

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1998 of 2021.

In the matter of:

Petition seeking extension of Scheduled Commercial Operation Date (SCOD) on (i) account of Force Majeure Events and (ii) delays solely attributable to Gujarat Energy Transmission Corporation and consequential reliefs under Section 86(1)(f) of the Electricity Act, 2003 read with Article 10.4 of Power Purchase Agreement executed between Goodwatts WTE Jamnagar Pvt Limited and GUVNL.

Petitioner : Goodwatts WTE Jamnagar Pvt. Limited

Represented by : Ld. Sr. Advocate Mr. Mihir Thakore alongwith Advocates Mr. Saunak Rajguru, Ms. Gayatri Aryan, Ms. Poonam Verma & Mr. Tarak Damani alongwith Mr. Aditya Handa, Mr. Arjun Handa, Mr. Ashish Mehta, Mr. Anup Pillai and Mr. Pankaj Patel

V/s.

Respondent No. 1 : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Advocates Mr. Anand Ganesan and Ms. Harsha Manav alongwith Ms. Shailja Vachhrajani, Ms. Girija Dave & Mr. Kandarp Mistry

Respondent No. 2 : Jamnagar Municipal Corporation

Represented by : Nobody was present.

Respondent No. 3 : Gujarat Energy Development Agency

Represented by : Mr. H.S. Silajiya

Respondent No. 4 : Gujarat Energy Transmission Corporation Limited

Represented by : Ld. Advocate Mr. Anand Ganesan alongwith Mr. K. J. Bhuva

Respondent No. 5 : State Load Despatch Centre - Gujarat

Represented by : Ld. Advocate Mr. Anand Ganesan alongwith Mr. A.B.

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 11/02/2022

DAILY ORDER

1. The present matter was listed on 02.02.2022 through virtual hearing on Microsoft teams.
2. At the outset, Ld. Sr. Adv. Mr. Mihir Thakore, appearing on behalf of the Petitioner, submitted that the Respondents make their submissions and advancing arguments but the Commission is requested to allow him to make rejoinder-in-reply arguments on next date of hearing on account of some personal difficulty. It is also submitted that there is no direction/decision regarding continuation of no coercive action against the Petitioner by the Respondent GUVNL in previous Daily Orders passed by the Commission for last hearing and requested that the Commission may continue with its earlier decision regarding no coercive action by Respondent GUVNL till next hearing in the matter..
3. Heard Ld. Adv. Mr. Anand Ganesan, appearing on behalf of the Respondent GUVNL. With regard to submission by Ld. Sr. Adv. for the Petitioner regarding no coercive action by Respondent GUVNL, Ld. Adv. Mr. Anand Ganesan submitted that the Petitioner has raised invoices on the Respondent GUVNL for supply of generation by applying the tariff as determined by the Commission for MSW projects in terms of Article 5.1 of the PPA as if the same tariff would also be applicable even after 31.03.2021. However, the control period of said Tariff Order passed by the Commission is up to 31.03.2021 only and therefore, in case the Commission directs GUVNL to pay to the Petitioner as per the tariff claimed in invoice at present, if any, the same shall be provisional tariff to be paid subject to the Petitioner providing an undertaking to the Respondent GUVNL confirming therein of having not availed any capital subsidy, generation based incentive, accelerated depreciation from MNRE or any other agency and also to be subject to tariff that may be determined by this Commission to be applicable after 31.03.2021 because in case such new tariff that may be decided may be lower and in that case the Petitioner will have to refund excess payments received with interest as per provisions of the PPA.
- 3.1. It is submitted that with regard to issues raised by the Petitioner in relation to the delay in the charging of 66 KV Navagam Ghed Sub-station of GETCO, as a matter of policy, GETCO does not provide connectivity with an planned/under construction sub-station because in case there is delay in commissioning the same, it should not

become an issue of dispute at later stage. Therefore, when the Petitioner applied for seeking connectivity from GETCO it was clearly conveyed to the Petitioner that since the said sub-station is not operational connectivity cannot be provided. Accordingly, originally, the Petitioner was granted connectivity at another sub-station. However, the Petitioner continued to insist for allowing connectivity at sub-station which was under planning/construction stage and also agreed to provide an undertaking that in case of any delay the Petitioner will not raise any claim for same. Accordingly, it is only after the Petitioner voluntarily providing such undertaking to GETCO that connectivity was agreed to be granted by GETCO and now the Petitioner is completely claiming delay contrary to said undertaking and such conduct of the Petitioner is not bonafide at this stage. Also, above issue of delay in commissioning sub-station by GETCO is not relevant to the present case as the entire power plant of the Petitioner was not ready before the commissioning of the GETCO Sub-station. Despite commercial operation of the Navagam Sub-Station on 08.06.2021, the Power Project of the Petitioner was not commissioned immediately and in fact even after considerable period of more than three months from the date of commissioning of the GETCO Sub-Station, the power project was not commissioned. Therefore, the project of the Petitioner was not even ready at relevant time and in fact the alleged non readiness of the sub-station did not affect the commissioning of the Petitioner's project. Hence, the submissions made by the Petitioner for delay on account of GETCO are wrong and denied.

- 3.2. In respect of issues of law and order, it is denied that there were any law and order issues and in any case, the Petitioner had not issued any notice for force majeure. The Petitioner has not provided any cogent evidence to establish any law and order issue and even otherwise such issues related to any sub-contractors cannot be treated as force majeure. Moreover, the Petitioner had not even intimated to GUVNL about any such issue through any Notice as required. Also, the disturbance at the project site is excluded from force majeure events in terms of provisions under Article 8 and hence no relief can be granted.
- 3.3. After referring to letter dated 03.07.2018 addressed to the District Suptd. Of Police, Jamnagar and email dated 08.08.2019 at pg. no. 442 of the Petition, it is submitted that the Petitioner itself has produced only one letter to Superintendent Police and there is no reference to any FIR being registered or any action taken by Police. It is also pointed out that the above letter is of 2018, wherein, in support of its contentions, the Petitioner has enclosed email dated 08.08.2019 by stating that there were some problems at project site and therefore it is difficult to complete the project is not proper. As such there is no mention about the same in progress reports submitted by the Petitioner or in any communications and is also not followed up by any notices. The said email enclosed with letter dated 08.08.2019 is also incomplete. Mere writing of letters/emails is not sufficient for any alleged law and order issues. In fact the aforesaid letter only refers to isolated incidents and after the alleged events in August 2019, no letter or communication seems to be

made to Police. On the other hand, email dated 08.08.2019 assures that they are in control of situation and Thermodyn Technologies Pvt. Limited should deploy without delay which makes it clear that there is in fact no issue and the Petitioner did not write to Police or any other authority nor sought for any extension from GUVNL. Therefore, on the face of it the same cannot be believed to be correct.

3.4. With regard to the issues of any heavy floods or rainfall, it is submitted that there was no impact of the same on the Petitioner's project as no Force Majeure notice was issued by the Petitioner to GUVNL. After referring the emails exchanged between M/s Thermodyn Technologies Pvt. Limited and Abellon, it is submitted that the Petitioner has not produced any evidence or material to demonstrate that the alleged heavy rainfall satisfies the condition in the PPA. Further, there is inconsistency within the documents filed as is evident from two emails at page 447 of the Petition. The email on top is dated 31.07.2021 stating 'Reforwarding for your information' whereas the email below that is dated 17.07.2020 which also mentions that 'hope you would have taken care of the site insurance due to flood'. The Petitioner has provided certain photographs which are not original and with time stamping, their sources are also unknown and even the aforesaid emails also states about to taken care of site insurance due to floods but no details such as claim of insurance etc. received/claimed are provided. The Petitioner ought to have taken prudent steps to avoid any issues of flooding at site and rather than filing relevant details regarding same, reliance is being placed on newspaper articles which also does not substantiate the claim of the Petitioner. It was for the Petitioner to take appropriate insurance so as to take care of same. The alleged newspaper articles are not verified and even, the Petitioner has produced only one article on 08.07.2020 which is already covered under the period of extension granted by GUVNL. The Petitioner has not produced any documents, notification to substantiate if there was any restrictions on the Petitioner. The newspaper articles are not sufficient proof and admissible as evidence. Further the Petitioner is relying on general statements rather than the specific impact on its project. There is no specific proof provided. It is well settled principle that the newspaper reports by themselves are not evidence. The Petitioner had not written to GUVNL for making any such claim and even the letter dated 29.08.2020 has not mentioned about any such issue of flooding and there is no extension of SCOD sought. In this regard, the Respondent is relying upon the following citations:

- (i) Quamarul Islam V/s. S.K. Kanta, 1994 Supp (3) SCC 5 at page 27;
- (ii) APTEL's decision dated 20.02.2008 in Appeal No. 119 of 2007 in the case of Chhattisgarh State Electricity Board V/s. Chhattisgarh State Electricity Regulatory Commission;
- (iii) Decision dated 2019 of the Allahabad High Court in the case of R.P. Goenka V/s. State of U.P. and Ors., SCC Online All 3815:(2020) 2, All LJ 300:2020 Cri LJ 1918:(2021) 115 ACC (Sum 11) 5.

(iv) APTEL's decision dated 13.08.2015 in Appeal No. 281 of 2014 in the case of Power Grid Corporation of India Limited V/s. CERC & Ors.

- 3.5. It is submitted that the Petitioner has also raised the grounds for the delay due to Covid-19. In this regard, it is submitted that the Respondent GUVNL has already granted extension of 5 months as per MNRE's directives in line with other Renewable Energy projects which is sufficient and no additional extension is admissible in the present case. There is no cause or justification given by the Petitioner within the scope of Article 8 of the PPA for further extension on account of Covid-19 pandemic or otherwise on account of any other alleged events. Referring the para 80-82 of the Petition, it is submitted to be in orange zone and that any claim on account of Covid-19 pandemic made by the Petitioner is subsumed in the above period and the Petitioner is not entitled to any further extension. It is not clear as to how there was lack of manpower because no mode of transport was operating then how their manpower left from the project site. It is denied that the man power of the Petitioner's company has returned only in September or October 2020 or they were affected by COVID-19. The Petitioner has not produced any supporting details/document or evidence in this regard. Further, the power projects, particularly renewable projects were exempted as essential services.
- 3.6. Referring the para 84-88 of the Petition, it is submitted that there is no force majeure event as the restriction was only on passengers flight and there was no restriction on Cargo flights. It is also submitted that the Petitioner has not provided details like when the contract was given to the vendors and when was the original schedule and the revised schedule, no evidence or supporting documentation in this regard. It is submitted that it was the choice of the Petitioner to place purchase orders on vendors in Austria and Germany despite the COVID 19 outbreak as there was no need for visit of the premises and the Petitioner was already delayed for the revised SCOD of 30.11.2020. It is further submitted that on 17.11.2020, the waste pre-processing equipment had not been dispatched and at this time no issue had been raised on travel or visa restrictions. In fact with knowledge of issues of international travel, the Petitioner has chosen to source the equipment etc. from outside India. It is submitted that the Petitioner was not ready in November 2020 which can be seen from the Letter dated 17.11.2020 that the construction activities were still in progress and further the equipment itself had not been dispatched yet. The other equipments/work were also not completed before 30.11.2020 and as per the Petitioner, the waste to power equipment was complete only in March 2021. It is further submitted that the Petitioner cannot simply wait for nearly a year on the basis that there are travel restrictions although the Petitioner has not provided any justification for the travel restriction nor provided any attempts to resolve the issue.

- 3.7. It is further referred the email dated 13.11.2020 and letter dated 12.02.2020 exchanged between Abellon and Komptech GmbH wherein it is stated that for waste pre-processing equipments Splitter & star screen for waste to energy project, anticipated period of traveling to India for site inspection, installation and commissioning of the equipment is in November 2020 and due to Covid-19 pandemic international travel is not permitted to India and considering the situation it is anticipated further restrictions in Europe and after the lifting the travel restrictions and lockdown and considering the safety aspect, considerable time to travel is closer to February or March 2021. It is submitted that the said letter produced by the Petitioner on simple paper without letter head and pasted the contents and signature thereon and claimed Force Majeure based such letter is not proper and valid.
- 3.8. Referring the para 100 of the Petition, it is submitted that various letters referred are exchange between the Petitioner and GUVNL and other authorities are not relevant for the consideration of the issue involved as per the PPA and the same are the matter of record only. The Petitioner is not entitled to any further extension beyond 5 months already granted by GUVNL as the Petitioner had failed to issue timely notice for force majeure and therefore, there was no merit in the claim of the Petitioner and the Respondent GUVNL was entitled to take action as per the provisions of the PPA.
- 3.9. Referring the definition of SCOD and various other provisions of the PPA, it is submitted that SCOD as per the PPA was 30.06.2020 which is extended by GUVNL by 5 months upto 30.11.2020 and the Petitioner has not commissioned the project upto 15.11.2021. It is submitted that if the present petition allows then it also give right to GUVNL to terminate the PPA and discharges from its obligations on account of delay of more than one year in achieving the SCOD. It is submitted that GUVNL is entitled for the liquidated damages from SCOD to the actual date of commissioning in term of Article 4.3 of the PPA. It is submitted that the issue would arises about the obligation of the Petitioner to pay the liquidated damages in terms of Article 4.3 of the PPA for delay beyond SCOD of 30.11.2020 to 15.11.2021 and the tariff that would be made applicable for the power which was not supplied to GUVNL during such period under the PPA. It is submitted that in case of delay of more than one year, GUVNL has no obligation and has right to terminate the PPA by giving one month notice. He also referred the exception as provided in Article 4.3 of the PPA and submitted that the Petitioner would only be benefited of such exception for not paying the liquidated damages in case the project is not commissioned on account of Force Majeure event or the Petitioner is not able to perform its obligations because the default on part of GUVNL or SCOD is not achieved due to delay in transmission facilities/evacuation system for reasons solely attributable to GETCO. There are no co-relation between Article 4.3 of the PPA and the tariff is payable to the Petitioner.

3.10. Referring to Article 5.1 of the PPA, it is submitted that GUVNL's obligation to pay the tariff is only Rs. 6.31/kWh upon receipt of monthly invoices for scheduled energy as certified in the monthly SEA by SLDC. Referring to last proviso of Article 5.1 of the PPA, it is submitted that this proviso is absolute provision and there is no exception of Force Majeure to the said proviso and if the project has not commissioned before 31.03.2021, the tariff would be the tariff applicable on the date of commissioning of the project or Rs. 6.31/kWh whichever is lower. It is also submitted that for tariff of commissioning the project, there is fixed date for commissioning i.e., 31.03.2021 and it is not related to SCOD in any manner as SCOD is defined as 30.06.2020 which may be extended either agreement between the parties or by invoking the Force Majeure. Therefore, the Petitioner has to raise the invoices by applying the tariff that would be applicable after 31.03.2021 as determined by the Commission for MSW projects in terms of this proviso of Article 5.1 of the PPA. In supports of this, reliance is being placed upon the following citations:

- (i) Hon'ble APTEL's judgment dated 04.07.2018 in Appeal No. 131 of 2015 in the case of Taxus Infrastructure Limited V/s. Gujarat Urja Vikas Nigam Limited & Ors;
- (ii) Gujarat Urja Vikas Nigam Limited V/s. EMCO Limited (2016) 11 SCC 182;
- (iii) Gujarat Urja Vikas Nigam Limited V/s. Solar Semi-Conductor Private Limited (2017) 16 SCC 498.

3.11. It is admitted that the notice of Force Majeure has not been given by the Petitioner at the relevant time to GUVNL. It is also submitted that it is necessary for the Petitioner to give notice for Force Majeure which is an essential to be given to GUVNL in terms of Article 8.1 (c) of the PPA as it requires to establish the factual evidence that notice has been given at relevant point of time and cannot be assumed subsequently. Therefore, it is submitted that when the Contract requires a notice to be issued, then the same has to be issued within the time frame provided in the agreement and as per the requirement of the contract. Hence, the Petitioner is not entitled for extension of SCOD in the present matter as it is merely an afterthought of the Petitioner and no notice has been given to GUVNL at relevant point of time. The Petitioner had also not provided requisite data to verify the claim of Force Majeure in terms of PPA. The issuance of notice is a mandatory requirement under the PPA and without such notice there can be no claim made or relief granted for force majeure. In support of this, the reliance is being placed upon the following judgements:

- (i) CERC's Order dated 27.06.2016 in Raichur Sholapur Transmission Company Limited V/s. Power Grid Corporation of India Limited in Petition No. 419/MP/2014 read with Order dated 24.01.2019 passed in Review Petition No. 4/RP/2018;

- (ii) Krishna Kilaru & Ors. V/s. Maytas Properties Limited (2013) [176] Comp Cas 483 [AP] - Order dated 21.08.2012;
- (iii) Judgement dated 30.04.2015 in Appeal No. 54 of 2014 in the case of Himachal Sorang Power Limited V/s. Central Electricity Regulatory Commission and Ors.
- (iv) Judgement dated 03.06.2016 in Appeal No. 97 of 2016, in the case of Talwandi Sabo Power Limited V/s. Punjab State Power Corporation Limited and others.

3.12. It is submitted that the Force Majeure has not to be given a wider interpretation as the PPA defines the Force Majeure which only can be applied and the PPA also provides for requirements of notice etc. It is reiterated that the Petitioner has already been granted blanket extension of 5 months due to COVID 19. The Petitioner has not fulfilled the requirements of Force Majeure, including notice for Force Majeure. In support of this, reliance is being placed upon the following citations:

- (i) Energy Watchdog V/s. CERC & Ors. (2017) 14 SCC 80.
- (ii) Judgement dated 29.05.2020 in OMP (I) (Comm.) No. 88 of 2020, in the case of Halliburton Offshore Services Inc. V/s. Vedanta Limited and Ors.

3.13. It is further submitted that the Petitioner cannot expect an immediate response and approvals by Government and claim that any time taken by Government is causing delay. It was the responsibility of the Petitioner to make requisite applications on time and take approvals and consents/clearances. It is also known that the Government would take some reasonable time to process any request of the Petitioner. The Petitioner cannot assume its own timelines and claim Force Majeure. In this regard, it is relied on the following citations:

- (i) NTPC Vidyut Vyapar Nigam Ltd V/s. Precision Technik Pvt. Ltd, (2018) SCC Online Del 13102;
- (ii) Pasithea Infrastructure Ltd. V/s. Solar Energy Corporation of India & Anr. (2017) SCC Online Del 12562.

3.14. It is also submitted that one of the issues raised by the Petitioner in the Petition that there is no loss or damage caused to GUVNL on account of the delay in commissioning of the generating station by the Petitioner, is wrong and not valid. It is submitted that there is distinction between the loss and damages and also quantification of loss and damages which is to be claimed. The reliance placed upon by the Petitioner on the judgement of Kailash Nath Associates V/s. Delhi Development Authority (2015) 4 SCC 136 is not correct because the variables that affect the pricing of electricity would result in a financial implication on account of non-commissioning of the project by the Petitioner in timely manner caused the substantial loss to the Respondent GUVNL. The liquidated damages are genuine pre-estimate of the damages suffered by GUVNL on account of the delay in the

commissioning of the project. The procurement of power and sale thereof, drawal from the grid, the applicable tariff and charges of the Respondent are dynamic in nature. Further the availability of power, continuous supply to the consumers at large, opportunity cost of power non-availability etc. are variables and incapable of being computed. Therefore, the PPA itself provides for the payment of liquidated damages for delay in commissioning of the project, which is a genuine pre-estimate of the loss suffered by the Respondent GUVNL.

- 3.15. It is further submitted that in the past year, GUVNL has been forced to procure costlier power to the tune of around 2964 MUs from the Power Exchange and utilizing spot gas to meet the demand of the consumers in the State of Gujarat at the tariff of above Rs. 7 per unit, which is much more than the contracted tariff payable to the Petitioner under the PPA. In fact, the Respondent has been constrained to procure power at tariff as high as Rs. 25 per unit to meet the demand in the State. In case the project of the Petitioner was commissioned in time, electricity to such extent could have been avoided to be purchased by GUVNL on short-term basis. It is also submitted that the Hon'ble Appellate Tribunal in case of the PTC India Limited V/s. GERC and Ors. 2014 ELR (APTEL) 1243 has already examined the issue of the liability to pay liquidated damages and considered the difficulty in calculating the actual loss and held that since the compensation payable has been pre-estimated and is not penal in nature, there is no need to provide evidence that actual loss incurred.
- 3.16. It is submitted that when the claim for liquidated damages is in the field of regulatory regime such as Electricity sector, the actual loss caused in monetary terms cannot be assessed and therefore it falls within the exception provided in the case of Maula Bux case (1969) 2 SCC 554 and Kailash Nath V/s. Delhi Development Authority (2015) 4 SCC 136. It is submitted that the Hon'ble High Court of Delhi vide its Order dated 14.03.2017 in OMP (COMM) 120/2017 in the case of Dalmia Solar Power Ltd. v/s. NTPC Vidyut Vyapar Nigam Ltd recognized that liquidated damages as specified in the PPA should be awarded. It is held that the liquidated damages provided in the agreement are payable unless the Court finds the specified compensation amount as liquidated damages in the Agreement to be unreasonable. In Bharat Sanchar Nigam Ltd. V/s. Reliance Communication Ltd. (2011) 1 SCC 394 while dealing with the regulated industry, the Hon'ble Supreme Court held that liquidated damages ought not to be interfered with particularly in regulatory regime. Further, the Hon'ble Supreme Court in the case of ONGC V/s. Saw Pipe Limited (2003) 5 SCC 705, held that if the compensation is a genuine pre-estimate of loss, then there is no question of providing the loss.
- 3.17. It is submitted that the reliance being placed upon by the Petitioner on the case of Kailash Nath Associates V/s. Delhi Development Authority (2015) 4 SCC 136 is misconceived because the Hon'ble Supreme Court has considered and upheld its earlier decisions and held that where a sum is named in a contract as a liquidated

amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated.

3.18. Ld. Adv. Mr. Anand Ganesan also draw attention to the citation of Construction and Design Services V/s. Delhi Development Authority, AIR 2015 SC 1282 which decided subsequent to Kailash Nath Case, wherein the Hon'ble Supreme Court again considered the issue of Liquidated Damages, proof required etc. in the light of its earlier decision in Oil and Natural Gas Corporation Ltd. V/s. Saw Pipes (2003) 5 SCC 705 and reiterated that the principle that if the sum is named as liquidated damages then it is payable and the burden for showing that there has been no loss or injury is on the Appellant.

3.19. It is further submitted that the liquidated damages are not a penalty but a genuine pre-estimate of damages, the same being evident from the PPA wherein the parties having agreed that in case of breach of the terms of PPA on account of non-adherence to the SCOD/commencement of supply of power, the Respondent is entitled to encash the Performance Bank Guarantees and claim liquidated damages depending on the period of delay. The Petitioner cannot now claim that the liquidated damages is not reasonable or genuine pre-estimate or that the Respondents are required to prove any loss. It is submitted that it is for the Petitioner to prove that the Respondent GUVNL had not suffered any loss and it is not for GUVNL to establish that it has suffered any loss or actual loss. In support of this, reliance is being placed upon the following citations:

(i) Judgment dated 21.12.2016 in Appeal 881 of 2005 in the case of Ultratech Cement Ltd. V/s. Sunfield Resources Pvt. Ltd (2016) SCC Online Bom 10023;

(ii) Mahanagar Telephone Nigam Limited V/s. Haryana Telecom Limited (2017) SCC Online Del 7967:(2017) 163 DRJ 425;

(iii) CERC's Order dated 08.03.2017 in the case of Chettinad Power Corporation Limited V/s. Power Grid Corporation of India Limited;

(iv) CERC's Order dated 24.01.2019 in the case of Raichur Sholapur Transmission Company Limited V/s. Power Grid Corporation of India Ltd.;

4. Based on the above, it is submitted that the Petitioner is not entitled to any relief as claimed in the present petition as there is no Force Majeure event and there can be no extension of SCOD and the Petitioner cannot be exempted from financial

liabilities of delay in commissioning its project and the Petitioner is not entitled to any such compensation. Therefore, the Commission may dismiss the Petition with cost as there is no merit in the present Petition.

5. Ld. Advocate Mr. Saunak Rajguru on behalf of the Petitioner, submitted that the Petitioner has not received copy of impleadment application filed by LUB - Gujarat in the matter. It is requested the Commission to direct LUB to make available copy of their application to the Petitioner.
6. Mr. Sharad Bohra, appearing for the Objector LUB – Gujarat has fairly agreed to provide his impleadment application to the Petitioner prior to next date of hearing. Let the same may be provided to the Petitioner, within 3 days from date of hearing.
7. Mr. Bharat Gohil, appearing on behalf of Utility Users' Welfare Association (UUWA), submitted that the Commission may pass an appropriate order on the impleadment applications filed by the objectors. It is also submitted that UUWA has filed a review petition against the Order dated 23.10.2017 passed in the Petition No. 1654 of 2017 wherein the Commission while exercising its inherent power has granted two years extension to the MSW projects, i.e., from 31.03.2019 to 31.03.2021. It is further submitted that the aforesaid review petition was filed based upon the judgement dated 25.10.2017 of the Hon'ble Supreme Court in Civil Appeal No. 6399/2016 in the case of GUVNL V/s. Solar Semi-Conductor Pvt. Limited wherein it is held by the Supreme Court that the State Commission has not inherent power in granting extension to the projects to which the PPA has already been executed between the parties in view of earlier control period in generic tariff orders decided by the Commission. Therefore, review Petition is filed in respect as to whether the Commission having such inherent power or not in allowing such extension to MSW projects based on the Government Notification or not and that has been challenged in the review petition. It is also submitted that if the said review petition is consider and decide in favour of consumer then scenario in the present case implementing the liquidated damages will be different. It is also requested that the Commission may hear first review petition filed by UUWA.
8. Mr. Nitin Madam submitted that copy of Petition and other documents have still not been provided to him to enable making submissions in the matter. In absence of same it is not possible to make any submissions and therefore, the Commission may decide on the issue of impleadment.
9. We have considered the submissions made by the parties. We note that Ld. Sr. Adv. Mr. Thakore appearing on behalf of Petitioner requested that the Commission may direct the Respondent GUVNL regarding no coercive action to be continued till next hearing and also direct the Respondent to pay the invoices raised by the Petitioner at the provisional tariff subject to the outcome of the present petition. We also note the statement of Ld. Adv. Mr. Anand Ganesan that the invoices raised by the

Petitioner by applying the tariff in terms of Article 5.1 of the PPA and at present, the same shall be provisional tariff subject to an undertaking provided by the Petitioner confirming of not availing any capital subsidy, generation based incentive, accelerated depreciation from MNRE or any other agency and also subject to tariff determined and applicable after 31.03.2021 by the Commission. The aforesaid issue is neither a part of present Petition nor any pleadings on this subject matter.

10. We note that an application from LUB- Gujarat is received by the office of the Commission seeking impleadment as party in the present matter on Affidavit alongwith other documents and physical copy is also received. However, the same is not served/provided to the Petitioner and the Respondents. Therefore, the Applicant LUB- Gujarat is directed to serve copy of Application alongwith relevant documents to the Petitioner, the Respondents and objectors within 3 days and file affidavit of service before the Commission. The Petitioner and the Respondents are also directed to file their submissions/reply on the affidavit to above Application seeking impleadment as party in present matter within 3 days from receipt of same.
11. The Commission takes note that earlier in this matter, the Commission had lastly in Daily Order dated 03.12.2021 ordered that no coercive action by the Respondent GUVNL may be continued till next hearing. However, in Daily Orders for subsequent hearings for various dates, said direction i.e. 'no coercive action by the Respondent GUVNL may be continued till next hearing' was not reflected/incorporated by mistake. Therefore, by taking note of same, the Commission declares that same be incorporated and accordingly, the same stands continued till next hearing.
12. The matter is posted for further hearing on 14.02.2022 at 3:00 P.M. through V.C. on the impleadment applications filed by the objectors in the present petition. Staff of the Commission is directed to provide copy of this Order and necessary hearing link to the parties including Mr. Nitin Madam, UUWA & LUB – Gujarat in connection with their application for impleadment in the present matter.
13. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 11/02/2022.