaid Article / provisions in the Draft PPA specifically stipulate that the Power Producer shall be required to abide by the Regulations issued by the GERC from time to time. Moreover, the provisions of the Draft PPA also stipulate that the cluster of adjoining Solar Projects with capacity aggregating to 1 MW and above shall also have to abide by the Forecasting and Scheduling Regulations and ABT Regulations.
- With regard to the suggestion for modifying Article 7.1 - Metering Point by allowing the Project Developers less than 1 MW capacity installation to install normal tariff-meter with the facility of 15 minute time-block at the metering point instead of installation of ABT Compliant Meters, it is submitted that in accordance with the CEA Metering Regulations, 2006 & amendments thereto all the Generators irrespective of their capacity have to install ABT Compliant Meters. It is also submitted that presently the Forecasting and Scheduling Regulations are applicable

to Generators of capacity of 1 MW and above and in future it may even be applicable to all the Generators, irrespective of their capacities. Further SSDSP Policy envisages even group of Solar Projects with collective capacity of 1 MW and above and evacuation of power through a common electrical line from such group of generators. Therefore, in case of projects below 1 MW also, ABT compliant meters are necessary on account of common evacuation infrastructure being envisaged under the SSDSP Policy and requirement of forecasting & scheduling. Accordingly, all Generators have to mandatorily install ABT Meters and the suggested modifications cannot be accepted.

- The objection regarding provisional estimate issued by the Distribution Companies in providing Grid Connectivity and further alleging supervision charges is stated to be incorrect. It is further clarified that under the SSDSP-2019 Policy, connectivity to the intended solar plant is to be granted at the “Substation” applied for, if technically feasible. Accordingly, based on the technical feasibility report received from GETCO, DISCOMs confirm the connectivity at respective substation. Most of the applicants have not provided clear land possession documents while submitting their applications. Furthermore, in light of large number of applications to be processed in very short-span by DISCOMs, it is difficult to prepare exact estimate for recovery of supervision charges for laying evacuation line and accordingly supervision charges @ 15% of the fixed charges as decided by the GERC for similar capacity HT consumer have been charged as provisional Supervision Charges, which will be adjusted while issuing final estimate to the respective applicant on the basis of actual work to be carried out. As per the GERC (terms and condition of intra – state open access) Regulation, 2011, Notification No. 3 of 2011, definition, the “Applicant” means a consumer, trader, distribution licensee or a Generating company who has applied seeking connectivity or open access as the case may be. Hence, the above rules and regulations applied for supply of power to any consumers are also applicable for Generating Companies. Further, the Supervision Charges are recovered in accordance with Notification No. 5 – GERC (Licensees’ power to recover expenditure in providing supply and other miscellaneous charges) Regulations, 2005. It is also clarified that the evacuation line is being erected and owned by the Developer, but the same being integral part of the network / grid, it is essential for the DISCOMs to supervise the material used for setting up the evacuation line and its construction. Accordingly, DISCOMs are recovering supervision charges @ 15%.
- With regard to the suggestion regarding power transmission through “underground cabling system”, it is submitted that this issue is not relevant to the present Petition.

- The suggestion regarding refund of provisional estimate for line in case the project developers do not wish to sign PPA, it is submitted that as per GERC's Open Access Regulations, 2011, Connectivity charges are non-refundable. So far as refund of Supervision Charges, the same can be refunded as per provisions of GERC's Licensee's Power To Recover Expenditure Incurred In Providing Supply And Other Miscellaneous Charges, Notification No. 9 of 2005.
- With regard to the submission that Liquidated Damages should not be levied in case of conditional TFRs, it is submitted that GETCO (Co-Petitioner No. 5) is undertaking the technical feasibility analysis and the detailed procedure of granting of TFRs has been submitted by them in their submission in the present Petition. It is further submitted that upon communication of TFRs taking into consideration existing as well as planned network i.e. including sub-stations that are ready with infrastructure but pending for commercial operation, upcoming sub-station with required land without any litigation / no RoW issues, etc. to the Applicants, the Applicants have to get their Projects registered with GEDA and make payment towards estimates, etc. That apart, in case of grant of TFRs based on planned network, the Project Developers are submitting an Undertaking to DISCOMs while seeking interconnection facilities specifically stating that they will pay Liquidated Damages for delay as per the provisions of the PPA and they shall not hold GETCO / DISCOMs / GUVNL responsible for the same. The applicants need to be well aware of the fact that they are themselves opting to proceed with such TFRs for developing the Project based on planned network of GETCO. Accordingly, it is their commercial decision to go ahead with setting up of the Project and in case of delay in commissioning, they shall be liable to make payment towards Liquidated Damages as per the provisions of the PPA. Accordingly, appropriate provision shall also be suitably incorporated in the PPAs to be signed with Applicants who have been allowed connectivity in the planned network of GETCO.
- With regard to the suggestion to increase the time commissioning their Solar Projects from 12 months to 18 months citing reasons, it is submitted that, vide Affidavit dated 10.03.2021, the petitioner has submitted that the timeline for commissioning / SCODs of the Projects as mentioned in the Draft PPAs to be signed under the SSDSP Policy has been revised from 12 months to 18 months.
- With regard to the suggestion to consider the land procured for the purpose of PPA as deemed N.A. Land, the petitioner has submitted that the GoG's Guidelines dated 15.11.2019 for Implementation of SSDSP Policy stipulates that it shall be responsibility of the Project Developer to obtain the N.A. permission, failing which they shall not be permitted to commission their Project by GEDA.

- With regard to the objection that despite feasibility in sub-stations, the TFR allocation by GETCO is 35-40% lesser than the feasibility, it is submitted that GETCO (Co-Petitioner No. 5) is undertaking the technical feasibility analysis and the detailed procedure of granting of TFRs has been submitted by them in their submission in the present Petition.
- With regard to the suggestion to allow updation of sub-station name citing reason that in some cases due to lack of knowledge, some of the Developers have simply mentioned the name of village or private sub-station in their applications and TFRs were not granted for the actual applicable sub-station and thereby they are being subjected to opportunity loss, it is submitted that as per the GoG's Guidelines dated 15.11.2019, the Applicants are required to clearly mention the site address where they intend to set up their Solar Project, name of sub-station at which the power shall be fed, details of land, like survey no., area, location details, etc., proposed capacity, etc. Accordingly, it is the responsibility of the Applicant to carry out due-diligence before submitting their Applications, and the co-petitioners GETCO/DISCOMs cannot be expected to assume the name of the nearby sub-station as GETCO and DISCOMs are required to follow sub-station wise priority list on first come first served basis and if connectivity is granted in an incorrect sub-station, it can lead to disputes.
- With regard to the submission on the tariff and capital cost of the Project, citing increase in cost of steel, copper, solar modules, etc. which has affected the capital cost per MW of Solar Project and financial implication on account of levy of additional charges viz. grid connectivity charges, supervision charges, ABT Meters, etc. the power purchase cost / tariff should be Rs. 3.56 / unit, it is submitted that the applicable tariff has to be in accordance with the GoG Policy dated 06.03.2019 for development of SSDSP and GoG's Guidelines dated 15.11.2019 for implementation of the SSDSP Scheme and its mechanism has already been determined in the earlier petition.
- With regard to the request to review the applicable tariff and the tariff mechanism providing additional 20 paise / unit over and above the tariff discovered under Competitive Bidding, it is submitted that this issue is not pertaining to the present Petition and the applicable tariff is in accordance with the GoG Policy dated 06.03.2019 for development of SSDSP and GoG's Guidelines dated 15.11.2019 for implementation of the SSDSP Scheme. Moreover, the Petitioner had filed Petition No. 1802 / 2019 for approval of mechanism of applicable tariff under the SSDSP Policy which has been approved by the Commission vide their Order dated 08.08.2019 following thorough procedure of Stakeholders' consultation and by conducting Public Hearing.

- With regard to the suggestion to amend Article 3.1 (iv) of the Draft PPA which stipulates that the Generators / Power Producers shall sell power from the identified Solar PV Project only to DISCOM and not to sell to any other third party nor consume for captive use other than reasonable auxiliary consumption, it is submitted that the provision is a standard provision.
- With regard to the submission that there should not be any restriction by DISCOMs for replacement of Solar PV Modules as provided under Article 3.1 (vii) which states that post commissioning of the Project, the Generator shall not replace Solar PV Modules, whether damaged or otherwise, is contrary to the Article 3.2 (ii) which states that DISCOMs shall be obliged to buy power upto contracted CUF of 30%, the response of the petitioner in this regard is as already stated above.
- It is suggested to direct the State DISCOMs to remove all 11 KV lines running parallel and/or crisscrossing each other to solve complexity of circuits & avoid line-losses and consider direct feeding to 11 KV overhead lines, it is submitted that it is out of the purview of the petition and technical reason is given that it may cause line outage and the issue raised is not pertaining to the present Petition.
- It has contended that DISCOM has not adhered to the Net Metering Regulations and wrongfully charged connectivity charges to them, which is on higher side, it is submitted that the issue raised is not relevant to the present Petition and the “Connectivity Charges” are recovered as per the provisions of GERC Open Access Regulations, 2011. It is further clarified that Notification no. 5 of 2016 is applicable to the consumers who desire to install the Rooftop Solar PV System under net metering arrangement, therefore the provisions of notification no. 5 can't be made applicable to the Generator.
- With regard to increasing the commissioning period in case of conditional TFRs / connectivity granted by GETCO, the response of the petitioner is already stated hereinabove.
- With regard to applicability of GST and review of financial viability of the Small Scale Projects, it is submitted that the applicable tariff has to be in accordance with the GoG Policy dated 06.03.2019 for development of SSDSP and GoG's Guidelines dated 15.11.2019 for implementation of the SSDSP Scheme. The Petitioner had filed Petition No. 1802 / 2019 for approval of mechanism of applicable tariff under the SSDSP Policy which has been approved by the Commission vide their Order dated 08.08.2019 following thorough procedure of Stakeholders' consultation and by conducting Public Hearing.

- With regard to the submission that delay in signing of PPAs at the tariff of Rs. 2.83 / unit and they have been exposed to the risk of reduction in tariff after the deadline of 31.03.2021 which will jeopardize their investments made till date and also discourage their future investments, the response in this regard of the petitioner is sated hereinabove.
- With regard to the objection raised that TFRs have not been granted to Applicants in some cases and due to one or the other reason, some of the Applications are rejected, it is submitted by Petitioner GUVNL that GETCO (Co-Petitioner No. 5) is undertaking the technical feasibility analysis and the detailed procedure of granting of TFRs has been submitted by them in their submission dated 10.03.2021 in the present Petition. Moreover, the DISCOMs (Co-Petitioner Companies No. 1 to 4) have also filed their submissions about the detailed procedure for processing applications and capacity allocation on 10.03.2021 in the present Petition apart from submissions dated 10.03.2021 and comprehensive submission / reply dated 22.03.2021 filed by the Petitioner in response to the comments / suggestions of various stakeholder, which also cover the above issue.
- As regards the suggestion for having a single-window clearance for fast conversion process of land into non-agriculture (N.A.), it is submitted that the same is not subject matter of the present Petition while clarifying that the GoG's Guidelines dated 15.11.2019 for Implementation of SSDSP Policy clearly provides that it shall be the responsibility of the Project Developer to obtain the N.A. permission, failing which they shall not be permitted to commission their Project by GEDA.
- With regard to objections raised by UUWA which is an Association of end-users that the tariff of Rs. 2.83 per unit has not been approved by the Commission and the proposal of the Petitioner to procure solar power at such tariff is not justified in absence of any details with calculation thereof, while denying the same to be wrong it is submitted by the Petitioner that the applicable tariff of Rs. 2.83 per unit is in accordance with the GoG's Policy dated 06.03.2019 for development of SSDSP and GoG's Guidelines dated 15.11.2019 for implementation of the SSDSP Scheme. Moreover, it is also submitted that the Petitioner had filed Petition No. 1802 / 2019 for approval of mechanism of applicable tariff under the SSDSP Policy, which has been approved by the Commission vide Order dated 08.08.2019 following thorough procedure of Stakeholders' consultation and by conducting Public Hearing.

- With regard to the suggestion that the PPA term should be effective for 10 years only and thereafter re-PPA should be undertaken, subject to approval of appropriate Commission, it is submitted that the PPA term is in accordance with the provisions of the GoG Policy dated 06.03.2019 for development of SSDSP as well as MoP's Guidelines for Competitive Bidding.
- As regards the objection raised to the Article 13.8 – 'Amendment' mentioned in the Draft PPA and questioning that merely with consent of Buyer and Seller, without approaching the Appropriate Commission on what aspects can the PPA be amended for which otherwise the consumers / stakeholders are required to be heard, if outcome of Amendment to the PPA is going to affect the tariff, it is submitted and clarified by the Petitioner that Article 13.8 – 'Amendment' of the Draft PPA is a standard provision provided under the PPAs and there can be instances requiring minor amendment(s) to the PPAs viz. change in location / name of village, district, etc. or change in name of the Company (upon change in legal status of the company viz. Private Limited Company to Public Limited Company or vice-versa) or change in ownership of the Company (pursuant to sale of the Project), etc. for which the aforesaid provision under the PPA permits the Parties to undertake such minor amendments (if required to be effected) and are undertaken in normal course of business. Moreover, it is also submitted that the Draft PPA clearly stipulates for approaching Commission for change / revision in tariff on account of 'Change in Law'.
- With regard to objections raised for quantum of power to be procured from the Projects under GoG's SSDSP Policy and RPPO requirement, it is submitted that the Petitioner has addressed the issue vide its earlier submission dated 10.03.2021.
- With regard to several other issues raised by UUWA, it is submitted that the same are not pertaining to the present Petition viz. litigation of Solar Developers under GoG's Solar Policy 2009 having tariff of Rs. 15 per unit, passing on the benefit of grant or capital subsidy or interest subsidy (if any), etc.

It is contended that the Commission is supposed to hear the consumers and sufficient time should be given. It is stated that the Commission has not approved the tariff rate of Rs.2.83 per unit in the order dated 08.08.2019 in Petition No.1802 of 2019. The mechanism of tariff is approved in para 13.22 of the said order. It is the contention of the objector that small

scale distribution solar project developers with whom GUVNL is going to enter into PPAs are necessary parties to the petition. The cost of the project differs from project to project and there should not be any ambiguity and the tariff should be determined only by legal method.. It is contended that Draft PPA must be accurately worded so that there is no scope for any ambiguity. After inviting applications and preparation of the project, Draft PPA should not be changed and change in law requires specific reasons and consent of the parties. It is contended that there is no provision in the Electricity Act or the Regulations empowering the Commission to adopt the tariff proposed by GUVNL without following either section 62 or section 63 read with section 86 (1)(a) (e) or section 86 (3) and the project developers have not given any consent to the proposed tariff of Rs.2.83 per unit.

It is further contended that the proposed tariff of Rs.2.83 per unit is not justified in view of the fact that no details are provided It is contended that the tariff of Rs.2.83 per unit is quite higher and the Commission should direct GUVNL to procure solar energy in the way. Torrent Power Ltd. has carried out competitive bidding discovering tariff of Rs.2.20 per unit which will ultimately benefit the consumers.

It is contended that there is no mention about any subsidy/grant to be available to solar project developers and, in case of such subsidy incentive in any form it is to be passed on to the distribution licensees and ultimately to the consumers.

It is contended that equal treatment should be given to the MSME sector who are facing huge financial/commercial issues on the cost of project working capital. In the present petition, the only question is regarding incorporation of “change of law” clause. It is also submitted that PPA should be made for 10 years and not for 25 years. It is contended that the Commission should look into the PPA and in terms of quantum which GUVNL intends to enter which may not exceed the RPO.

- National Solar Energy Federation of India (NSEFI) vide affidavit dated 22.03.2021 has submitted that subsequent to approval from the DISCOMs, GETCO and GEDA, its member solar power developers have purchased land in the State and eagerly waiting for signing of PPAs with DISCOMs by February-2021. However, now demand note is received by them from GETCO/DISCOMs for payment against estimated cost of evacuation system and supervision charges but DISCOMs have not been able to sign the PPAs with the developers due to pendency of present Petition to safeguard the interest of the investors by allowing the relief under the ‘Change in Law’. Such delay in signing of the PPA has exposed the investor to greater risk of reduction in Tariff from existing Rs. 2.83/kwh to lower tariff as per the mechanism approved

by the GERC in its Order date 08.08.2019 and will jeopardize the investment made till date by its members and prevent further investments. Such arbitrary and inadvertent delays will ultimately lead to failure of the scheme, which has got such overwhelming response in its first phase. Such actions by Government machineries will not only deteriorate investors' confidence in the State Government but also discourage further investments.

20. We have heard all the petitioners and the objectors. Based on the submissions made by the parties, the following issues arise for the decision of the Commission:

- (i) Whether the proposed incorporation of 'Change in Law' clause and other changes in the proposed draft PPA as prayed in the petition are required to be allowed or not?
- (ii) If 'yes', what order?

21. We have considered the submissions made by the parties. We note that Government of Gujarat has notified the Policy for Development of Small Scale Distributed Solar Projects-2019 vide G.R. No. SLR/11/2019/51/B1 dated 6th March, 2019. The said Policy provides that the Small Scale Solar Projects having size of 0.5 MW and above upto 4 MW, set up by the Project Developers be permitted to inject the energy generated from it in the distribution network, sub-station by setting up Solar projects of size specified above and laying distribution network/transmission lines for injection of energy into the Distribution system. The objective of the said Policy is to facilitate development of distributed generation from Small Scale Solar Power Projects with the size of 0.5 MW and above upto 4 MW in the distribution network of the licensees in the State. The tariff payable by the distribution licensee to such project developer is linked with the tariff discovered in the Competitive Bidding Process carried out by the distribution licensee under Competitive Bidding Process as per Competitive Bidding Guidelines for large scale projects set up in Non-Solar park. The objectives stipulated in the said Policy are as under:

“2.1 To facilitate and promote speedier development of Solar Projects in multiple scattered pockets of barren and uncultivable land.

2.2 To provide visibility about available tariff for sale of power to small solar power project developers who cannot participate in competitive bidding.

2.3 To mobilize local resources, enhance skill development and create employment opportunities in Solar Energy Sector by promoting small scale entrepreneurs.

- 2.4 *To help utilize the robust transmission and distribution network of State Utilities for large scale integration of Solar Projects with the grid.*
- 2.5 *To strengthen the local grid and improve local voltage by encouraging distributed generation.*
- 2.6 *To encourage growth of local manufacturing facilities in line with the ‘Make in India’ programme”.*
- 21.1. The Solar projects having size of 0.5 MW and above, but not exceeding 4 MW allowed by the Government of Gujarat in its aforesaid Policy is with a view to promote distributed solar generation to achieve various objectives as stated above.
- 21.2. The Petitioner, GUVNL, had earlier filed Petition No. 1802 of 2019, wherein the Commission passed an Order dated 08.08.2019 and decided and approved tariff receivable by such projects as per approved mechanism and other aspects. The operative part of the said Order is reproduced below:

“14. In view of the above, we decide to approve the mechanism of applicable tariff for purchase of power under the Government of Gujarat Policy for development of Small Scale Distributed Solar Projects – 2019 as proposed by the Petitioner with the following directives:

- 1. The Petitioner shall place on its website the applicable tariff on which it will buy the energy generated from Small Scale Distributed Solar Power Projects of the capacity of 0.5 to 4 MW.*
- 2. The rate will be updated every 6 months.*
- 3. The Petitioner shall submit a statement showing the details of PPAs executed with the Small Scale Distributed Solar Power Projects Generators to the Commission at the end of every quarter beginning from 01.04.2020 onwards”.*

In the aforesaid Order, the Commission has specified the mechanism for procurement of energy from Small Scale Distributed Solar Projects. The tariff rate to be worked out based on the methodology specified in the above Order read with Government of Gujarat Policy for ‘Development of Small Scale Distributed Solar Projects – 2019 having capacity of 0.5 MW and above upto 4 MW. The Commission in the aforesaid Order also directed the Petitioner, GUVNL to update the rate every 6 months as per approved mechanism. The Commission has also approved that the Petitioner shall submit the statements showing

details of PPAs executed with the Small Scale Distributed Solar Project Developers from time to time.

- 21.3. We note that the tariff of Rs. 2.83 per unit proposed by the Petitioner to procure consists of additional 20 paise in Rs. 2.63 per unit as compensation towards savings in transmission charge and higher cost of land and project development as specified in the Policy. Thus, the effective tariff is Rs. 2.63 per unit. The Commission has already approved the mechanism for the procurement of such energy from Small Scale Distributed Solar Generators vide its Order dated 08.08.2019 in Petition No. 1802 of 2019.
- 21.4. Moreover, the tariff of the proposed procurement apart from being in accordance with the Order dated 08.08.2019 in Petition No. 1802 of 2019 and the same is not comparable with the tariff of Rs. 1.99 per unit discovered under the competitive bidding process during the period from 01.10.2020 to 31.03.2021.
- 21.5. Further we note that the following aspects are also important which need to be considered with regard to the tariff proposed by the Petitioner for procurement of power:
- (i) The tariff discovered under the Competitive Bidding Process of Dholera Solar Power Park is having project size of 100 MW and above, while the project proposed in the present Petition is having the size of 0.5 MW to 4 MW, where the Competitive Bidding is not permitted as per the Competitive Bidding Guidelines. The tariff proposed for such projects is linked with the discovered tariff in the Competitive Bidding Process of earlier six months. Thus, the tariff of Small Scale Distributed Solar Project Generators is different and distinct from the tariff discovered in the Competitive Bidding Process. Even the economics of scale of project size in both the cases are different and distinct and not comparable, which affect cost of the project and operation cost of project etc.
 - (ii) The Commission has approved the mechanism for determination of tariff in its Order dated 08.08.2019 in Petition No. 1802 of 2019. The tariff of Rs. 2.83 per unit proposed in the present Petition by the Petitioner consists of 20 paise additional in the form of 12 paise per unit savings in transmission loss and 8 paise per unit is for compensation towards expensive land cost, higher capital investment and maintenance cost. Thus, the effective tariff of such project is not compatible with

Solar Park Project or Non-Solar Project where the bidding is carried out. In comparison with the discovered tariff of Dholera Solar Power Project, the tariff of Small Scale Distributed Solar projects which works out to Rs. 2.83 per unit minus 20 paise works out to Rs. 2.63 per unit. Comparison of the same with the discovered tariff of Dholera Solar Power Project of Rs. 2.78 per unit to Rs 2.81 per unit, it works out to lower tariff in the range of 15 paise per unit to 19 paise per unit.

- (iii) The energy generated from Small Scale Distributed Solar Projects may be injected at the lower voltage at the sub-station at either 11 KV or 66 KV level. It will be beneficial to the licensees as well as the consumers in the nearby area of such injection of energy by way of better voltage and also reduces the distribution losses of the system and quality reliable voltage supply to the consumers.
- (iv) Moreover, in such project it will also be helpful to avoid the construction of EHV and/ or HV transmission system consisting of sub-station, transmission lines etc. and helpful to avoid ROW issues associated with it, which are additional costs, to be borne by the Petitioner. In case of Dholera Solar Power Projects, wherein the Petitioner requires to set up necessary sub-station of 400 KV/220 KV and also to create EHV transmission system for evacuation of power from the aforesaid sub-station, wherein the solar energy generated from the projects be injected and also requires to be transmitted at the load center by way of construction of EHV transmission lines at additional cost. Moreover, the Petitioner, GUVNL, shall also bear the additional cost of transmission charges and losses for transmission of such energy.

21.6. Now we deal with the submissions of the Petitioner on the query raised by the Commission in its Order dated 02.03.2021 to work out the quantum required to be procured in the present matter on basis of balance capacity required for fulfilment of RPO trajectory notified by the Commission with consideration of provisions of RPO Regulations. Further, the Petitioner after duly taking into consideration Solar capacity which is already tied up till date irrespective of whether commissioned or not and capacity for which tenders are issued/likely to be issued by the Petitioner, respective CUF stated in PPAs, renewable energy of non-obligated entities etc. work out Solar capacity which may be required for fulfilment of RPO of distribution licensees on basis of approved/proposed total energy requirement is concerned, the Petitioner submitted that the gestation period for

commissioning of solar project is 12 to 18 months and accordingly the generation benefit is available only after such period. Therefore, the generation benefit in such project may be available only after March 2022 for which the RPO are yet notified by the Commission.

- 21.7. The RPO for FY 2020-21 notified by the Commission is 6.75% against which the Petitioner/DISCOMs have achieved the RPO of 4.59% upto 3rd quarter of the financial year. Thus, there is a shortfall in Solar RPO compliance in FY 2020-21.
- 21.8. The target Solar RPO specified by the Commission for FY 2021-22 is 8%. The Petitioner has granted 5 months' extensions to all RE projects under implementation in accordance with MNRE's office memorandum for granting 5 months' blanket extension due to 'Force Majeure' on account of outbreak of pandemic of COVID-19. Therefore, the expected capacity addition from the solar projects tied up through competitive bidding has been deferred by 5 months. It is likely that there shall be shortfall in Solar RPO compliance in FY 2021-22.
- 21.9. The Government of India has specified Solar RPO for FY 2021-22 as 10.5% against it the Solar RPO notified by the Commission is 8%. MNRE from time to time has been seeking that all SERCs to align the RPO trajectory with Govt. of India trajectories.
- 21.10. The Commission passed an Order dated 08.08.2019 in Petition No. 1802 of 2019 and decided about the procurement of renewable energy from the Small Scale Distributed Solar Projects as per the mechanism of applicable tariff proposed by GUVNL in terms of Govt. of Gujarat Policy dated 06.03.2019 to achieve the target of RPO. Thus, there is no issue of limitation of capacity for applicability of the scheme was considered by the Commission. Further, the RPO stipulated by the Commission is a minimum requirement and power in excess of RPO can be procured if the same is commercially viable.
- 21.11. We note that the Petitioner who procure power on behalf of the distribution licensees are obligated entities for fulfilment of RPO as per the provisions of GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendments made in it. The RPO specified in the Regulations for FY 2020-21 and 2021-22 are as under:

Year	Minimum Quantum of purchase (in%) from renewable energy sources (in terms of energy in kWh)			
	Wind	Solar	Others	Total (%)

(1)	(2)	(3)	(4)	(5)
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.00	0.75	17.00

Accordingly, the obligated entities are required to procure 6.75% in FY 2020-21 and 8% in FY 2021-22 from solar energy as a part of total consumption during the respective year. We also note that for FY 2020-21 the RPO complied upto 3rd quarter by the Petitioner is 4.59% against 6.75% notified by the Commission. Thus, there is shortfall in compliance of the RPO. Further, the RPO specified for FY 2021-22 is 8% by the Commission which is 1.25% higher than the RPO of FY 2020-21. We also note that due to COVID pandemic during FY 2020-21 the MNRE issued memorandum for granting five months blanket extension in the project completion by the project developers as force majeure on account of COVID 19. Thus, projects which are affected due to COVID-19 may be delayed to achieve SCOD in stipulated time as per the PPA.

21.12. The Petitioner has referred Order dated 8.08.2019 in Petition No. 1802 of 2019 and submitted that there is no limitation of capacity for the applicability of the scheme was considered by the Commission. Hence, the it is necessary to refer the relevant portion of the said order reproduced below:

“13.16. In pursuance of the above mandate the Commission has notified the renewable purchase obligation for the obligated entities in the State of Gujarat through GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and subsequent amendments thereto. Vide Second Amendment, 2018 the Commission has specified the trajectory for renewable purchase obligation of the obligated entities in terms of energy in kWh as under:

Year	Minimum Quantum of purchase (in%) from renewable energy sources (in terms of energy in kWh)			
	Wind	Solar	Others	Total (%)
(1)	(2)	(3)	(4)	(5)
2018-19	7.95	4.25	0.50	12.70
2019-20	8.05	5.50	0.75	14.30
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.00	0.75	17.00

From the above, it is clear that the obligated entities are required to comply with the renewable purchase obligation by consumption of different percentage of energy from wind, solar and other sources of their total consumption during different financial years.

13.17. The total consumption of the four distribution licensees of the Petitioner, i.e. DGVCL, PGVCL, MGVCL, UGVCL for FY 2018-19 to FY 2020-21 has been estimated in MYT Orders dated 31.03.2017 as under:

Approved GUVNL Cost from FY 2018-19 to FY 2020-21

(Rs Crores)

Sr. No.	Particulars	FY 2018-19	FY 2019-20	FY 2020-21
1	Energy handled (MUs)	91973	96426	101205

Taking into consideration the above requirement of energy and the RPO targets as stated in the previous paragraph. Thus, the Petitioner is required to procure substantial quantum of renewable energy specifically from solar during 2018-19 to 2020-21. The said quantum would further increase in FY 2021-22 in view of increased RPO targets. Thus, the energy requirement from solar projects during the period up to FY 2021-22 has to be met by the Petitioner through procurement of power from the renewable energy sources which include solar energy which is the subject matter of the present Petition. We, therefore, decide the procurement of energy from small scale distributed Solar PV Projects as per the mechanism of applicable tariff proposed by the Petitioner in term of the GoG Policy dated 06.03.2019 would help the obligated entities in achieving their targets.”

21.13. In the aforesaid decision the Commission has considered the RPO specified in the Regulations i.e. from FY 2018-19 to FY 2021-22. The Commission has also considered the energy handled by the distribution licensee/GUVNL during FY 2018-19 to FY 2020-21. The Commission has recorded that the Petitioner GUVNL shall require to procure substantial quantum of renewable energy specified from Solar during FY 2018-19 to 2020-21. It is also recorded that the RPO quantum would further increase in FY 2021-22 in view of increase RPO targets and the Petitioner GUVNL has to meet such target through procurement of renewable energy include solar energy also. The Commission has decided to allow the procurement of energy from small scale distributed solar PV projects as per the mechanism of applicable tariff proposed in the Govt. of Gujarat Policy dated 6.03.2019 to achieve the targets. There is no specified quantum of energy from solar projects stated in the said order by the Commission.

21.14. We also note that the argument advanced by the Petitioner that the RPO specified by the Commission in the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendment made in it is the minimum percentage of the consumption as per the Regulations. It is, therefore, necessary to refer Regulation 4.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and the amendments made in it, which is reproduced below:

“4. Quantum of Renewable Purchase Obligation (RPO)

4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year.

Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.

The defined minimum percentages are given below in the Table 1.

Table 1

Year (1)	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.5%	0.5%
2012-13	7%	5.5%	1.0%	0.5%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfilment of the RPO in accordance with column 2.....”

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.”

The aforesaid provision provides for minimum procurement of energy from the renewable sources by the obligated entities which includes the distribution licensees. There is no restriction on the licensee to procure renewable energy more than the percentage of the RPO specified by the Commission in the aforesaid Regulations. With consideration of different aspects stated above and the benefits specified in the Policy as recorded in earlier para the procurement of energy from the Small Scale Distributed Solar Projects propose to procure by the Petitioner is as per the mechanism specified in the Government of Gujarat G.R. dated 6.3.2019 and the Order dated 8.8.2018 passed by the Commission in Petition No. 1802/2019.

21.15. Further, the Petitioner has invited applications during the period 3.10.2020 to 15.01.2021 aggregating to 8000 MW capacity as per EPD, GoG letter dated 08.01.2021. The various factors have been considered under the policy for tie up of power are as under:

- a) The State Government has implemented Kisan Suryodaya Yojana (KSY) to facilitate the farmers to avail power-supply for irrigation purpose during day-time. Under the KSY Scheme, power is being supplied to Agriculture Sector during the period from 5 am to 9 pm instead of the former arrangement of supplying power to them under various groups during day and night period. Accordingly, the additional generation from solar projects would be beneficial to cater the incremental load of Agriculture Sector during the day-time period on account of the KSY Scheme. Further, the distributed nature of the solar generation under the SSDS Policy would also be beneficial for the above.
- b) Government of India has set an ambitious target of achieving RE capacity of 450 GW by the year 2030. Accordingly, the State of Gujarat has been making all efforts in garnering more and more Renewable Energy and contributing in the National RE capacity expansion program.
- c) That the GoG's SSDS Policy aims to facilitate development of Small Scale Distributed Solar Projects with size 0.5 MW and above but up to 4 MW in the Distribution Network of Licensees and promote speedier development of solar projects in multiple small pockets of barren and uncultivable land in the State as well as to mobilize local resources, enhance skill development, create employment opportunities in the Solar Sector by promoting small scale entrepreneurs, encourage growth of local manufacturing facilities, etc.
- d) In case of availability of excess solar power in upcoming years, the newly launched green energy trading platform at Indian Energy Exchange and other avenues available for supply / sale of power to other States can also be explored by Petitioner.

21.16. We note that the SLDC is assign a function of grid management and control in the Act as well as the regulations notified by the Commission. Further, the SLDC also required to carry out energy accounting consist of forecasting and scheduling of renewable energy. We note that Commission has notified the Scheduling and Forecasting Regulations and also carry out the energy accounting works in the State. We also note that the necessary metering data available to the SLDC through RTU and AMR as per the Government Policy as well as the provisions of the PPA.

21.17. We note that there are provisions made in the Policy specifically clause 11 and 15 of the Policy which are reproduced below:

“11. METERING AND ENERGY ACCOUNTING

The electricity generated from Solar Projects, shall be metered on 15 – minute time block basis by DISCOM/ALDC/SLDC and interconnection point. For the purpose of energy accounting, solar generating project shall provide ABT – compliant meters and RTUs at the interface points. Interface metering shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations 2014 and amendments thereto. DISCOM/SLDC/ALDC shall stipulate specifications in this regard.

15. FORECASTING & SCHEDULING

The Solar Projects shall, for the time being, be exempted under scheduling procure procedure for Intra State ABT. The Solar Projects shall however abide by the instructions of SLDC. Actual energy injected in the grade during particular time block of 15 minutes shall be post-facto considered available for drawl schedule for sale of power to DISCOM. And when forecasting and scheduling mechanism is made applicable to solar power projects, the solar power projects shall abide by such rules and regulations.”

21.18. As per the aforesaid Policy, the solar power project developer shall require to install of ABT meters along with RTU at injection point. Moreover, they are also required to carry out forecasting and scheduling as per the provisions of Rules and Regulations notified. The SLDC is carrying out energy accounting of the various renewable energy projects at present also including the solar power projects. Moreover, there is provision 7.1(4) in Article of the PPA which provides that the meter installed shall mandatory be equipped with AMR for facilitating energy accounting and certification by GETCO /SLDC/DISCOMs.

21.19. The data available from the meters and scheduling and forecasting will be helpful to SLDC from time to time for grid management, operation and control which is carried out in case of other generators also as per the provisions of the Act, Rules and Regulations from time to time by the SLDC. We note that as SLDC carries out the functions as per the provisions of Act, Rules and Regulations for which the necessary data of scheduling and forecasting as well as metering are available to them in this case also.

21.20. In response to the objections of the Objectors, the response/submissions made by the Petitioner, Co-Petitioners and on it the decision of the Commission are as under:

- The submissions made by the objectors with regard to furnishing documentary evidence of payment towards safeguard duty / anti-dumping duty / customs duty and the reasonableness of mitigation and relief under “Change in Law” has to be dealt with on case to case basis are concerned, the generators who procure from local suppliers, where there is no levy of safeguard duty / anti-dumping duty / customs duty the aforesaid provisions are not applicable. The Petitioner submitted that the same are devoid of any merit and liable to be rejected. We agree with the submissions made by the Petitioner that whenever any person seeks and/or invokes reliefs under ‘Change in Law’ provisions pursuant to occurrence of same which affects his project cost or generation of electricity, it requires to be proved by him. Hence, the aforesaid contentions of the objectors are not accepted and the same are rejected.
- With regard to the objection that estimated revenue for the contract year should be allowed increase and objection to any decrease in tariff is concerned, the Petitioner clarified that the estimated revenue for the contract year shall be calculated at the contracted CUF% of 30%. The applicability of effective revised tariff, if any, will have to be examined on case-to-case basis, based on the ‘Change in Law’ effect which may lead to increase or decrease in the tariff. We find that there is force in the submission of the Petitioner and therefore, agree with it. Therefore, the objection is not acceptable and the same is rejected.
- The contention of the objectors with regard to Forecasting and Scheduling Regulations are applicable to the generators having capacity of 1 MW and above only and not to 500 kW, is concerned. The Petitioner submitted that the Forecasting and Scheduling Regulations apply to Solar generators also. We note that the provisions made in Article 4.1.7 and 4.3.1 of the PPA provide that the Forecasting and Scheduling Regulations are applicable as per the Regulations issued by the Commission from time to time. Therefore, the contentions of the objectors are not acceptable and the same are rejected Hence, there is no need to make any change in the said Regulations.
- The Petitioner submitted that the contention of the objectors that levy of new charges / taxes / duties / levies on the Power Project Developers be considered, however, there should not be reduction in tariff from Rs. 2.83 per unit is concerned, the same is not permissible because the intent of incorporation of “Change in Law” provision in the

PPAs is with intent to passing of impact on account of introduction / modification / changes in the rates of safeguard duty and/or anti-dumping duty and / or custom duty including surcharge thereon occurring after the date of signing of PPA. We note that there is substance in the submission of the Petitioner/Co-Petitioner on the aforesaid issue because the 'Change in Law' may have positive or negative impact of the cost of the project and generation of energy, which requires to be passed on by the generator to the licensee and consumers. Therefore, the contention of the objectors is not acceptable and the same is rejected.

- The contention of the objector that the provision made with regard to capacity shall not exceed the AC capacity is concerned, the Petitioner submitted that the technical feasibility of the applications have been assessed by DISCOMs/GETCO with consideration the substation capacity and the line capacity. Therefore, injection of power higher than the permissible contracted capacity can lead to technical glitches / line-loading issues / evacuation problems etc. The project developers cannot be allowed to inject power more than the contracted AC capacity and therefore, it is specifically mentioned that the Inverter Capacity cannot be permitted to be more than the contracted AC capacity. Moreover, it is in line with the GoG Guidelines dated 15.11.2019. Therefore, the request of the objectors is not acceptable. We note that the aforesaid contention of GUVNL is having force if the injection of power into the grid is permitted with consideration of capacity of the lines and substations are measured in AC capacity. Any more than the permitted installed capacity of projects than the granted connectivity affects the line-loading, evacuation problems and also create the technical issues which are not permitted. Further, we note that the above provision /definition of contracted capacity is in line with the Guidelines dated 15.11.2019 of GoG. Hence, the aforesaid contentions of the objectors are not accepted and the same are rejected.
- The contention of the objectors that the Solar Developers be permitted to replace the solar modules whether damaged or otherwise with intimation to DISCOM is concerned, the Petitioner submitted that Clause 32 of the GoG Guidelines dated 15.11.2019 provides that replacement of solar modules on account of damage etc. be permitted with prior consent of DISCOM. However, there is no obligation under the PPA on the project developer with respect to minimum CUF to be achieved. The CUF of 30% is on the upper ceiling limit. Hence, the contention of the objector is not

accepted. We note that clause 32 of GoG Guidelines dated 15.11.2019 provides that SSDSP shall not replace the solar modules whether damaged or otherwise without intimation and approval of DISCOM. Thus, the aforesaid provision made in Article 3(xiii) is in consonance with the aforesaid provisions of the Guidelines. Further, the CUF stated in the PPA is 30% upper ceiling. There is no restriction that if CUF is below 30% the same is not permitted. Hence, the aforesaid contention of the objector is not accepted and the same is rejected.

- Some of the objectors have stated that in Article 3(x) of the PPA the word ‘GETCO’ be deleted for evacuation facility and maintenance of transmission is concerned, the Petitioner submitted that it is provided that the power producer shall enter into separate agreement with GETCO / DISCOM. This alternative is already given by way of the words ‘GETCO / DISCOM’. Therefore, such objection/suggestion raised by the objectors is not acceptable. We note that in Article 3(x) the provision is made that for evacuation of facility and maintenance of transmission, the power producer shall enter into separate agreement with GETCO /DISCOM. This alternative is given for signing of the agreement with GETCO/DISCOM. Hence, the contention of the objectors is not accepted and the same is rejected.
- The objection made by the objectors that modification be made in Article 4 with regard to early commissioning of the Draft PPA stating that in case the power producer declares to commission its project early, DISCOM shall commission the project within 15 days of such written declaration and in case of failure to do so, the power producer may be entitled for compensation considering energy at 20% CUF upto the actual date of commissioning is concerned, the Petitioner submitted that there is no provision made in the Competitive Bidding Guidelines, Bidding Documents or GoG SSDSP Policy for such compensation. The project developers have an option to provide an early date of commissioning in the PPA as SCOD. Hence, the aforesaid objection is not acceptable. We note that in the Draft PPA the project developer is eligible to declares SCOD which may be earlier than specified in the draft PPA and approved by the Commission in the present petition. Hence, in case the SCOD is desired earlier then the project developer has option to declare earlier date of SCOD than the date specified in the Policy or Order in this case and entitled to get the tariff. Further the tariff for energy supplied by it to DISCOM/GUVNL as the case may be. Further, there is no provision in the deemed generation in the GoG Policy dated

6.3.2019 or Guidelines dated 15.9.2019 or Order dated 8.8.2019 passed in Petition No. 1802/2019 of the Commission. Hence, the aforesaid contentions/ objections of the objectors are not accepted and the same are rejected.

- As per GoG Guidelines dated 15.11.2019, change in ownership of project is allowed after expiry of COD with prior approval of DISCOM without any fees / charges for facilitating such change. While Article 5.5 of the Draft PPA provides for levy of an amount of Rs 1 lakh per transaction plus GST @ 18% as facilitation fees in the event of Change in Shareholding. Change in ownership be allowed within one year from COD is concerned, the Petitioner GUVNL has submitted that change in shareholding / substitution of promoters is not allowed to avoid trading or squatting of land and/or connectivity as the lock-in period is one year from the COD provided in the PPA. It is also in consonance with the provisions of the Competitive Bidding Documents and standard industry practice. Therefore, the contention of the objectors to allow change in ownership of the project within one year from COD by levying facilitation charges / fees of Rs 1 lakh per project plus 18% GST cannot be accepted. Further, the change in ownership / shareholding of the project is allowed after one year from COD with prior consent of the DISCOM and only in case of change in shareholding / substitution of promoters triggered by the Financial Institutions, an amount of Rs 1 lakh per project per transaction as Facilitation Fee (non-refundable) is payable to DISCOM. We note the aforesaid submissions. We note that the lock-in period provided in the draft PPA is with a view to avoid the trading or squatting of land and/or connectivity. Further, the fees of Rs. 1 lakh per project per transaction as facilitation fees payable to DISCOM seems to be valid and therefore, the aforesaid contentions of the objectors are not accepted and the same are rejected.
- The contention of the objectors to modify Article 5.6 which provides for Intra-State ABT apply only for installed capacity of 1 MW and above is concerned, the Petitioner submitted that the said Article is in compliance with the Regulations issued by the Commission `from time to time in this regard. Therefore, the same are not accepted. We note that the Commission has notified the ABT applicable in the State. Hence, the aforesaid Article 5.6 is in consonance with the Orders of the Commission with regard to implementation of ABT in the State. Therefore, the contentions against it proposed by the objectors are not accepted and the same are rejected.

- The contention of the objectors to modify Article 7.1 – Metering Point by allowing the project developers less than 1 MW capacity installation to install normal tariff meter with the facility of 15 minute time-block at the metering point instead of installation of ABT compliant meters is concerned, the Petitioner submitted that as per CEA (Metering) Regulations, 2006 and amendments made in it all generators irrespective of their capacity have to install ABT compliant meters. Further, the Forecasting and Scheduling Regulations are applicable to the generators of capacity of 1 MW and above and in future it may even be applicable to all the generators, irrespective of their capacity. Further, the SSDSP Policy envisages even group of Solar Projects with collective capacity of 1 MW and above and evacuation of power through a common electrical line from such group of generators. Therefore, in case of the projects below 1 MW also, ABT compliant meters are necessary on account of common evacuation infrastructure. Therefore, it is mandatory to install ABT complaint meters. Hence, the contentions of the objectors are not accepted and the same are rejected. We note that it is necessary to follow the CEA (Metering) Regulations, 2006 and amendments made thereto by the generators irrespective of their capacity. Further, the Forecasting and Scheduling are applicable to the generators as per the provisions of Regulations notified by the Commission. We also note that the ABT complaint meters are also necessary for common evacuation infrastructure as envisaged in the SSDSP Policy. Therefore, the contentions of the objectors against the same are not acceptable and the same are rejected.
- The contentions of the objectors that provisional estimate issued by the DISCOMs in providing Grid Connectivity and that the DISCOMs are indulging into unfair practice of charging supervision charges in spite of the fact that the line is being laid by the Developer and there is no role of DISCOMs in power evacuation line erection and supervision is concerned, the Petitioner submitted that the supervision charges are recoverable by the distribution licensee @ 15% of the fixed charges as decided by the Commission the charges are recovered on provisional basis and the same are adjusted while issuing final estimate. We note that the supervision charges recovered by the licensee as per the provisions of GERC (Licensee's power to recover expenditure in providing supply and other miscellaneous charges) Regulations, 2005. Further the evacuation line erected by the project developer being integral part of the network/grid, it is essential for DISCOMs to supervise the material used for setting up the evacuation line and its construction. Accordingly, DISCOMs are

eligible to recover supervision charges @ 15% which is in consonance with the provisions of the Regulations notified by the Commission. Hence the contentions of the objectors are not acceptable and the same are rejected.

- The objection raised by the objector to allow power transmission through underground cabling system is concerned, the Petitioner GUVNL submitted that the evacuation line configuration is a matter of choice of the generator or developer and they may choose according to their requirement, duly following the construction standards as approved by the Competent Authority. Further it is stated that majority network in the DISCOMs area are 'overhead line network' especially in rural areas. Therefore, in absence of adequate resources, it would be challenging for DISCOMs to undertake operation and maintenance of the 'underground network'. Further infrastructure development and other digging activities are very frequent in the rural areas, which can damage underground cable, non-availability of the system, other hazards etc. and it is not desirable to lay down underground cable network. We note that the aforesaid objection is beyond the scope of the present petition. Hence, the same is not accepted and rejected.
- Some of the objectors requested that the Commission may extend the time limit for signing of PPA by 30 days without change in tariff as the Small Scale Project Developers need to verify the terms and conditions of the approved PPA, viability of the project etc. prior to payment made towards provisional estimates for line supervision and connectivity charges should be refunded immediately on their application. It is submitted by the Petitioner that the extension for execution of PPA should be made applicable only for those projects which are registered before GEDA on or before 31.03.2021. GUVNL has further submitted that so far as connectivity charges are concerned, the same are not refundable as per the Open Access Regulations, 2011 notified by the Commission whereas the supervision charges are concerned the same can be refunded as per the provisions of GERC's Licensee's Power to Recover Expenditure Incurred in Providing Supply and Other Miscellaneous Charges) Regulations, 2005 notified by the Commission. We note that so far as extension of time limit for signing of PPA is concerned the same is dealt in later part of this Order. So far as refund of supervision charges and connectivity charges on application of developer is concerned the same is not acceptable as the reasons stated by the Petitioner are valid and therefore, the same are rejected.

- The objection raised by some of the objectors that in case of “Change in Law” the revision in tariff may not be lower than the agreed tariff. In this regard, the Petitioner GUVNL submitted that as per the provisions of “Change in Law” ;proposed to be incorporated in the PPA is with intent to keep the Small Scale Projects at equal footing with the projects awarded under Competitive Bidding based projects. We note that the “Change in Law” provision proposed to be incorporated in the PPA is with an intent to keep the Small Scale Projects at equal footing with the projects awarded under Competitive Bidding based projects and passing on the impact, if any, on account of introduction/modification/changes in the rates of safeguard duty and/or anti-dumping duty and/or custom duty including surcharge thereon occurring after the date of signing of PPA. The impact on “Change in Law” may be either increase in tariff or reduction in tariff as the case may be. Hence, the contention of the objectors that “Change in Law” may not be construed to lower the agreed tariff is not accepted and the same is rejected. We note that the impact of ‘Change in Law’ on tariff or capital cost is by way of increase or decrease in tariff. Therefore, any contention against it of the objectors is not acceptable and the same is rejected.
- The objection on Liquidated Damages should not be levied in case of conditional TFRs is concerned, it is not acceptable as on issuance of TFR to the applicant, it has to get registered with GEDA and make payment towards estimates. Further, TFR is issued based on planned network and the project developers are submitting an undertaking to DISCOM while seeking interconnection facility stating that they will pay the Liquidated Damages for delay as per the provisions of PPA and shall not hold GETCO/DISCOMs/GUVNL responsible for it. It is a commercial decision of the project developer to set up a project and therefore, in case of delay in commissioning of the project they shall be liable to make payment of Liquidated Damages. We note that the Liquidated Damages are payable as per the provisions of PPA. Any exemption from it also be as per the provisions of the PPA. There is no provision that the Liquidated Damages should not be levied in case of conditional TFR. Hence, the contention of the objectors is not accepted and the same is rejected.
- The SCOD of the project may be revised from 12 months to 18 months with consideration of various reasons like procurement of material, procurement of land, land conversion etc. are time consuming. The Petitioner GUVNL submitted that the

SCOD time provided in the draft PPA may be revised from 12 months to 18 months. We note the aforesaid objection as also there is a request from GUVNL in this regard which is dealt with in the subsequent paras of the Order by the Commission.

- The land procured for the purpose of the project and for the purpose of PPA be considered as N.A land. The contention that the project developer shall not be responsible for obtaining any N.A. permission is concerned, the Petitioner submitted that as per the Government Guidelines dated 15.11.2019 it is the responsibility of the project developer to obtain N.A. permission failing which they shall not be permitted to commission the project by GEDA. We note the aforesaid contention and the submission of GUVNL. The aforesaid issue is beyond the scope of the present petition. Hence, the same is not accepted and is rejected.
- The contention of the stakeholders that despite feasibility in the substations the TFR allocation by GETCO is 35-40% lesser than the feasibility. The Petitioner submitted that GETCO has undertaken technical feasibility analysis and the detailed procedure of granting of TFR has been submitted to the Commission also. We also note that the aforesaid issue is beyond the scope of the present petition. Hence, the said objection is not accepted and the same is rejected.
- The objectors have submitted that permission be granted for change in partners for a Partnership Firm and Proprietor for Proprietor Firm and not limit it upto a period of one year from COD. The Petitioner submitted that the aforesaid activity may indulge into wrongfully abandoning the project by selling it to new entities. Therefore, lock-in period of one year from COD provided is in accordance with the Guidelines and hence, the aforesaid contention is not accepted and the same is rejected. We note that the aforesaid contention is against the provisions of GoG Policy. We also note that the contention raised by GUVNL is having force and the said provision is in accordance with the provisions of GoG Policy as the proposed change/amendment may indulge into wrongfully abandoning the project by selling it to new entities. Therefore, the contention of the objectors is not accepted and the same is rejected.
- Some of the objectors have requested to allow updation of substation name by citing reason that in some cases due to lack of knowledge is concerned, the Petitioner GUVNL submitted that it is the duty of the developer to mention the site address

where they intend to set up their Solar Project, name of substation at which the power shall be fed details of land (survey number, area, location details etc.) The contention of the objectors that they may be allowed updation of substation name is concerned, the change of name of the substation may be permitted. However, the request of the applicant to change the substation where the power is to be evacuated needs to mention details of land (survey number, area, location details etc.). We note that the aforesaid issue is beyond the scope of the present petition and hence, the same is not accepted and rejected.

- Some of the objectors have contended that the tariff for the power project supplying to GUVNL should be Rs. 3.56/unit. The Petitioner GUVNL submitted that the applicable tariff has to be in accordance with the GoG Policy dated 6.3.2019 and the Guidelines issued under it. However, the Commission vide Order dated 8.8.2019 in Petition No 1802/2019 decided the tariff. Hence, the aforesaid contention of the objectors is not accepted and the same is rejected. We note that the tariff for Small Scale Project Developers has to be in accordance with the GoG Policy dated 6.3.2019. Moreover, the Commission vide its order dated 8.8.2019 in Petition No. 1802/2019 has approved the mechanism for tariff as per the GoG Policy dated 6.3.2019. Hence, the contention of the objectors is not accepted and the same is rejected.
- The contention of the objectors to allow additional 20 paise/unit, in addition to the tariff mechanism specified in the GoG Policy dated 6.3.2019 and the Order dated 8.8.2019 passed by the Commission in Petition No. 1802/2019 is concerned, the Petitioner submitted that it is not acceptable and the same is rejected with consideration of provisions of GoG Policy and Commission's Order dated 08.08.2019 in Petition No. 1802 of 2019. We agree with the contentions of GUVNL. The objection is against the provisions of the GoG Policy dated 6.3.2019 as well as the Order dated 8.8.2019 passed by the Commission in Petition No. 1802/2019 which has attained finality. Hence, the aforesaid objection is not accepted and the same is rejected.
- The objection of the stakeholders to amend Article 3.1(iv) of the draft PPA by incorporating the provision that the power producer shall sell power from the identified Solar PV Project only to DISCOM and not sell to any other third party nor

consume for captive use other than reasonable auxiliary consumption is concerned, the Petitioner submitted that the same is not acceptable as the provision made in the aforesaid Article is standard provision and hence, the said objection is not acceptable. We note that the approval sought in the present petition is with regard to approval of draft PPA and incorporation of 'Change in Law' provision in PPA. Moreover, the terms and conditions approved are as per the standard terms agreed between the parties. As there is no agreed terms between the parties with regard to sale of power from the identified Solar PV Project only to DISCOM and not sell to any other third party nor consume for captive use, it is not admissible and acceptable by GUVNL/DISCOM and therefore, the said objection is rejected.

- The contention with regard to the delay in commissioning of the project due to non-availability of transmission line of GETCO will be allowed and power generation be considered and loss for such energy be compensated is concerned, the Petitioner GUVNL submitted that so far as the Liquidated Damages due to delay in non-availability of transmission line of GETCO is concerned, the same is considered as Force Majeure event and not applicable in such case. We note that the Liquidated Damages are not applicable in case of delay in construction of transmission lines by GETCO. It is construed as Force Majeure event and in such cases the same may be accepted for levy of Liquidated Damages. We, therefore, decide that in case of delay in construction of transmission line when solar generator is ready for injecting energy into the grid, the delay in commissioning certificate issued by GEDA and others be considered as Force Majeure event and no Liquidated Damages is leviable in such case.
- Some of the stakeholders have requested the Commission to direct the DISCOMs to remove all 11 KV lines running parallel and/or crisscrossing each other to solve complexity of circuits and avoid line losses and consider direct feeding to 11 KV overhead lines. In response, GUVNL submitted that the said issue is not pertaining to the present petition. Further, the Solar Developers are required to follow the provisions of CEA (Technical Standards for Connectivity of Distributed Generation Resources) 2013 and CEA Safety Regulations. We note that the aforesaid issue is beyond the scope of the present petition and therefore, the same is not accepted and rejected.

- The objector has requested to increase the non-period TFR issued or connectivity granted by GETCO. In response to it the Petitioner GUVNL submitted that GETCO shall not be held responsible for delay. Further, Liquidated Damages shall be leviable to the generators in case of delay made on the generator part. After issuance of TFR, GETCO needs to carry out the planned network. Accordingly, it is their commercial decision to go ahead with setting up of the project within the stipulated time. Therefore, the aforesaid objection/suggestion is not acceptable. We note that the aforesaid provisions are decided by the GUVNL and GETCO and do not fall within the scope of the present petition. Hence, the same is rejected.
- The objector has submitted that the Commission may review the tariff considering the implication of GST applicability and review financial viability of the Small Scale Projects. In response to the aforesaid contention, GUVNL submitted that the tariff payable to SSDSP are as per GoG Policy dated 6.3.2019 and Order dated 8.8.2010 passed by the Commission in Petition No. 1802/2019 and therefore, the said objection is not sustainable and acceptable. We agree with the submission made by GUVNL and therefore the said objection/suggestion of the stakeholder is not acceptable and the same is rejected.
- The objector apprehend that the delay in signing of PPAs will lead to the risk of reduction in tariff after the deadline of 31.3.2021 which will jeopardize their investments made till date and also discourage their future investments. The Commission may examine the said issue of time limit with consideration of procedural delay in signing of PPA and pass appropriate orders. Further, extension for execution of PPAs is granted by the Commission should be made applicable only for those projects which are registered with GEDA on or before 31.3.2021. We note that the aforesaid issue needs discussion, deliberation and will be decided by the Commission in the later part of this Order.
- So far as the objections raised by the objector that the capital subsidy and interest subsidy receivable by the project developer be passed on to the licensee and consumers by redetermination of the tariff is concerned the same is beyond the scope of present Petition with consideration of the prayers of the Petition and hence the same are not accepted and rejected.

- The objection that all Small Scale Solar Developers shall be joined as necessary party to the present Petition is concerned, we note that as per the directive of the Commission, the Petitioner has issued a public notice and uploaded the Petition and relevant documents on their website and invited comments/suggestions on it. The Commission has also uploaded the Petition and other relevant documents on its website and invited comments and suggestions. Thus, the Small Scale Solar Project Developers got the opportunity to comment on it and make their submissions. Therefore, we are of the view that they are not necessary party to the present Petition as an opportunity of making submissions and hearing is given to them. Hence, the contention of the objector that they are necessary party is not accepted and rejected.
- Some of the objectors submitted that Article 13.8 in the draft PPA provides for ‘Amendment’ through consent of ‘Buyer’ and ‘Seller’ for which objection is raised that merely with consent between the parties how the PPA can be amended without approaching the Appropriate Commission and particularly in absence of specific conditions/situation which may provide for allowing amendment without approval of the Commission is not valid and legal. The Petitioner has clarified that the said provision under Article 13.8 of the Draft PPA is a standard provision provided under the PPAs and there can be instances requiring minor amendment(s) to the PPAs viz. change in location / name of village, district, etc. or change in name of the Company (upon change in legal status of the company viz. Private Limited Company to Public Limited Company or vice-versa) or change in ownership of the Company (pursuant to sale of the Project), etc. for which the aforesaid provision under the PPA permits the Parties to undertake such minor amendments (if required to be effected) and are undertaken in normal course of business. Moreover, it is also submitted that the Draft PPA clearly stipulates for approaching Commission for change / revision in tariff on account of ‘Change in Law’. We note that the Petitioner has clarified and admitted that as and when it is necessary to obtain the approval of the Commission on Regulatory subject matter of the PPA like tariff, ‘Change in Law’ etc., the approval of the Commission is essential prior to any such amendment or change. Therefore, we are of view that subject matter of PPA where the Regulatory aspects are involved, the parties to the Agreement needs to get approval from the Commission. Hence, the aforesaid contention of the objector is not accepted and the same is rejected.

- 21.21. We have carefully considered all the objections raised during the hearing as noted above and also considered the clarifications of the Petitioner GUVNL. In view of the clarifications of GUVNL, we find no force in the objections / points raised by the objectors and we are satisfied with the submissions/clarifications made by the Petitioner. Further, earlier in Petition No. 1802 of 2019, public hearing was done and in the present Petition also public hearing has been done wherein issues regarding 'Change in Law' and approval of 'Draft PPA are only involved. Hence, the other contentions beyond the scope of the Petition are not permissible and do not warrant any deliberation on the same.
- 21.22. So far as request for extension of time period for completion of PPAs, it is required to be noted that there are number of project developers with whom the different entities are to execute the PPAs. Some time has elapsed because of hearing of this Petition. Time is required for execution of the PPAs which were otherwise required to be executed before 31.03.2021. The Petitioner GUVNL has not objected to it but has requested to keep the extension limited for the projects registered with GEDA on or before 31.03.2021. We find force in this submission and in the larger interest of the sector this request requires to be considered. We therefore, deem it fit to grant time up to 30.04.2021 only for the projects registered with GEDA on or before 31.03.2021.
22. In so far as the directives given by the Commission that the terms and conditions in the draft PPA are in conformity and consonance with the Solar Bidding Guidelines notified by the Central Government and as amended from time to time and relevant deviations earlier approved by the Commission, the Petitioner has provided the necessary details.
- 22.1. The Petitioner has submitted that certain provisions of the standard PPA being signed by the Petitioner through Competitive Bidding namely; (i) Financial Closure, (ii) Part Commissioning, (iii) Minimum generation compensation, Compensation for off-take constraints, (iv) Letter of Credit, etc. are not kept in the Draft PPA to be executed with Small Scale Solar Project Developers, considering implementation and operational challenges at Distribution Licensees level due to multiplicity of PPAs. The aforesaid submission of the Petitioner seems valid because the number of applicants who are qualified for setting up the project are huge in number and likely to create implementation and operational challenges for the Petitioner to verify the same.

22.2. It is also submitted by the Petitioner that the provisions regarding Liquidated Damages, Performance Bank Guarantee, Timelines of project commissioning and submission of Land Documents, Term of PPA, replacement of modules, change in ownership of project, Termination Compensation, etc. are kept in consonance with the provisions of the State Government's Policy for development of Small Scale Distributed Solar Projects – 2019 notified by State Government on 06.03.2019 and Guidelines for implementation of Policy notified by State Government vide GR dated 15.11.2019.

22.3. We note that the Petitioner has filed the Petition No. 1706 of 2018, wherein the deviations was approved by the Commission with regards to "Change in Law" and Payment Security Mechanism. The relevant portion of the "Change in Law" stated in the said order is reproduced below:

"any Changes in Law that result in additional tax, duty, cess etc on generation of electricity (leviable on the final output in the form of energy) or sale of electricity shall only be allowed as pass through under Change In Law provisions".

22.4. Further, the Petitioner has submitted RFS dated 04.06.2018 consists of 'Change in Law' provisions in accordance with Clause 3.1.1 (c) of MoP Guidelines dated 03.08.2017. The aforesaid clause is in consonance with the bidding guidelines. The same is reproduced below:

"9.1.1 "Change in Law" shall refer to the occurrence of any of the following events after the Bid Deadline.

a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.

b) *Introduction of safeguard duty and/or anti-dumping duty which has direct effect on the Project cost.*”

The Petitioner had filed Petition No. 1768 of 2018 wherein the Commission passed Order dated 19.06.2019 and adopted the discovered tariff of Rs. 2.44 per unit. The clause ‘Change in Law’ stated in the PPAs is as under:

“9.1.1 "Change in Law" shall refer to the occurrence of any of the following events after the Bid Deadline.

a) *the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*

b) *Introduction of safeguard duty and/or anti-dumping duty which has direct effect on the Project cost.*”

The Petitioner has carried out the competitive bidding for procurement of Solar power and the discovered tariff also put up before the Commission for approval by filing Petition No. 1923 of 2021, wherein the Commission passed Order dated 08.01.2021 and adopted the tariff. The Petitioner has also submitted the PPAs executed with the successful bidders in the aforesaid proceedings consisting of the ‘Change in Law’ provisions reproduced below:

“ARTICLE 9: Change in law

9.1 Definition

9.1.1 “Change in Law” shall refer to the occurrence of any of the following events after the Bid Deadline.

- a) *The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*
- b) *Introduction/modification/changes in rates of safeguard duty and/or anti-dumping duty and/or custom duty which have direct effect on the cost of solar PV modules.*

9.2 Relief for Change in Law

9.2.1 *In case Change in Law on account of 9.1.1 (a) above results in the Power Producer's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of GERC.*

9.2.2 *In case of Change in Law on account of 9.1.1 (b) above, the Power Producer shall be allowed an increase/decrease in tariff of 1 paise/unit for every increase/decrease of Rs. 2 Lakh per MW in the Project Cost incurred upto the Scheduled Commercial Operation Date upon submission of proof of payment made by the Power Producer towards safeguard duty and/or anti-dumping duty and/or custom duty to the concerned Authority and with due approval of GERC. This increase/decrease in tariff due to this change in cost of solar PV modules shall be limited to actual DC capacity or 150% (One hundred & fifty percent) of contracted AC capacity, whichever is lower.*

9.2.3 *The Power Procurer/GUVNL or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.*

9.2.4 *The revised tariff shall be effective from the date of such Change in Law as approved by GERC, the Parties hereto have caused this Agreement to be executed by their fully authorized officers, and copies delivered to each Party, as of the day and year first above stated.*

.....”

The draft PPA submitted by the Petitioner consists of “Change in Law” provisions, which are reproduced below:

ARTICLE 9: Change in law

9.1 Definition

9.1.1 *“Change in Law” shall refer to the occurrence of any of the following events notified after the date of signing of the PPA.*

- a) *The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*

- b) *Introduction/modification/changes in rates of safeguard duty and/or anti-dumping duty and/or custom duty including surcharge thereon which have direct effect on the cost of solar PV modules.*

9.2 Relief for Change in Law

9.2.1 *In case Change in Law on account of 9.1.1 (a) above results in the Power Producer’s costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff*

Payment to the Power Producer shall be appropriately increased or decreased with due approval of GERC.

9.2.2 In case of Change in Law on account of 9.1.1 (b) above, the Power Producer shall be allowed an increase/decrease in tariff of 1 paise/unit for every increase/decrease of Rs. 2 Lakh per MW in the Project Cost incurred upto the Scheduled Commercial Operation Date upon submission of proof of payment made by the Power Producer towards safeguard duty and/or anti-dumping duty and/or custom duty to the concerned Authority and with due approval of GERC. This increase/decrease in tariff due to this change in cost of solar PV modules shall be limited to actual DC capacity or 150% (One hundred & fifty percent) of contracted AC capacity, whichever is lower.

9.2.3 The Power Procurer/GUVNL or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents including proof of payment to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.

9.2.4 The revised tariff shall be effective from the date of such Change in Law as approved by GERC.

We have considered the earlier decision of the Commission and also PPAs signed with successful bidders by the Petitioner having provision of 'Change in Law' and accordingly we approve the 'Change in Law' as under:

ARTICLE 9: Change in law

9.1 Definition

9.1.1 "Change in Law" shall refer to the occurrence of any of the following events notified after the date of signing of the PPA.

a) The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar

charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.

- b) Introduction/modification/changes in rates of safeguard duty and/or anti-dumping duty and/or custom duty including surcharge thereon which have direct effect on the cost of solar PV modules.*

9.2 Relief for Change in Law

9.2.1 In case Change in Law on account of 9.1.1 (a) above results in the Power Producer's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of GERC.

9.2.2 In case of Change in Law on account of 9.1.1 (b) above, the Power Producer shall be allowed an increase/decrease in tariff of 1 paise/unit for every increase/decrease of Rs. 2 Lakh per MW in the Project Cost incurred upto the Scheduled Commercial Operation Date upon submission of proof of payment made by the Power Producer towards safeguard duty and/or anti-dumping duty and/or custom duty to the concerned Authority and with due approval of GERC. This increase/decrease in tariff due to this change in cost of solar PV modules shall be limited to actual DC capacity or 150% (One hundred & fifty percent) of contracted AC capacity, whichever is lower.

9.2.3 The Power Procurer/GUVNL or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents including proof of payment to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.

9.2.4 The revised tariff shall be effective from the date of such Change in Law as approved by GERC.

The aforesaid provision is in consonance with the PPAs signed by the Petitioner with the successful bidders, i.e. NTPC Limited, Torrent Power Limited, Aljomaih Energy and Water Co. and Aditya Birla Renewables Limited and discovered tariff of the aforesaid bidders has been adopted by the Commission vide its Order dated 08.01.2021 in Petition No. 1923 of 2021. The change is 'Change in Law' has reference to occurrence of any of the event notified after date of signing of PPA in the present case. While in case of PPAs signed with aforesaid bidders the 'Change in Law' qualifies after the 'bid deadline'. The reference date in the Competitive Bidding are the bid deadline date while in the present case the same is date of signing of the PPA. Therefore, we are of view that the same is valid.

- 22.5. We also note that the tariff receivable by the Small Scale Distributed Solar Project Generators is linked with the discovered tariff in the Competitive Bidding Process carried out by them as per the provisions of the Government Policy dated 06.03.2019 and also the Order dated 08.08.2019 passed by the Commission in Petition No. 1802 of 2019. We also note that the discovery of tariff for the Small Scale Distributed Solar Projects is indirectly linked with the tariff discovered in the Competitive Bidding Process wherein the project developer established the power projects with various items/components like solar modules, inverter, balance of plant consists of DC to AC converter, cables, structures etc. Moreover, some of the items/components may be procured by them from the domestic market or international market. The price of such components are also subject to prevailing laws at the relevant time as specified in the Bid documents. Thus, the capital cost of such projects i.e., Small Scale Distributed Solar Generation Projects is linked with the capital cost of the project developers who are selected as successful bidders. Similarly, the interest, working capital, O&M etc. are also linked with the Bidders projects who were declared as successful bidders. There are chances that there will be changes in existing law if any occurred after the bidder is declared as successful bidder. Such laws, later on, will be changed during the construction of the project or operation of the project. Hence, the provision of 'Change in Law' incorporated in the Bid documents of the Competitive Bidding Process carried out by the Distribution Licensee, i.e. the Petitioner on behalf of the Government Distribution Licensee to protect the interest of project developer from any "Change in Law" which may affect the capital cost of the project during the construction of the project or the energy cost of the project during the operation of the project, as case may be. The aforesaid provisions are incorporated in the Bid Documents as per the provisions of Competitive Bidding Guidelines as well as deviations approved by the

Commission from time to time on the request of the Distribution Licensee. As stated above, the tariff for Small Scale Distributed Solar Project Generators is linked with the discovered tariff of the Competitive Bidding Process projects. The benefit of increase or decrease in the capital cost of the project or increase or decrease of the cost of energy generated from such projects is also affected due to “Change in Law”, if any, occurred in case of Small Scale Distributed Solar Project development like the project development of the Competitive Bidding Process as the tariff by such project is linked with the tariff discovered in the Competitive Bidding based projects as the impact in capital cost of the project or operation cost of the projects, therefore, the interest of project developers needs to be protected by allowing ‘Change in Law’ in the PPA. We are, therefore, of the view that the benefit of “Change in Law” available to the big solar power project developers who are selected in the Competitive Bidding Process also be passed on to the Small Scale Distributed Solar Project Developers in order to protect the interest of the Small Scale Distributed Solar Project Generators as well as the licensees by way of incorporating “Change in Law” provision in the PPA. We also note that the proposed “Change in Law” by the Petitioner in the present Petition is consistent with the approval given by the Commission. We, therefore, decide to approve the “Change in Law” to be incorporated in the PPA to be executed with Small Scale Distributed Solar Project Generators by the licensee as stated above.

- 22.6. The provision of ‘Force Majeure’ in the draft PPA is in consonance with the provisions of approved deviation by the Commission earlier and also part of PPAs signed with successful Bidders by the Petitioner where tariff was adopted by the Commission and accordingly we decide to approve the same which reads as under:

“.....”

ARTICLE: 8: Force Majeure

8.1 Force Majeure Events:

a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a “Force Majeure Event”) beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:

- i) *Acts of God,*
- ii) *Typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities,*
- iii) *Acts of war (whether declared or undeclared), invasion or civil unrest,*
- iv) *Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the Power Producer or GUVNL of any Law or any of their respective obligations under this Agreement),*
- v) *Inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals,*
- vi) *Earthquakes, explosions, accidents, landslides, fire,*
- vii) *Expropriation and/or compulsory acquisition of the Project in whole or in part by Government Instrumentality,*
- viii) *Chemical or radioactive contamination or ionizing radiation, or*
- ix) *Damage to or breakdown of transmission facilities of GETCO/DISCOMs,*
- x) *Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.*

b) Force Majeure Exclusions: *Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:*

1. *Unavailability, Late Delivery or Change in cost of plants and machineries, equipment, materials, spares parts or consumables for the project:*
2. *Delay in performance of any contractor/sub contractor or their agents,*
3. *Non Performance resulting from normal wear and tear experience in power generation materials and equipments,*
4. *Strike or Labour Disturbances at the facilities of affected parties,*
5. *Insufficiency of finances or funds or the agreement becoming onerous to perform, and*
6. *Non Performance caused by, or concerned with, the affected party's*
 - I. *Negligent and intentional acts, errors or omissions,*
 - II. *Failure to comply with Indian law or Indian Directive, or*
 - III. *Breach of, or default under this agreement or any Project agreement or Government agreement.*

c) The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If any event of Force Majeure results in a breakdown of communication rendering it not reasonable to give notice within the applicable time limit specified herein, then the party claiming Force Majeure shall give notice as soon as reasonably practicable after reinstatement of communication, but not later than one day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the situation.

d) The affected Party shall give notice to the other Party of (1) cessation of relevant event of Force Majeure, and (2) cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this agreement, as soon as practicable after becoming aware of each of these cessations.

e) To the extent not prevented by a Force Majeure event, the affected party shall continue to perform its obligations pursuant to this agreement. The affected party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

8.2 Available Relief for a Force Majeure Event:

No Party shall be in breach of its obligations pursuant to this agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

22.7. The Draft PPA submitted with the Petition consists of the provision of ‘SCOD’ as under:

“Scheduled COD” or “Scheduled Commercial Operation Date” shall mean the date (Insert a date within 12 (twelve) months from the date of execution of the PPA.)”

The aforesaid provision is in accordance with clause 5.1 of Government Policy dated 6.3.2019 which reads as under:

“SCOD” or “Scheduled Commercial Operation Date” shall mean the date as to be declared by the Developer in the PPA on or before which the Solar Project of the Developer shall be commissioned and such date shall not exceed 12 (twelve) months from the date of execution of PPA”.

22.8. The Petitioner has in its affidavit dated 10.03.2021 submitted that the Government has decided to revise the time period for commissioning of solar projects under the policy from 12 months to 18 months and the same was conveyed vide letter dated 08.02.2021 by the Energy and Petrochemicals Department (E&PD), Government of Gujarat (GoG).

22.9. The letter dated 08.02.2021 of Energy & Petrochemicals Department, Government of Gujarat states that the Government has examined the issues of (i) Change in Law provision, (ii) increase the commissioning period from 12 months to 18 months and also (iii) issue of change in ownership of the project in the PPA and principally agreed for the provisions on it which are recorded and approved in the Minutes of Meeting held on 04.01.2021 under the Chairmanship of MoE. The aforesaid provisions consist of the increase in SCOD period from 12 months to 18 months with consideration of difficulties faced by the small developers in securing the land approvals etc. Moreover, the extension of the PPA timeline in future, if arises, the same is cumbersome for the small developers. The proposed change in SCOD from 12 months to 18 months seems to be valid with consideration of the various approvals needed to be obtained by the project developer prior to establishment of the project as recorded in above letter. Moreover, it is also in consonance with the provision of PPAs signed with then successful bidders of the Competitive Bidding carried out by the Petitioner. Hence, we approve the same as proposed by the Petitioner to be incorporated in the definition clause as well as at other places of the PPA, as under:

“Scheduled COD” or “Scheduled Commercial Operation Date” shall mean the date (Insert a date within 18 (eighteen) months from the date of execution of the PPA.)

22.10. We note that the Petitioner submitted that the following provisions are incorporated in the draft PPA in accordance with the provisions of the Government Policy for development of Small Scale Distributed Solar Projects, 2019 notified vide GR No SLR/11/2019/51/B1 dated 06.03.2019.

- (a) Liquidated Damages,
- (b) Performance Bank Guarantee,
- (c) Timelines of project commissioning and submissions of Land Documents,
- (d) Term of PPA,
- (e) Replacement of modules,
- (f) Change in ownership of project, Termination Compensation, etc. are kept in consonance with the provisions of the State Government’s Policy for development of Small Scale Distributed Solar Projects – 2019 notified by State Government on 6.03.2019 and Guidelines for implementation of Policy notified by State Government vide GR dated 15.11.2019.

As the above provisions are in consonance with the Government of Gujarat Policy, we approve the same.

22.11. Upon perusal of definition of ‘Commissioning’, though no submissions have been made or attention of the Commission has been drawn, it is noticed that the Government GR No. SLR/11/2019/51/B1 dated 15.11.2019 on Guidelines for implementation of Policy for development of Small Scale Distributed Solar Projects, 2019 consists of clause 20 which reads as under:

Clause 20

“The Commissioning Certificate of the Solar Plant shall be issued by GEDA upon verification of the plant installation and witnessing of the generation of electricity by representative authorised by DISCOM/GETCO”

22.12. Further, the definition of “Commissioning” specified in Article 1 of the draft PPA reads as under:

“Commissioning” with respect to the project as certified by GEDA shall mean when all equipments as per rated capacity has been installed and energy has flown into the grid

22.13. We are of the view that the definition of “Commissioning” specified in Article 1 shall be substituted with consideration of aforesaid provision of Government G.R.

“Commissioning” with respect to the project certified by GEDA shall mean when all equipments as per rated capacity has been installed and energy has flown into the grid and witnessing of such generation of electricity by representative authorised by DISCOM/GETCO”

22.14. Article 6.5 of the draft PPA pertains to disputes in case of Billing/Payment, wherein it is stated that where any dispute arising out of or in connection with this Agreement is not resolved mutually then, such disputes shall be submitted to adjudication by the GERC under Section “79” or “86” of the Electricity Act, 2003. The Section number “79” shall be deleted/removed from the aforesaid provision since the GERC has jurisdiction to adjudicate the dispute under Section 86 of the Electricity Act.

ORDER

23. We admit and allow the petition.

24. We approve the proposed provision of “Change in Law” to be incorporated in the proposed Power Purchase Agreements to be executed by the State DISCOMs with Project Developers under the ‘government of Gujarat ‘s Policy for Development of Small Scale Distributed Solar Projects – 2019 notified vide G.R. No.SLR/11/2019/51/B1 dated 06.03.2019.

(i) The draft PPA is approved with consideration of following changes in it:

(a). the Petitioner/Co-Petitioners shall incorporate the definition of SCOD in the PPA as under:

“Scheduled COD” or “Scheduled Commercial Operation Date” shall mean the date (Insert a date within 18 (eighteen) months from the date of execution of the PPA.)

(b). the Petitioner/Co-Petitioners shall incorporate the definition of “Commissioning” specified in Article 1 and in the PPA as under:

“Commissioning” with respect to the project certified by GEDA shall mean when all equipments as per rated capacity has been installed and energy has flown into the grid and witnessing of such generation of electricity by representative authorised by DISCOM/GETCO”

(c). the Petitioner/Co-Petitioners shall amend/modify Article 6.5 of the PPA by deleting/removing Section number “79”.

25. We decide and direct the Petitioner/Co-Petitioners, Distribution Licensees to make the necessary changes in the draft PPA as approved by the Commission.
26. The time limit for execution of PPAs is hereby extended up to 30.04.2021. We clarify that it is in respect of those power projects which are registered with GEDA on or before 31.03.2021.
27. The Petition stands disposed of accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.

Date: 25/03/2021.