

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1817 of 2019

And

IAs No. 06 of 2019, 08 of 2019, 09 of 2019 and 02 of 2020.

In the matters of:

Petition under Section 86(1)(f) and other applicable provisions of the Electricity Act, 2003, read with Article 10.4 of the Power Purchase Agreement dated 31.03.2017 entered into between the Petitioner and Respondent No. 1/GUVNL, for declaring that the Power Purchase Agreement dated 31.03.2017 entered into between the Petitioner and Respondent No. 1/GUVNL for Petitioner's 0.8MW wind power plant at Ninama, Taluka Sayla, District Surendranagar is valid, subsisting and enforceable and for quashing and setting aside the Termination Notice dated 16.08.2019 issued by Respondent No. 1/GUVNL under Article 9.3.1 of the Power Purchase Agreement.

Petitioner: Sipla Wind Energy Limited

Represented by: Ld. Sr. Adv. M. R. Bhatt along with Adv. Nithya Balaji and Adv. Mayur Kishanchandani

V/s.

Respondent No. 1: Gujarat Urja Vikas Nigam Limited

Represented by: Adv. Anand Ganesan, Adv. Harini Subramani and Girija Dave

Respondent No. 2: Gujarat Energy Development Agency

Represented by: Nobody was present.

Respondent No. 3: Gujarat Energy Transmission Corporation Limited

Represented by: Y. J. Gamit and Vasant Patel.

Respondent No. 4: State Load Dispatch Centre - Gujarat

Represented by: P. B. Suthar and S. P. Nagale

Respondent No. 5: Uttar Gujarat Vij Company Limited

Represented by: K. B. Chaudhari.

Respondent No. 6: Paschim Gujarat Vij Company Limited

Represented by: J. J. Gandhi.

Respondent No. 7: Madhya Gujarat Vij Company Limited
Represented by: J. R. Shah.
Respondent No. 8: Dakshin Gujarat Vij Company Limited
Represented by: Nobody was present.

CORAM:

Anil Mukim, Chairman
Mehul M. Gandhi, Member

Order

Date: 10/08/2023

1. The present petition has been filed by M/s Sipla Wind Energy Limited (herein referred as the Petitioner) under *Section 86(1)(f)* and other applicable provisions of the Electricity Act, 2003, read with Article 10.4 of the Power Purchase Agreement dated 31.03.2017 (“**PPA**”) entered into between the Petitioner and the Respondent No.1/GUVNL seeking indulgence of this Commission to declare that the PPA entered into between the Petitioner and the Respondent No. 1/GUVNL for the Petitioner’s 0.8MW wind power plant at Ninama, Taluk Sayla, District Surendranagar is valid, subsisting and enforceable and to quash and set aside the Termination Notice dated 16.08.2019 (“**Termination Notice**”) issued under Article 9.3.1 of the PPA, by the Respondent No. 1/GUVNL maliciously, in a highhanded manner, and in colourable exercise of its power alleging breach on part of the Petitioner and discharged itself of all its obligations with effect from 31.03.2017, further calling upon the Petitioner to make payment of Rs.1.78 crores towards compensation, being compensation equivalent to three years billing on normative PLF, within 30 days from the date of the Termination Notice.
- 1.1 The Petitioner has made the following prayers:
 - i. *Set-aside and quash the Default Notice dated 11.07.2019 issued by the Respondent No. 1/GUVNL on the Petitioner,*
 - ii. *Ad-interim restrain the Respondent no. 1/GUVNL from giving effect to the Default Notice and from issuing a Termination Notice on the Petitioner under the Provisions of the PPA;*

iii. *Pass any such other or further order/s as the Commission may deem fit and proper in the facts and circumstances of the case.*

2. During pendency and hearing of the present Petition, pursuant to the termination notice dated 16.08.2019 issued by the GUVNL, the Petition came to be amended with the following prayers:

- i. *Declare that the PPA dated 31.03.2017 entered into between the Petitioner and Respondent No. 1 for Petitioner's 0.8MW wind power plant at Ninama, Taluk Sayla, District Surendrangar is valid, subsisting and enforceable;*
- ii. *Set-aside and quash the Termination Notice dated 16.08.2019 issued by the Respondent GUVNL on the Petitioner;*
- iii. *Ad-interim relief restraining the Respondent GUVNL from giving effect to the Termination Notice dated 16.08.2019;*
- iv. *Pass any such other or further order/s as this Commission may deem fit and proper in the facts and circumstances of the case.*

3. **Preliminary:**

3.1 This matter was earlier heard by the previous Commission. After retirement of the then Chairman/Members and thereafter upon recusal by one Member of the present Commission the matter has been heard by us for disposal.

3.2 Before dealing with the facts of the main Petition, it is required to be noted that during pendency of the Petition, the Petitioner has filed various Interim Applications for different reliefs. I. A. No. 6 of 2019 was filed for granting stay to the effect and operation of the Default Notice dated 11.07.2019 issued by the Respondent No. 1/GUVNL to the Petitioner. The Petitioner also filed I. A. No. 09 of 2019 seeking stay on the effect and operation of the Termination Notice dated 16.08.2019 issued by GUVNL and also a direction to maintain status quo till disposal of the petition. In I.A.No.8 of 2019, the Commission vide Daily Order dated 07.12.2019 framed certain issues for the decision and observed that the framed issues would need the submission by the Gujarat Energy Transmission Corporation Limited, State Load Dispatch Centre and the Distribution Licensee in whose area the Wind Turbine

Generators were set up and commissioned on 31.03.2017 being essential and necessary party, and accordingly directed the Petitioner to amend the cause title and join the aforesaid entities as party Respondents and provide them a copy of the Petition and other documents. The Petitioner vide affidavit dated 24.01.2020 amended cause title and in compliance of the said directive issued by the Commission, copy of Petition to other Respondents was sent.

3.3 The Petitioner has also filed Interim Application No. 2 of 2020 for urgent hearing and, in the interregnum, to direct Respondent GUVNL to make payment to the Petitioner for the energy injected into the grid at a reduced rate, to help sustain the power plant, as deemed appropriate by the Commission, without prejudice and in the interest of justice.

4. **Facts of the Petition in brief:**

4.1 Petitioner is a public limited company incorporated in 2011 under the Companies Act, 1956, and also a power generating company as per Section 2(28) of the Electricity Act, 2003 having set up a 0.8MW wind power plant at Ninama, Taluk Sayla, District Surendranagar, Gujarat ("WTG").

4.2 GUVNL is a Government of Gujarat Company incorporated under the Companies Act, 1956, entrusted with the functions of the bulk purchase and bulk supply of electricity. Respondent No. 2, Gujarat Energy Development Agency (referred as "GEDA"), is a government of Gujarat organization and a State Nodal Agency for the development of Renewable and non-conventional sources of energy in the State of Gujarat and has been entrusted with the responsibility of issuing the certificate of commissioning to power projects.

4.3 The Government of Gujarat notified the Gujarat Wind Power Policy, 2016 vide Notification dated 02.08.2016 for promotion of generation from clean and green sources of energy in the State of Gujarat. Under para 6 of the said Policy, GEDA has been recognized as the State Government Nodal Agency for facilitation and implementation of the Wind Policy, 2016. Respondent GEDA has been given the task to facilitate and assist the project developers inter-alia in the following activities:

- a) Registration of projects;
- b) Respond to queries and problems of Developers of Wind Power Projects; and
- c) Accreditation and recommending Wind Power Projects for registering with Central Agency under REC mechanism.

4.4 Accordingly, GEDA vide letter No. GEDA/PWF/SWEL/Mahidad II/2016-17/14659 dated 27.03.2017 permitted the Petitioner to set-up Wind Energy based power project of 0.8MW capacity in Gujarat to generate power under the GERC (Power Procurement from Renewable Sources) (First Amendment) Regulations, 2014.

4.5 The Ministry of New and Renewable Energy ("MNRE"), Govt. of India, runs the Generation Based Incentive II ("GBIScheme") for grid interactive wind and solar power projects with the main aim to broaden the investor base, incentivise actual generation, facilitate the entry of large independent power producers and to provide level playing field to various classes of investors. One of the essential eligibility criteria for obtaining the benefit under the GBI Scheme is that the power project must have been commissioned on or before 31.03.2017.

4.6 Accordingly, since the WTG of the Petitioner was fit/ready to be commissioned, and in order to avail the benefit under the GBI Scheme, the Petitioner approached GUVNL vide letter dated 31.03.2017 requesting it to execute a PPA with the Petitioner at the fixed tariff of Rs. 3.46/unit for 25 years. On 31.03.2017, the Petitioner and GUVNL entered into the PPA for the sale of power generated by the WTG of the Petitioner. One of the obligations of the Petitioner under the PPA was to ensure that its WTG is commissioned on or before 31.03.2017. In failure thereof, as per Clause 4.3 of the PPA, the PPA would have been treated void and not enforceable. GEDA after completing the testing procedures and all formalities under law, vide Certificate of Commissioning dated 15.04.2017 certified that on 31.03.2017 the Petitioner's WTG was duly and successfully commissioned.

4.7 The Certificate of Commissioning issued by Respondent GEDA categorically records the meter reading along with date and time stamp of the electricity generated at the

time of commissioning. The relevant extract from the Certificate of Commissioning is as under:

Electricity generation report for the purpose of commissioning of wind farm:

Sr. No.	WTG ID No.	R.S. No.	Village	Date	Time (Hrs.)		Meter (kWh)		
					From	To	Initial	Final	Difference
1	WWIL/800/ 16-17/4565	221 (Old No.2 11)	Ninama	31.03. 17	16:35	16:45	0.00	5.00	5.00

- 4.8 Subsequent to the commissioning of the Plant on 31.03.2017, some technical issues cropped up in the WTG and the same could not be rectified in time due to severe Right of Way (“RoW”) issues. It is the case of the Petitioner that to make conditions worse, the roads leading to the WTG were also washed away due to heavy rains in the area and the same could not be rebuilt instantly due to the persistent RoW issues. These issues were resolved by August 2017 and thereafter the Petitioner has been duly supplying power to GUVNL as per the provisions of the PPA.
- 4.9 GUVNL filed Petitions No. 1676 of 2017, 1678 of 2017 and 1679 of 2017 before this Commission seeking approval of PPAs executed by it with various Wind Power Projects. This included the subject PPA entered into between the Petitioner and GUVNL, and the Petitioner was accordingly arrayed as Respondent in Petition No.1676 of 2017. After hearing all the Parties, the Commission vide order dated 01.10.2018 granted approval to the 13 PPAs, including the PPA executed with the Petitioner, for a tariff of Rs. 3.46 per unit. Thereafter, the Petitioner on 05.10.2018 raised the energy invoices on GUVNL for the energy supplied from its Project from September 2017 onwards as per the provisions of the PPA.
- 4.10 Upon receipt of the energy invoices, GUVNL vide letter dated 15.10.2018, for the first time, sought an explanation from the Petitioner for zero energy generation for the months March, 2017 to August, 2017, and asked the Petitioner to justify the genuineness of successful commissioning of its WTG on 31.03.2017 and also informed that their invoices will be put on hold until the position regarding zero generation is