

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR

Petition No. 1883 of 2020

In the matter of:

Petition under Section 86 of the Electricity Act, 2003 against Default Notice dated 01.06.2020 issued by Gujarat Urja Vikas Nigam Limited to the Petitioner under Article 10.3.1 of the Power Purchase Agreement dated 24.01.2018 executed between the parties for purchase of power from 30 MW Wind Project.

And

IA No. 03/2020 in Petition No. 1883 of 2020.

In the matter of:

Interim Application seeking interim relief against Default Notice dated 01.06.2020 issued by Gujarat Urja Vikas Nigam Limited pending the hearing and final disposal of the Petition filed by the Applicant.

And

IA No. 04/2020 in Petition No. 1883 of 2020.

In the matter of:

Interim Application seeking amendment in Petition No. 1883 of 2020 to place subsequent developments on record and challenge termination notice dated 01.07.2020 issued by GUVNL.

And

IA No. 05/2020 in IA No. 03 of 2020 in Petition No. 1883 of 2020.

In the matter of:

Interim Application seeking amendment in Interim Application No. 3 of 2020 in Petition No. 1883 of 2020 to place subsequent developments on record and challenge termination notice dated 01.07.2020 issued by GUVNL.

Petitioner/Applicant : M/s Evergreen Mahuva Wind Farms Pvt. Limited
Represented by : Ld. Advocate Shri G.G. Shaikh

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented By : Ms. Girija Gave

And

Petition No. 1980 of 2021

In the matter of:

Petition under Section 86 (1) (f) of the Electricity Act 2003 for adjudication and recovery of compensation as liquidated damages for termination of PPA dated 24.01.2018 for default.

Petitioner : Gujarat Urja Vikas Nigam Limited

Represented by : Ms. Girija Gave

V/s.

Respondent : M/s Evergreen Mahuva Wind Farms Pvt. Limited

Represented By : Ld. Advocate Shri G.G. Shaikh

CORAM:

**Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 23/08/2021

DAILY ORDER

1. These matters were listed for hearing on 21.08.2021.
2. The subject matter of Petition No. 1883 of 2020 and allied IAs as well as Petition No. 1980 of 2021 are pertaining to dispute related to PPA dated 24.01.2018 and being cross Petitions between M/s Evergreen Mahuva Wind Farms Pvt. Limited and Gujarat Urja Vikas Nigam Limited (GUVNL). Hence, the Commission decided to hear these matters combinedly and pass common order.

3. Ld. Advocate Shri G.G. Shaikh, appearing on behalf of M/s Evergreen Mahuva Wind Farms Pvt. Limited sought an adjournment on account of personal difficulty of arguing senior counsel in the matter.
4. Ms. Girija Dave on behalf of Gujarat Urja Vikas Nigam Limited (GUVNL) submitted that there is no objection to the adjournment sought by the Ld. counsel for M/s Evergreen Mahuva Wind Farms Private Limited but GUVNL has circulated letter requesting for allowing virtual hearing in these matters on account of difficulty in attending physical hearing by their counsels due to prevailing situation of COVID-19. Since, these matters are of significant importance it is necessary for GUVNL to be represented through their counsel. However, in case the Commission decides to conduct physical hearing in these matters, short date of hearing may not be granted.
 - 4.1. It is further submitted that Respondent M/s Evergreen Mahuva Wind Farms Pvt. Limited in Petition No. 1980 of 2021 filed by GUVNL has not filed any reply. Therefore, the Commission may direct to file the reply, if any, in the matter with copy to GUVNL and some time may be granted to GUVNL for filing rejoinder reply in the matter.
5. In response, Ld. Advocate Shri G.G. Shaikh requested the Commission to continue with physical hearings in these matters with consideration of the issues involved and post the matter for hearing in second week of September-2021 subject to convenience of the Commission. With regard to filing reply in Petition No. 1980 of 2021, the Commission may grant some time and also direct GUVNL to file their reply in the matters filed by M/s Evergreen Mahuva Wind Farms Private Limited. Further, liberty may also be granted for filing rejoinder to reply filed by GUVNL.
6. In response to query of the Commission regarding any objections to applications filed by M/s Evergreen Mahuva Wind Farms Limited seeking certain amendments in the main matter and IA No. 03 of 2020, Ms. Girija Dave on behalf of GUVNL submitted that there is no objection to the amendment applications, if the same are allowed by the Commission.
7. We have considered the submissions made by the parties. We note that GUVNL has circulated letter requesting for allowing virtual hearing in these matters on account of difficulty for their counsels in attending physical hearing due to prevailing situation of COVID-19 pandemic. However, Ld. counsel for M/s Evergreen Mahuva Wind Farms Pvt. Limited objecting to same has requested the Commission to continue with physical hearings in these matters, which is not objected by representative of GUVNL. Accordingly, with consideration of above, as of now, we decide to continue with physical hearings in these matters.
 - 7.1. Ld. counsel for M/s Evergreen Mahuva Wind Farms Pvt. Limited has sought for an adjournment in these matters on account of personal difficulty of their arguing senior counsel to which GUVNL has no objection. Accordingly, we decide to adjourn these

matters and as jointly agreed by the parties we decide to post these matters for further hearing on 06.09.2021.

- 7.2. We note that M/s Evergreen Mahuva Wind Farms Pvt. Limited has filed Petition No. 1883 of 2020 under Section 86 of the Electricity Act, 2003 for quashing and setting aside default notice dated 01.06.2020 issued by the Respondent GUVNL to the Petitioner under Article 10.3.1 of Power Purchase Agreement dated 24.01.2018 for purchase of power from 30 MW Wind Power Project. Thereafter, GUVNL filed Petition No. 1980 of 2021 under Section 86 (1) (f) of the Electricity Act 2003 for adjudication and recovery of compensation as liquidated damages for termination of PPA dated 24.01.2018 for default by Respondent M/s Evergreen Mahuva Wind Farms Pvt. Limited. We note that in these matters, M/s Evergreen Mahuva Wind Farms Pvt. Limited is developer of 30 MW grid connected Wind Power Project after emerging as successful bidder in the competitive bidding carried out by GUVNL vide RfS No. GUVNL/Competitive/500 MW/Wind dated 15.06.2017 and executing Power Purchase Agreement (PPA) dated 24.01.2018 is a generating company. GUVNL is a licensee who is to procure the power from the said 30 MW Wind Power Project under the aforesaid PPA. Thus, the dispute in these matters between the respective Petitioner and the Respondent is pertaining to the terms & conditions of the PPA executed between them, bidding documents and various other documents. Thus, as it is a dispute between a Generating Company and licensee, hence this Commission has jurisdiction to decide the dispute between the parties under Section 86(1)(f) of the Electricity Act, 2003. Hence, we decide to admit these Petitions.
- 7.3. We note that pursuant to filing aforesaid Petition No. 1883 of 2020, the Petitioner M/s Evergreen Mahuva Wind Farms Pvt. Limited has also filed IA No. 03 of 2020 in said Petition seeking interim relief pending the hearing and final disposal of the main Petition against default notice dated 01.06.2020 issued by GUVNL. Thereafter, IA No. 04/2020 is filed seeking amendment to place subsequent developments on record and challenge termination notice dated 01.07.2020 issued by GUVNL wherein it is prayed to allow adding Paras 39 (A) to 39 (D) after Para 39 and Para 40 (O) to 40 (T) after Para 40 (N) and prayer Para 45 (dd) after Para 45 (d), Para 45 (ee) after Para 45 (e) and Para 45 (ff) after Para 45 (f) in Petition No. 1883 of 2020.
- 7.4. Moreover, M/s Evergreen Mahuva Wind Farms Limited has also filed IA No. 05/2020 in IA No. 03 of 2020 in Petition No. 1883 of 2020 seeking amendment to place subsequent developments on record and challenge termination notice dated 01.07.2020 issued by GUVNL wherein it is prayed to allow adding Para 2 (A) to 2 (H) after Para 2 and prayer Para 6 (aa) after Para 6 in IA No. 03 of 2020 in Petition No. 1883 of 2020.
- 7.5. Although, GUVNL has not filed any reply/response in above IA No. 04/2020 and IA No. 05/2020, considering the statement made by representative of GUVNL having no objections to the aforesaid amendment applications and taking it on record, we decide to allow both the aforesaid applications being IA No. 04/2020 in Petition No. 1883 of 2020

seeking relevant amendments in the main Petition No. 1883 of 2020 and IA No. 05/2020 in IA No. 03 of 2020 in Petition No. 1883 of 2020 seeking relevant amendments in IA No. 03 of 2020 in Petition No. 1883 of 2020. We, therefore, direct the Petitioner to file the duly amended Petition and IA No. 03 of 2020 with a copy to GUVNL. Since, the amendments as prayed for by the Applicant / Petitioner M/s Evergreen Mahuva Wind Farms Pvt. Limited in aforesaid applications are allowed IA No. 04 of 2020 and IA No. 05 of 2020 in Petition No. 1883 of 2020 stands disposed of with this Order.

8. We also note that the Respondent M/s Evergreen Mahuva Wind Farms Limited has not filed any reply in Petition No. 1980 of 2021 till date. Hence, we direct the Respondent to file their reply, if any, in the matter with a copy to the Petitioner. The Petitioner GUVNL is at liberty to file its rejoinder reply thereafter in Petition No. 1980 of 2021.
9. We further note that the Respondent GUVNL has not filed any reply in Petition No. 1883 of 2020 and allied IA till date. Hence, we direct the Respondent GUVNL to file their reply, if any, in these matters with a copy to the Petitioner/Applicant with liberty to Petitioner to file its rejoinder reply, if any.
10. With consent of both parties, the next date of hearing is 06.09.2021 at 11:30 A.M.
11. We order accordingly.

Sd/-

[S. R. Pandey]
Member

Sd/-

[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 23/08/2021.