

- 9.13. There is no specific bar in the Open Access Regulations on transfer of connectivity so long as the injection point/generating station and drawal point/consumer premises as well as capacity are same and subject to necessary approvals/permission.
- 9.14. The submission of the objector on the issue that in respect of those RE projects for which connectivity is granted prior to Order No. 01 of 2024, the commissioning timeline shall be governed by the timeline provided in earlier order of the Commission/Government Policy, is not relevant to the present case. The issue raised in regard to the past is not relevant and even otherwise is denied. The respective RE Orders have provided for timelines to be followed by the RE projects and the consequences thereof and the Petitioner has followed the same. The Objectors are seeking to divert the issue by raising irrelevant aspects, which has no relevance to the issue at hand.
- 9.15. In the Petition, it is provided for consideration of allowance of transfer only for Scheme/Developer Model and RE Park Developer provided they make the declaration at the time of the application itself. This is to ensure that the individual project developer subsequently does not claim under Scheme/Developer Model or RE Park, only in order to be allowed to transfer the connectivity. The intention is clear as to not allow the transfer of connectivity and further the person who had applied and obtained for connectivity would be the person who has to sign the transmission and/or wheeling agreement. The Petitioner had only pointed out that the above restriction includes where the RE projects are being established through recognized Schemes with involvement/ facilitation by RE Project Developer/ RE Park Developers. Since such restriction would affect the scheme of Developer Model where project developers who had been establishing the RE projects in aggregate and thereafter transfer individual RE Projects to other entities as well as affect park developers, GETCO had proposed the amendments to address the issues related to these specific instances.

- 9.16. The aspect raised by the Petitioner in the Petition is for RE Project Developers developing the Projects for number of RE projects entities under the Scheme. The consideration of RE Project under the Scheme are in cases where the Renewable Projects are being promoted and allowed to be established under a Scheme involving RE Project Developer acting for group of RE Projects entities till the commissioning and Commercial Operation.
- 9.17. There is no intention to include all project developer transferring to any other entity. The reason for seeking the above is only because there are project developers who had been establishing the RE projects in aggregate and thereafter transfer individual RE Projects to other entities. Such projects are all connected to the common pooling station and the generation is apportioned to the individual generators by GEDA. It is therefore requested that the consideration is only for these developers and RE Park Developers.
- 9.18. Further there are RE Park Developers who establish common infrastructure facilities including the dedicated line to the GETCO sub-station. RE Parks are authorized by the Government. Therefore it is necessary for the RE Parks to be addressed appropriately in the present mechanism of Detailed Procedure and Order No. 1 of 2024. It is submitted that the Objectors/Comments have confused between RE Park Developers and Project Developers under Developer Model/Scheme. These are separate.
- 9.19. Most of the objector's submissions for consideration is on the Developer Model, while some of the objectors have sought for transfer to be allowed to all entities. The Petitioner has sought for limited provision for Scheme or Developer Model/RE Park Model in the Petition and there cannot be any other consideration. Further some objectors have also pointed out that object and intent of the Orders/Procedure to ensure that there is no trading/transfer or cornering of the connectivity by the entities.

- 9.20. The salability of the project as referred by some of the objector is not a factor for consideration. The concern is that the connectivity should be sought only by only genuine applicants who apply for themselves and only exceptions being a recognized methodology of Developer Model or RE Park Model. The purpose of declaration at the time of application is also to ensure that only genuine cases of Developer Model or RE Park Model seek connectivity with intention to transfer in name of individual entities.
- 9.21. Reliance on GEDA allowing transfer permission cannot be a basis to oust the regulatory supervision of the Commission. The Commission is the Regulatory Commission for intra-state transmission and connectivity and therefore the Commission has decided not to allow the transfer of connectivity. The Petitioner is also not proposing for allowing transfer of connectivity in all cases but only restricted to Developer Model and RE Parks.
- 9.22. The proposal by some of the objectors to include a specific provision after Clause 4.5 of the connectivity procedure cannot be accepted. Such objectors are in effect seeking to remove all restrictions on transfer which is not the intention of the Commission and the not the intention of the Petition.
- 9.23. The amendments in regard to the transfer are proposed only in respect of the Detailed procedure and Wind Solar Hybrid Tariff Order dated 22.02.2024 and other restrictions or permissions or approvals etc. under other laws or contracts or procedures are not subject matter of the present Petition. The discussions in case of Developer Model/RE Park is not within scope of the present Petition and even otherwise is not relevant for the purposes of Connectivity and Open Access.
- 9.24. The Petitioner had proposed that RE Project Developer (Developer Model/Scheme) and RE Park Developers should declare at the time of the application. Some of the objectors have requested to delete the same; however this cannot be accepted. The only rationale raised is with regard to the entities

who had already obtained connectivity. There is no basis as to why it cannot be applied to future. Further there is a purpose to such declaration at the time of the connectivity as these are the only entities who may be allowed transfer of connectivity. If this is not declared, there would be issues subsequently to determine whether the same is Developer Model/RE Park or not. The intention has to be clear from the beginning and not allow the switching subsequently. Further the RE Park Developer applying for connectivity has to provide the authorization by Government and also has to declare the above. There is no reason why the developers/parks cannot be bound to disclosures made at the time of application.

- 9.25. In regard to the issue of date of applicability of the amendment and aspects of declaration to be applied to such entities if the retrospective application of amendment is allowed, the same may be decided by the Commission.
- 9.26. On the issue which has arisen is the addressing of entities who have already been granted connectivity prior to the Order No. 1 of 2024. In regard to the entities who were granted connectivity prior to the Detailed Procedure dated 07.01.2023, there was no absolute bar of transfer of connectivity at the time of grant of connectivity. However in regard to the entities who were granted connectivity under Detailed Procedure 07.01.2023 even before 22.02.2024, they were aware of the restriction in the Detailed Procedure. However the Commission may decide on the aspects of the date of application of the restrictions or amendment. The Petitioner would follow the guidelines/directions of the Commission in this matter.
- 9.27. In regard to giving effect to the amendments from 07.01.2023 for giving credit of energy injected into the grid, a question would arise as to the legality of retrospective amendment. Further even if allowed, it would not change the fact that permission for transfer of connectivity for the RE Project Developers under the Scheme/RE Park Developers can only be granted after the amendment which means in future. Therefore the question of giving any credit

to the past would not arise. This would also require changing the SEA etc. which have already been settled. Further entities who commissioned and injected despite the transfer not being allowed, cannot claim any equity.

- 9.28. Some of the objectors have sought for interim permissions which cannot be sought in the Petition filed by the GETCO. It would also not be possible to give interim permissions. However GETCO would seek urgent decision on the aspect raised in the present Petition so that the issues raised by the developers can be resolved. The Commission may consider the above issues and practical difficulties. The Petitioner would follow the guidelines/directions of the Commission in this matter.
- 9.29. Though the issue of shared utilization of the transmission capacity is not directly involved in the present case, it is submitted that the Detailed Procedure dated 07.01.2023 under FORMAT 6 provides for Model Agreement between the Lead Generator and other generators seeking inter-connection with Gujarat Intra- State transmission network at a single connection point and therefore there can be shared utilization of dedicated transmission line by individual RE Generators. Further Clause 13 of the Detailed Procedure also provides for sharing of the dedicated transmission line in case the developer is not able to fully utilize the capacity. Clause 13.2 provides for certain entities to apply at bay already allocated to Stage II grantee for sharing of dedicated line.
- 9.30. Some objectors have in their submissions sought to distinguish between Generating Station and Generating Company, which is baseless and an attempt to confuse the issue. Generating Company is an entity which owns, operates or maintains a generating station – it is not “may” own, operate or maintain as sought to be contended. The word may is not there in the definition. It is wrong that Generating Company and Generating Station are separate entities. A generating company cannot be without a generating station. Generating station is owned by a Generating Company. The generating station is not a legal entity by itself but rather the station and the legal entity is the generating



company. Therefore the claim that the developer is a generating company and the transferee is a generating station is absurd and irrational. Further, the contention of the Petitioner is not based on any such on such distinction. It is reiterated that the consideration of transfer is restricted to the Scheme for RE Project Developers and RE Park Developers and not for any other entity. Not all developers can be allowed to claim the said status.

- 9.31. It is submitted that GETCO in regard to Clause 4.5 of Detailed Procedure has only sought for inclusion of provisions for allowing transfer by RE Project Developer (under Scheme/Developer Model) and RE Park and had not made any submission in regard to the purpose of the connectivity. Therefore this is not within the scope of the Petition.
- 9.32. The reference to CTU Procedure cannot be the sole basis of consideration of any change in the present Procedure. When it has been recognized that the Central Commission Regulations are not binding on the State Commission (order dated 07.10.2016 passed by Hon'ble High Court of Gujarat in SCA No. 9138 of 2016 Para 40 and noted by the Commission in order dated 11.02.2021 Para 32.29), the Procedure is also not binding. While it may be guiding factor, this does not consider the state specific aspects. In the present case, the Orders passed by the Commission for various RE projects has differential treatment for captive and third party sale. Further the Detailed Procedure requires the declaration and requirement of PPA for third party sale. In such case, it would have to be considered whether an entity applying under one category can be allowed to switch. Therefore such aspects need detailed consideration including on the eligibility requirements etc. and cannot be decided in the present proceedings where such issue has not been raised in the Petition.
- 9.33. Further the sale to DISCOMs have priority and have different requirements and conditions. Therefore it is not possible for an entity to take connectivity based on category for sale to DISCOM and then change purpose. Therefore in any case, the sale to DISCOMs cannot be allowed to be switched. This aspect is not

within the scope of the Petition and is not related to aspects of connectivity and it cannot be considered. It may however be noted that the Timelines in the Hybrid Order No. 1 of 2024 is based on the timelines provided in the RE Policy of Government of Gujarat dated 04.10.2023 under Clause 17.4. Similarly even in Solar and Wind Tariff Orders, the timelines are based on the capacity and not voltage.

- 9.34. The Detailed Procedure under Clause 10 provides for cancellation of connectivity and encashment of bank guarantee in case the Stage II Connectivity Grantees do not complete the dedicated transmission lines etc. within timeline specified by the Commission in relevant Order/LOI/PPA. The Order provides for timelines from date of allotment of transmission capacity which in view of the Detailed Procedure is the date of grant of Stage II Connectivity. The alleged perception of objectors cannot be the basis of consideration. Further these cannot be subject matter of the present proceedings.
- 9.35. The aspect of encashment of Bank Guarantee is not within the scope of the Petition and cannot be considered. Even otherwise, the aspects of the consequences including encashment of Bank Guarantee if the Stage II Connectivity Grantee does not fulfill the requirements would have to be separately considered.
- 9.36. The aspect of revisiting supervision charges levied by GETCO is not only outside the scope of the present Petition, it is also outside the scope of the consideration of Detailed Procedure and Hybrid Tariff Order No. 1 of 2024 or aspects of Connectivity. This aspect cannot be considered.
- 9.37. The aspect of giving priority for grant of connectivity for enhance capacity as a result of repowered wind project is outside the scope of the Petition. Particularly since the issue raised is on priority of such projects which are seeking repowering, this aspect needs detailed consideration and further this

aspect has not been the basis of public notice. Therefore the said issue cannot be considered in the present proceedings.

- 9.38. The objectors have made various suggestions for priority, change in requirements, right to use, capacity, flexibility in procedure etc which are not relevant to the present Petition and are outside the scope of the Petition.
- 9.39. On the aspect of grant of time limit extension due to delay in commissioning of the project due to force majeure situation, it is submitted that the present Petition is limited in scope and such aspects outside the scope of the Petition cannot be considered particularly when they are not basis of public notice. The extension to be granted for delays in commissioning cannot be considered in the present Petition.
- 9.40. During the hearing, some of the objectors have handed over detailed list of dates and documents concerning to individual cases. The purpose of the present petition is not for deciding individual cases and therefore it is not required to deal with facts of each individual cases by the Commission.
10. We have heard the parties /objectors/ stakeholders, who were present in the public hearing and also considered the submission made objectors / stakeholders in response to public notice issued by the Petitioner. We note that the present Petition has been filed by the Petitioner seeking amendment to the Order No. 01 of 2024 for tariff framework for procurement of power by distribution licensee and others from wind-solar hybrid power projects including storage if any, for the State of Gujarat and procedure for grant of connectivity to projects based on RE sources to intra-state transmission system dated 07.01.2023.
- 10.1. The Petitioner has proposed amendment in clause 3.10 (c) of Order No. 01 of 2024 and amendment in procedure for grant of connectivity with intra-state system under clause 4.5 of the said procedure for RE projects. The petitioner has proposed to add two provisos in Order no. 01 of 2024 dated 22.02.2024



under clause 3.10 (c) and in clause 4.5 of procedure for grant of connectivity for RE projects with intra-state transmission system.

10.2. The following facts are undisputed:

1. The Petitioner GETCO had issued draft procedure for grant of connectivity to RE projects with intra-state transmission network and invited comments and suggestions on it from stakeholders. After considering comments/suggestions received from stakeholders, The Petitioner had finalized the draft procedure for grant of connectivity for RE projects.
2. The Petitioner vide letter No. letter No. ACE (R & C)/STU/51314911 dated 21.12.2022 had approached to the Commission for approval of draft procedure for grant of connectivity prepared by them.
3. The Commission had approved the “procedure for grant of connectivity to RE project developers” submitted by GETCO without any deviations or amendments in it. Thus, while granting the approval, the Commission has not directed GETCO to made any amendment/modify the procedure for grant of connectivity submitted by them. Vide letter No. GERC/TECH-II/2022/0040 dated 07.01.2023, the Commission conveyed approval on the procedure for grant of connectivity for RE Projects.
4. The Commission has issued generic tariff Order No. 01 of 2024 dated 22.02.2024 after public consultations as provided in Section 62 and 64 of the Act and decided generic tariff framework of wind-solar hybrid projects.
5. The procedure for grant of connectivity for renewable energy projects approved by the Commission on 7.01.2023 contained the provision that the connectivity cannot be transferred, as under:

*4.5 Further, connectivity once granted, shall not be transferrable to other entity. Also, purpose of connectivity once granted cannot be changed or modified.*

10.3. The Petitioner has also requested for amendment in the Order No. 1 of 2024 under the clause 3.10 "Procedure for integration of the wind solar hybrid

project and battery storage to the grid", which inter alia provides as under:

"3.10

*c. It is also necessary to ensure that the physical connectivity of Solar - Wind and Storage, if any, Hybrid Power Project with grid is granted to the same person/generating company in whose name the connectivity is approved / sanctioned and also the transmission and/or wheeling agreement is signed with the same person/generating company as a party to the agreement in whose name the connectivity is granted. The commissioning of the project shall be allowed by GEDA, DISCOMs and/or GETCO representative by verifying that such RE generators has complied with the provisions of CEA's Connectivity Standard Regulations and obtained ALMM certificate, if applicable and it shall be recorded in Commissioning Certificate during the inspection and commissioning activities."*

- 10.4. Prior to the procedure for connectivity of renewable energy projects prepared by GETCO and get approved from the Commission on 07.01.2023, there was no provision like stipulated in clause 4.5 of the said procedure in which the GETCO has proposed amendments through present Petition.
- 10.5. Prior to 07.01.2023, i.e. procedure for grant of connectivity for RE projects submitted by GETCO and approved by the Commission, there was no explicit bar for transfer by connectivity holder(s) of the RE project and they were eligible for transfer of connectivity and even as per the development procedure of GEDA under Government of Gujarat's relevant RE Policies, there is no bar for such transfer permission. Further, there was no bar for transfer of connectivity either in the Regulations or Orders of the Commission. Thus, prior to 07.01.2023, the RE project developer were eligible to apply for connectivity for GETCO Network, which were approved by GETCO as per the procedure framed by them and the same is transferable to other entities based on grant of transfer permission as per the provisions procedure laid down by GEDA under the relevant Govt Policies.

- 10.6. After 07.01.2023, i.e. date of procedure for grant of connectivity approved by the Commission, as per Clause 4.5 of the said connectivity procedure, the connectivity once granted, cannot be transferred to other entity.
- 10.7. There are various project developers who have applied to GETCO prior to 07.01.2023 for grant of connectivity of RE projects and GETCO has applied the prevailing procedure and granted connectivity to such project developers. There are various project developers who have applied to GETCO for grant of connectivity after 07.01.2023 i.e. date of procedure for grant of connectivity to RE projects and such projects have been granted connectivity by GETCO.
- 10.8. It is submitted that there are various RE projects which have been granted connectivity by GETCO prior to 07.01.2023 on fulfilment of requisite conditions. Such developers have started their activities for construction of projects. The list of events submitted by one of the objectors to give understanding of the procedure for getting approval and project execution related activities carried out by project developer before and after 07.01.2023, are reproduced as under:

No.	Particulars
1	Application for Grant of Connectivity under Procedure dated 14.02.2017
2	GETCO reply to the letter dated 13.07.2021
3	Payment of Load flow study charges
4	Approval granted in accordance with the System Study
5	Meeting held for feasibility and finalisation of 02 Nos of 66kV Feeder bay location between representatives from M/S Bajrang Wind Park (Kutch) and GETCO 220 kV.
6	Bank Guarantee Submission to GETCO
7	Date for Submission of feasibility along with the estimate of feeder bays for evacuation of 120 MW

No.	Particulars
8	Estimate informed by SE (TR) GETCO Ameli and EE (Cons) Ameli for GETCO bay end.
9	Payment of Supervision Charges on the metering equipment and bay at GETCO end.
10	Agreement with GETCO for Bay work at OTHA Grid Substation
11	Approval granted for Contractors for Erection of 66kV Class feeder bay at 220 kV Otha s/s along with metering bay
12	Connection Agreement between GETCO and M/S Sri Bajrang Wind Park (Kutch) Limited
13	Kick off Meeting in accordance with Letter dated 06.08.2021
14	Approval granted under Section 68 and Section 164 of the Electricity Act for carrying out dedicated line and bay at GETCO end.
15	Dedicated line from M/S Sri Bajrang Wind Park (Kutch) Limited pooling Station to GETCO Otha S/S
16	CEI Inspection for 66kV feeder bay
17	Charging Permission granted for 66kV Feeder Bay at 220/66kV Otha Substation of GETCO
18	Development permission by GEDA after 07.01.2023
19	Transfer permission by GEDA after 07.01.2023
20	GETCO permission for open access and signing of transmission agreement after 07.01.2023

10.9. The GEDA which is nodal agency for RE projects as per Govt Policy and Regulations as well as Order of the Commission, would also require to carryout various facilitation activities in relation to development of RE Projects in the State prior to commissioning of such projects, which are stated below:

- a. Registration of Projects
- b. Accreditation and recommending Renewable Energy Projects for registering with the Central Agency under REC mechanism
- c. Certifying the commissioning of Renewable Energy Projects

- d. Submit a monthly progress report of the activities mentioned above to the GUVNL/E&PD.
- e. Any other functions assigned.

- 10.10. The GEDA has carried out the aforesaid activities for grant of development permission and transfer permission to RE projects which had obtained connectivity prior to 7.01.2023 i.e. date of grant of connectivity procedure approved by the Commission.
- 10.11. GEDA is also required to act in accordance with the provisions of the procedures for grant of connectivity approved by the Commission on 07.01.2023 read with Government RE Policy and Tariff Orders, Regulations of the Commission prevailing on or after 7.01.2023 and make it applicable to the RE projects which have obtained the connectivity on or after 7.01.2023.
- 10.12. The Petitioner has submitted that after approval of connectivity procedure dated 07.01.2023 by the Commission, State Govt notified RE Policy 2023. Further, the Commission issued Order No. 01 of 2024 dated 22.02.2024 wherein provision is contained at the para 3.10 (c) with regard to non-transfer of connectivity and transmission/wheeling agreement be carried out by the same person in whose name connectivity was granted.
- 10.13. The issue emerged in the present case is with regard to non-transfer of connectivity as provided in connectivity procedure dated 07.01.2024 read with Commission Order No. 01 of 2024 dated 22.02.2024. The said issue is affecting to RE park developers/RE project developers who are developing the park / RE capacity in aggregate as provided in GoG RE Policy wherein the development of project is allowed to be undertaken by developer entity with requisite infrastructure in terms of arranging project land, internal road, pooling sub-station etc. and thereafter the project is transferred to individual entities for own and operate the transferred project. The Petitioner has submitted that due provisions related to non-transfer of connectivity and



transmission and wheeling agreement needs to execute by the same entity who has obtained connectivity, is affecting the RE project developers to set up the RE plant under the development model, get it transferred, commissioned and transmit/wheel the energy generated from it to place of consumption for third party or self- consumption or sale to licensee,

10.14. We note that the issue stated in the Petition emerged due to different interpretation by the GETCO and GEDA as well as some of the aspects which are overlapping as a part of the provisions of policy, regulations and orders of the Commission.

10.15. We note that there are following types project developers who desire to set up the RE plant under the GoG Policy, Commission's Orders and Regulations and procedures for connectivity approved by the Commission.

1. The projects which have obtained connectivity prior to 7.01.2023 under the applicable Govt RE Policies and Order of the Commission applicable prior to 07.01.2023 i.e. obtained connectivity prior to GoG RE Policy 2023 and Order No. 01 of 2024 dated 22.02.2024.
2. The Projects which have obtained connectivity after 07.01.2023, i.e. under the GoG Policy 2023 and/or earlier policy and commission's orders as applicable on or after 7.01.2023.

10.16. It is necessary to give effect to the provisions of the policy framed by the Government readwith Commission Order, Regulations and procedure for connectivity prevailing at relevant time when it was applied to the RE project developers by the concerned entity i.e. GEDA, GETCO and Discoms. We note that while applying the provisions of above policy framework, order of the Commission, regulations, the interpretations made by above entities has affected the ongoing RE projects of the persons / developers.

10.17. Now we deal with the issue raised by some of the objectors that the present Petition is not admissible and maintainable on a ground that the Order No. 01

of 2024 dated 22.02.2024 passed by the Commission is a tariff order wherein the Petitioner has prayed for amendment in the Order. The Petitioner's prayer is review of aforesaid order which is not fulfill the relevant criteria of review of order as provided under Regulation 72 of GERC (Conduct of Business) Regulations, 2004. Further, Petitioner has also prayed for amendment in procedure for grant of connectivity approved by the Commission which requires to follow the procedure of amendment i.e. inviting comments and suggestion on it etc.

10.18. We note that the Commission passed order No. 1 of 2024 dated 22.02.2024 under Sections 3(1) 61(h), 62 (1)(a) and 86 (1)(b) and (e) of the Act read with GovtRE Policy 2023 and amendments made in it. The said order was passed by the Commission after publishing the Discussion Paper and inviting comments and suggestions from the stakeholders and considering the objections and suggestions received from various stakeholders.

10.19. The Commission on 07.01.2023 has also approved the procedure for grant of connectivity under GERC (Open Access) Regulations, 2011 to RE projects as prepared and submitted by GETCO.

The relevant portion of Sec.86 of the Act, is reproduced below:

*"Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -*

- (a) *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*  
*Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*
- (b) *regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

(c) *facilitate intra-State transmission and wheeling of electricity;*

.....

(e) *promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;”*

10.20. Section 86 states functions of the State Commission. Section 86(1)(a) provides for determination of tariff of generation, transmission, supply and wheeling of electricity and also for the whole sale, bulk or retail tariff by the Commission. The proviso of said section provides that the Commission shall determine the wheeling charges and surcharges payable by the consumers in case of procurement of power under open access under Section 42 of the Act.

10.21. Section 86(1)(b) states regarding regulating the procurement process of the distribution licensee consisting of quantum of power, its price and agreement etc., by the Commission.

10.22. Section 86(1)(c) states that the Commission shall provide facilitation of intra-state transmission and wheeling of electricity on transmission/distribution network through open access.

10.23. Section 86(1)(e) states about the promotion of co-generation and generation of electricity from renewable energy sources by way of providing connectivity with grid, sale of electricity to any person and specify the procurement of RE as a part of total consumption by the consumer situated in the distribution licensee area.

10.24. We note that in the Electricity Act 2003 there are two routes for tariff determination- (1) under Sections 61, 62 and 64 of the Act wherein the Commission determines the tariff of generating company, distribution licensee, transmission company and whole sale and retail tariff, and (2) under Section 63 of the Act wherein the tariff determined under the Competitive

Bidding Process carried out by distribution licensee under the competitive bidding guidelines issued by the Central Government are adopted by the Commission. Thus, the aforesaid provisions empower the Commission to determine the tariff under the Act.

10.25. The Order No. 01 of 2024 dated 22.02.2024 issued by the Commission on tariff framework for procurement of power by the Distribution Licensees and others from Wind-Solar Hybrid Energy Projects and other commercial issues, which is a Tariff Order issued/passed under Electricity Act, 2003. The said tariff order consists of other commercial terms and conditions like transmission, wheeling of energy, its charges and losses, Cross Subsidy Surcharge, Additional Surcharge, security mechanism, energy accounting, project set up under REC, non-REC mode, Energy Banking Facility etc. which have implication on tariff. This is not the order passed in adjudication of disputes between parties which are final and binding and can be modified only in Appeal or Review.

10.26. Further the Petitioner has contended that the amendment of Tariff Order is recognized in Section 62 (4) and 64 (6) of the Act. Therefore, the same are necessary to be referred and are reproduced below and dealt by the Commission:

*62. (Determination of tariff): .....*

*(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.*

In the aforesaid provision, it is provided that the tariff or its part may not ordinarily be amended more frequently than once in any financial year except in respect of fuel surcharge as per the formula specified by the Commission.

.....

64.(Procedure for tariff order): .....

*(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.*

This section provides that the tariff order shall remain in force till the period specified in it, until such order is amended or revoked.

10.27. We further note that the Hon'ble Supreme Court in UP Power Corporation Limited v. National Thermal Power Corporation Limited [(2009) 6 SCC 235] upheld as under:

*"21. Power and/or jurisdiction of the Central Commission to frame tariff and/or carry out revision thereof is not in dispute. It is in fact well settled that the Central Commission has the exclusive jurisdiction to frame not only tariff but also any amendment, alterations and additions in regard thereto.*

.....

*35. Revision of a tariff must be distinguished from review of a tariff order. Whereas Regulation 92 of the 1999 Regulations provides for revision of tariff, Regulations 110 to 117 also provide for extensive power to be exercised by the Central Commission in regard to the proceedings before it.*

.....

*40. Regulations 92 and 94, in our opinion, do not restrict the power of the Central Commission to make additions or alterations in the tariff. Making of a tariff is a continuous process. It can be amended or altered by the Central Commission, if any occasion arises therefor. The said power can be exercised not only on an application filed by the generating companies but by the Commission also on its own motion.*

.....

*46. The concept of regulatory jurisdiction provides for revisit of the tariff. It is now a well-settled principle of law that a subordinate legislation validly made becomes a part of the Act and should be read as such."*



In the aforesaid decision Hon'ble Supreme Court held that the Commission has power to amend the tariff order as the tariff determination is a continuous exercise.

- 10.28. We note that the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v/s. Tarini Infrastructure Limited and others [(2016) 8 SCC 743] has considering Section 86(1)(b) and Section 64 recognised that there must be flexibility and there may be a review of tariff. The Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited and Another [(2017) 16 SCC 498] relying on the above held that the Commission has power under Section 62 (4) and Section 64 (6) of the Act to amend the tariff order. The relevant para of the said order is reproduced below:

*"31. Having referred to the above decisions, we shall now make an independent endeavor to analyse the present case in the context of factual matrix and the relevant statutory provisions. An amendment to tariff by the Regulatory Commission is permitted under Section 62(4) read with Section 64(6) of the Act. Section 86(1)(a) clothes the Commission with the power to determine the tariff and under Section 86(1)(b), it is for the Commission to regulate the price at which electricity is to be procured from the generating companies. Section 86(1)(e) deals with promoting co-generation and generation of electricity from renewable energy. Therefore, there cannot be any quarrel with regard to the power conferred on the Commission with regard to fixation of tariff for the electricity procured from the generating companies or amendment thereof in the given circumstances."*

- 10.29. We further note that Hon'ble APTEL in case of Balasore Alloys Ltd. v/s. Odisha Electricity Regulatory Commission, [2014 SCC Online APTEL 180], has upheld that the Commission has power to amend the tariff under Section 62(4) of the Act. The relevant portion of the said order is reproduced below:

*"27. Section 62(4) of the Electricity Act, 2003 provides that no tariff or part of any tariff may ordinarily be amended,*

*more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. In the present case, the State Commission has amended the tariff once during the FY 2012- 13 by the impugned order dated 23.8.2012. The State Commission has also given reasons for the amendment.*

*28. This Tribunal in O.P. No. 1 of 2011 dated 11.11.2011 has also held that the State Commission has power to initiate tariff proceeding suo-motu.*

*29. We feel that the impugned order is not a review order but an order to amend the tariff during the course of the FY 2012-13. The State Commission has not amended the tariff from the effective date of the original order dated 23.3.2012 i.e. 1.4.2012 but has made the amended tariff applicable subsequently w.e. from 1.7.2012. Thus, as per the impugned order, the 'Take or Pay' Tariff as decided by the original order dated 23.3.2012 would remain in vogue from 1.4.2012 to 30.6.2012.*

*30. In view of above, we hold that the State Commission exercising its power to amend a part of tariff in a suo motu proceeding in the present case is perfectly legal."*

10.30. We also note that necessary procedure with regard for issuing amendment in tariff order has been duly followed by the Commission by directing the Petitioner to issue public notice and objections/comments have been invited on the Petition and thereafter public hearing was held. During the public hearing, objectors, respondents and the petitioner were heard by the Commission. Thus, the Commission has followed the procedure and therefore the Commission can pass the amendments to the Order.

10.31. We also note that the Order No. 01 of 2024 dated 22.02.2024 had been passed by the Commission after consideration of procedure for grant of connectivity to RE projects prepared by GETCO and get it approved from the Commission on 7.01.2023 and provisions of Gujarat RE Policy 2023. In the said Order, the Commission had considered the specific aspects of connectivity of RE projects

and the same was changed as per connectivity procedure prepared by GETCO and approved by the Commission. The Commission had considered various provisions of Gujarat RE Policy while deciding the tariff framework under Order No 01 of 2024 for wind-solar hybrid power projects. The Gujarat RE Policy 2023 is also policy in public interest.

- 10.32. We also note that, when the Order No. 01 of 2024 dated 22.02.2024 was passed by the Commission with consideration of Gujarat Renewable Energy Policies issued by Government of Gujarat, grant of connectivity procedure of RE projects prepared by GETCO and approved by the Commission. There is no bar for the Commission to consider the existing provision of connectivity as provided in RE Policy and incorporate the same in tariff order.
- 10.33. The jurisdiction or power of the Government to issue Policy or the Commission to issue orders cannot be barred. Therefore, the issuance of Policy by Government or issuance of Orders by Regulatory Commission on Tariff framework and commercial terms for wheeling of power cannot be barred.
- 10.34. We note that the Petition has been filed under Section 86 which includes Section 86(1)(a) and 86(1)(b) related to tariff, 86(1)(e) related to promotion of renewable energy as well as “other applicable provisions of the Electricity Act” which would include Section 62 and 64 of the Act.
- 10.35. Some of the objectors have contended that Government Policy is not binding on the Commission, which is a statutory body constituted under the Act. In support of above submission, the respondent and objectors have relied upon Judgements of Hon’ble Tribunal in the following cases:
- (i) Maruti Suzuki Vs. HERC in Appeal No. 103 of 2012 reported in 2015 (SCC) APTEL 127 and
  - (ii) Polyplex Corporation Ltd. Vs. HERC in Appeal No. 41, 42 and 43 of 2010.
- 10.36. In the aforesaid decisions, the Hon’ble APTEL has held that the Policy notified

by the State Government is not binding to the Commission. It is only a guiding factor on the Commission while determining the tariff or related matters. The Commission is a statutory body constituted under the Act to carry out the functions assigned under the Act in accordance with law. The provisions of the National Electricity Policy and the Tariff Policy notified under Section 3 of the Act, though statutory provisions, are not binding to the Commission and they work as a guiding factor.

- 10.37. It is also necessary to refer to the provisions of the Electricity Act, 2003 which empowers the Commission to frame the regulations which are subordinate legislation. Electricity Rules 2005 notified under the Act provides that prior to notifying the Regulations, Rules etc. it is necessary to carry out pre-publication. Section 181 of the Act provides power to the Commission to frame the regulations. Further, Section 182 provides that the regulations notified by the Commission are required to be put before the State Legislature for approval. Once the Legislature approves the regulations and they are notified, the regulations come into force as subordinate legislation and become applicable and enforceable.
- 10.38. The power to make the regulations provided to the Commission also consists of power to amend, alter or modify the regulations by following the process specified in the Act read with Rules made under it.
- 10.39. The objectors have contended that there is no criteria for change/amendment in the Order No. 1 of 2024 dated 22.02.2024 which sought to be amended in the present proceedings. There is no justification given by the Petitioner. We note that the Petitioner has specifically mentioned in the Petition about particular provisions which needs to add in the procedure for grant of connectivity approved by the Commission and also incorporate as provisos in Order No. 01 of 2024 dated 22.02.2024, as there is error with regard to non-consideration of the provisions of GoG Policy as well as Orders and Regulations of the Commission so as the provisions of Policies, Regulations, Orders,



procedures be given effect by way of amendments in the Order No. 1 of 2024 dated 22.02.2024 and Procedure for Grant of connectivity dated 07.01.2023. The Petitioner has mentioned salient features of the prevailing Policy and the Orders and Regulations of the Commission prior to 7.01.2023 as well as Order No. 1 of 2024 dated 22.02.2024 and submitted that various changes/amendments in order No. 01 of 2024 dated 22.02.2024 and procedure for grant of connectivity to RE projects dated 7.01.2023 needs to be carried out with consideration of prevailing policy, Regulations, Orders and procedure framed by GEDA under aforesaid policy, regulations and orders. Hence, the contentions of the Objectors are not correct and the same are rejected.

- 10.40. Considering the above, we are of view that the Commission has power to amend the tariff order under section 62(4) and 64 (6) of the Act, and the regulations notified by it after following the due process of law. The present petition filed by the Petitioner for amendment in the tariff Order No. 1 of 2024 dated 22.02.2024 and procedure for grant of connectivity to RE projects dated 7.01.2023 is permissible under the provisions of the Electricity Act, 2003 after due consideration on merit of the issues and after following due process of law.
- 10.41. In the present case, the process of issuance of the public notice and inviting comments and suggestions and hearing of the objectors/ stakeholders is already done. Therefore, the process of amendment of tariff order as well as amendment in procedure for grant of connectivity to RE projects dated 7.01.2023 is already done by the Commission. Hence, the contention of the objectors that present petition is not maintainable is not acceptable.
- 10.42. We also note that some of the objectors/stakeholders have stated that the Petitioner has not joined the original objectors/stakeholders who have submitted their suggestions/objections while deciding Order No. 01 of 2024 dated 22.02.2024 by the Commission. Thus, the present Petition is not admissible and maintainable on the ground of non-joinder of original parties. The Commission in the earlier review the Petition filed by TPL & GETCO has



directed to the Petitioner to join original objectors/ stakeholders as party and given opportunity to file their reply on such Petition. We note that the present Petition filed by the Petitioner seeking amendment in the Order No. 01 of 2024 dated 22.02.2024 in clause 3.10 (c) for tariff framework for win-solar hybrid power projects by adding two proviso in aforesaid clause. The Petitioner has also prayed to add two provisos in clause 4.5 of procedure for grant of connectivity to projects based on renewable energy sources to intra-state transmission systems. We also note that the Commission has directed in its daily Order dated 09.08.2024 to the Petitioner to issue public notice in two daily Gujarati newspapers and one English newspaper and invite comments and suggestions from the objectors/stakeholders on the Petition on affidavit within 21 days from the date of issue of public notice. The Commission has also decided and directed the staff of the Commission to upload the Petition on Commission website and invite comments/suggestion from stakeholders. We note that as per the direction of the Commission, the Petitioner has published public notice in two daily Gujarati Newspaper viz. Sandesh and Gujarat Samachar on 14.08.2024 and in one English Newspaper, i.e. Indian Express on 14.08.2024, wherein it is specifically mentioned that the present Petition filed by the Petitioner seeking amendment in aforesaid Order No. 1 of 2024 dated 22.02.2024 i.e. tariff framework for wind- solar, hybrid power projects and procedure for grant of connectivity dated 7.01.2023 approved by the Commission, wherein the Petitioner has seek amendment. The aforesaid public notice issued by the petitioner is covering participation from larger stakeholders which also includes the parties/objectors who have filed their suggestions/objections during the procedure for determining tariff framework in the Order No 01 of 2024 dated 22.02.2024 as well as the parties/ objectors who have submitted their objections on draft procedure for connectivity prescribed by the Petitioner on which comments and suggestions were invited by them. The Petitioner has also uploaded the Petition with relevant documents on website. The Commission has also uploaded the said Petition on its website and invited comments and suggestions from the stakeholders. Thus, it is incorrect to say that the original objectors/stakeholders need to join as a

party to the present Petition. In fact, an opportunity given to more persons to file their objections/suggestions if any, on the subject matter of the Petition without limiting to original objectors/stakeholders. Considering the above, we are of the view that the aforesaid objections of the stakeholders is not acceptable and the same is rejected.

10.43. Some of the objectors have raised the objections that as per the provisions of Electricity Act, 2003, rules and regulations framed under it by Government and Commission and CEA, only generating company, licensee and consumers are recognized for generation of electricity, supply of electricity, transmission of electricity, trading of electricity, consumption of electricity. Thus, any other person or developer is not recognized in Act, Rules or Regulations, therefore, the proposed amendment in tariff order passed by the Commission and amendment in procedure for grant of connectivity of RE projects as proposed by the Petitioner is in contravention of principle Act, Rules and Regulations. Further, it is also stated that the connectivity is permissible only to consumer, licensee or generating company with considering of provision of Section 39 and 42 of the Act. On this ground the present petition is not admissible and maintainable is concerned, we note that the Petitioner has proposed to add two provisos in Order No. 01 of 2024 dated 22.02.2024 under clause 3.10 (c) and in the procedure for grant of connectivity to projects based on RE sources under clause 4.5 of the said procedure. We note that the procedure for connectivity consists of applicability clause 2.1 which reads as under:

*"2. Applicability*

*2.1 This procedure shall be applicable to the following:*

*.....*

*(ii) This procedure shall be applicable to the concerned agencies such as Gujarat STU, Transmission Licensee(s), Distribution licensees, State Load Dispatch Centre (SLDC), RE implementing Agencies, RE Park Developers etc."*

Thus, RE park developer is recognized in the aforesaid procedure on whom the

grant of connectivity prepared by GETCO and approved by the Commission is applicable. Further, the Government of Gujarat has issued the RE Policy 2023 which recognizes the RE Project Developer and RE park developer who will carryout different works related to development of RE projects including common infrastructure works to set up RE plant in such park and utilize the common resources in optimal manner. The relevant portion in GoG Policy issued vide G.R. No. REN/e-file/20/2023/0476/B1 dated 04.10.2023, read as under:

*"12. Renewable Energy Parks*

*12.1 In order to minimize the cost of common infrastructure and optimize the evacuation infrastructure along with fulfilling the objectives of this Policy, it is also desirable to promote the development of RE parks, which include solar parks, wind parks, and hybrid parks (i.e., solar-wind).*

*...*

*12.3 The Government of Gujarat may designate the Renewable Energy Park developer on a nomination basis, which may be Gujarat Power Corporation Limited or any other state government agency. The Guidelines issued by Central Government from time to time for development of Solar Parks shall be applicable to all Park Developers."*

- 10.44. In regard to eligible entities seeking connectivity as provided under Open Access Regulations, 2011, it needs to be noted that the said Regulations have to be read with the purpose and intent of optimum utilization of resources and promotion of renewable sources provided under the Electricity Act, 2003. In case of the Developer Model also, the developer is the generating company who is setting up the generating station and on sale of capacity to another entity, the said entity is the generating company which owns the generating station.
- 10.45. We also note the submission of the Petitioner that the RE Park has been considered as the representative of the Generating stations developing the Park and providing the infrastructural facility and have been recognized by Government of Gujarat as well as other State Governments. RE Parks seek connectivity on behalf of the Generating Companies which would establish the generating station in the Park. Even in regard to the inter-state transmission,

RE Parks are recognized to be eligible for seeking connectivity and even open access. If the purposive interpretation is not followed, this would stall the process of RE development. RE Parks are recognized under the RE Policy issued by Government of Gujarat as well as by MNRE. It cannot be that the RE Parks being developed and promoted by the Government of India and State Government are left out of mechanism. We also note that the Section 86 (1) (e) of the Act states for promotion of RE based projects and consumption. The central commission has also recognized RE park developers for promotion of RE projects.

- 10.46. Considering the above and in view of larger public interest and to uphold the objective under the Electricity Act, 2003, the objections of stakeholders that the connectivity is granted only to generator, licensee or consumers and not RE park developer/RE Project developer is not correct. Hence, the aforesaid objections of the stakeholders are not accepted.
- 10.47. Now we deal with the issues with regard to aspects raised by the some of the objectors that they had obtained connectivity prior to 07.01.2023 and set up RE projects either on their name or with consideration that grant of transfer permission and transfer of connectivity is permissible under prevailing norms as applicable as on date of grant of connectivity and sought transfer permission and transfer of connectivity prior to or after 07.01.2023 from GETCO / GEDA. After grant of connectivity prior to 7.01.2023, different activities have been carried out for development of RE projects and applied for approvals by such entity/project developer to GETCO / GEDA and their projects are at different stage of commissioning /injection of energy into the grid based on the connectivity which were granted by the Petitioner GETCO prior to 07.01.2023. They have taken various step such as application for grant of connectivity, payment of charges for load flow study, connectivity approval granted by GETCO in accordance with the load flow study, meetings with GETCO for feasibility and finalization of feeder bays at GETCO S/S, submission of bank guarantee for connectivity, estimate issued by GETCO for erection of feeder



bays for evacuation of power from power plant, payment of supervision charges on metering equipment, evacuation line and bays at GETCO end, agreement for bays work at GETCO S/S, approval by GETCO for appointment of GETCO approved contractor for erection of feeder bays at GETCO S/S along with metering bays, connection agreement with GETCO, approval under Section 68 and Section 164 of the Electricity Act for carryout bays at GETCO end and creation of dedicated line from pooling stations of plant to GETCO S/S, in some of the cases grant of development permission and transfer permission by GEDA, permission for transfer of connectivity and signing of transmission agreement etc. by GETCO, CEI drawing approval for feeder bays & dedicated line, charging permission granted by CEI for feeder bays.

- 10.48. It is further stated that many of the aforesaid activities were carried out prior to 07.01.2023 and some of the activities are carried out after 07.01.2023. It is also contended by the objectors that they have made huge investment in RE projects and also the plants are already on commissioning stage and in some cases the projects have been witnessed for commissioning by the GEDA/GETCO, however, the commissioning of such project is restricted due to Order No. 01 of 2024 dated 22.02.2024 by the GEDA / GETCO. The objectors have also stated that as they have developed the RE projects based on connectivity granted prior to 07.01.2023 with consideration that the transfer permission and transfer of connectivity is permissible under the extant norms / policy as well as order of the Commission as well as procedure laid down by GEDA/GETCO at relevant time. Therefore, the projects which have been executed or ready for commission under aforesaid situation be governed by the earlier Government Policy as well as the procedure laid down by GEDA and also followed by GETCO at relevant time when original connectivity was granted. The objectors have also stated that other similarly placed RE Projects with aggregate capacity of about 432.36 MW have been granted transfer permission as well as allowed to commission i.e., projects granted connectivity prior to the connectivity procedure 07.01.2023 were subsequently granted transfer permission as well as transfer of connectivity and also allowed to



commission the Project even after the Connectivity Procedure dated 07.01.2023. The restriction on transfer of connectivity as well as not allowing commissioning of RE project and inject energy into the grid which is developed based on the connectivity norms applicable prior to 07.01.2023 is against the provision of Act, which provides for promotion of renewable energy projects and generation. Further, it amounts to discriminatory treatment by GETCO/GEDA which is required to be corrected by the Commission by allowing such projects to commission having aggregate capacity of around 275 MW as stated by the Petitioner GETCO in its Petition.

10.49. We note that the Petitioner in its additional submission dated 17.09.2024 stated as under:

*“..... The above amendment once introduced would also apply to the entities who were granted connectivity prior to the Detailed Procedure as well as after the Detailed Procedure and they may be allowed transfer of connectivity. However, it may be noted that the requirement of the declaration of RE project developer and RE park developer at the time of application as referred to in the proposed amendment can only apply to entities who apply in future since the entities who had already applied and granted connectivity, there was no provision for such declaration at the time of application. In particular for the entities who were granted connectivity prior to the Detailed Procedure dated 07.01.2023, there was no bar for transfer of connectivity and such entities had already been granted connectivity and taken steps on such basis. Therefore the entities who were already granted connectivity, would have to be treated separately and it may be considered to allow transfer of such entities.”*

10.50. We note that the Government of Gujarat had framed Policies on renewable energy sources from time to time for promotion of renewable energy generation and consumption in the State and granted various benefits/incentives under the policy. The Commission has also passed generic Tariff Orders on renewable energy sources i.e. Wind, Solar, Wind-Solar Hybrid

etc. from time to time to provide regulatory support and certainty on the aforesaid subject for promotion of RE generation and consumption in the State. The GEDA is nominated as nodal agency for undertaking various activities concerning to development of RE projects in the State. The GEDA has been following executive procedure formulated under the relevant Govt Policies for promotion of RE projects in the State which include the registration of such projects, grant of development permission and transfer permission for RE projects etc. The GETCO had granted the connectivity to RE projects and also allowed for transfer of connectivity granted prior to 7.01.2023 i.e. date of connectivity procedure, to another person. Thus, as per the norms applicable prior to 7.01.2023, the connectivity holding by a person was permissible to be transferred to another person for execution of RE projects and transmit/wheel energy generated from such RE projects developed by transferee person, to the place of consumption as case may be.

10.51. We also note that the GETCO has prepared connectivity procedure of RE projects and made various provisions with regard to grant of connectivity and after following due process of law approached to the Commission for approval and the same was approved by the Commission on 07.01.2023. The said procedure restricted transfer of connectivity.

10.52. We also note that there may be following types of projects prevailing as on the date of aforesaid procedures approved by the Commission:

1. The projects which have applied for connectivity prior to above procedure for grant of connectivity and they have also executed projects on or before 07.01.2023.
2. The projects which have applied for connectivity prior to 07.01.2023 and connectivity has been granted by the GETCO to such projects/person prior to 07.01.2023 and they have also started various activities for execution/implementation of projects. However, such projects are not completed by 07.01.2023 but they are executed / completed after 07.01.2023.

- 10.53. Here it is also necessary to note that the Commission has passed Order No. 01 of 2024 dated 22.02.2024 wherein the Commission has decided tariff framework of wind-solar hybrid projects. The aforesaid Order also consist of the provisions that the connectivity is not transferable, in line with the stipulation provided in GETCO procedure for grant of connectivity which was approved by the Commission on 07.01.2023.
- 10.54. The Petitioner has in the present case submitted that due to aforesaid provisions there are various RE projects which are stranded at the different stage of commissioning, for which aforesaid connectivity procedures and provisions of Order No. 01 of 2024 dated needs to be amended so as to allow commissioning of such projects which are being set up based on the connectivity granted prior to 07.01.2023 wherein there was no explicit bar for transfer of connectivity under extant norms / policy. On referring to submission of stakeholders and GETCO, the Commission observed that the projects which have been granted connectivity prior to 07.01.2023 by GETCO, could have been at different stage as on Order No. 01 of 2024 dated 22.02.2024. The same are stated below:
- 10.55. The projects which have carried out project execution related various activities prior to 7.01.2023 and after 7.01.2023 and such projects have been allowed to commission even after 7.01.2023 but prior to Order No. 01 of 2024 dated 22.02.2024, wherein the registration of the project, development permission and transfer permission etc granted by GEDA and transfer of connectivity also granted by GETCO.
- 10.56. The projects have carried out project execution related various activities prior to 7.01.2023 and after 7.01.2023 and such projects have not been allowed for commissioning, pursuant to Order No. 01 of 2024, i.e. 22.02.2024, wherein some of the permissions granted by GEDA/GETCO prior to 22.02.2024 but such projects are not permitted for transfer permission /transfer of connectivity / open access/ commissioning, as the case may be.

- 10.57. These projects have carried out various activities prior to 7.01.2023 and after 7.01.2023 and such projects have been ready for commissioning or they have applied for commissioning activities and sought various permissions from GEDA/GETCO/Discoms on or after Order No. 01 of 2024 dated 22.02.2024, wherein the GEDA/GETCO/Discoms have either witness the commissioning but not issued commissioning certificate (as per objector submissions). There are some of the projects which are ready for commissioning as on Order No. 01 of 2024 dated 22.02.2024 and they had applied to GEDA/GETCO/Discoms for carryout commissioning activities on or after 22.02.2024 but GEDA/GETCO/Discoms have neither witness the commissioning nor issued commissioning certificate, in some of cases GETCO/ GEDA has denied transfer permission, denied signing of transmission agreement / open access etc. after Order No. 01 Of 2024 dated 22.02.024.
- 10.58. Considering the above, we are of the view that it is necessary to provide regulatory certainty and clarity for above stated RE projects to commission and generate renewable energy and transmit / wheel such energy at the place of consumption. It is to be noted that GETCO has granted permission in name of transferee entity to carryout various activities for development of projects for the cases for which connectivity is granted prior to 7.01.2023 and entities have proceeded for execution of projects and made ready for commissioning with huge investment based on the norms prevailing prior to 07.01.2023 i.e. with consideration that development permission, transfer permission, and transfer of connectivity is permission under the prevailing norms as being applied by GETCO / DISCOMs/ GEDA.
- 10.59. We also note the facts stated by some of the stakeholders/objectors that GETCO and GEDA have differently interpreted the provisions of non-transferability of connectivity provided in procedure for connectivity of RE projects approved by the Commission on 07.01.2023 for similarly placed other RE projects who have been granted connectivity prior to 07.01.2023 but such projects are allowed for commissioning even after 07.01.2023 but prior to Order dated 22.02.2024, whereas the commissioning of about 275 MW RE



project capacity as being referred to in present petition, has been denied by GETCO/GEDA.

- 10.60. We note that GETCO has in its submission dated 17.9.2023 also requested that such RE projects i.e. the projects which have been started various activity based on connectivity granted prior to 7.01.2023 and executed projects be treated at par and they shall be permitted for transfer permission, transfer of connectivity, grant of open access and commissioning etc. for transmitting/wheeling of power from generating stations to consumption place.
- 10.61. Considering the above, we decide and clarify that the RE projects which have been implemented based on connectivity granted by GETCO prior to 07.01.2023 i.e. prior to date of connectivity procedure approved by the Commission, as stated above, were eligible for grant of transfer permission, transfer of connectivity, grant of open access, signing of transmission / wheeling agreement and commissioning of projects for transmitting/wheeling of energy from generating stations to consumption place and therefore transferee entities of such projects are allowed for the same, if already not permitted by GETCO/ GEDA / DISCOMs.
- 10.62. Now we deal with the issue with regard to addition of following proviso under clause 3.10 (c) of Order No. 01 of 2024 dated 22.02.2024 and clause 4.5 of grant of connectivity to projects based on RE sources to intra-state transmission system dated 7.01.2023 approved by the Commission, as under, as sought by the Petitioner:

*“Provided that where RE Park Developer (as declared in the application for connectivity) developing the infrastructure facilities for the RE Projects to be established in the RE Park obtains connectivity for evacuation of power from RE projects located in the RE Park, such arrangement between the RE Park Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Park Developer shall be deemed to be on behalf of the RE Projects also.*



*Provided further that where under any scheme duly declared in the application for connectivity, the RE Developer develops the RE Projects in aggregate, with Connectivity to the Grid taken by the RE Developer with intent to allocate, transfer and assign individual RE Projects to identified entities, such arrangement between the RE Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Developer shall also be deemed to be on behalf of the RE Projects also for all intents and purposes”*

- 10.63. The rational given by the Petitioner for addition of aforesaid proviso is necessary to refer. It is also necessary to refer the relevant provisions of the Renewable Energy Policy 2023, which is reproduced below:

*"Project Developer / RE Project Developer" shall mean an entity that makes investment for setting up solar or wind or wind-solar hybrid power project for the purpose of generation of electricity. Provided further that in case of wind Power Projects and also Wind-Solar Hybrid Power Projects wherein the development of project is being undertaken by an entity with requisite infrastructure in terms of land, internal roads, pooling sub-station, dedicated transmission line upto grid substation etc. and thereafter the project is transferred by such entity to another entity(ies), the RE project developer in such cases for the period upto transfer of project, shall mean the transferor entity and after the transfer of project shall mean the transferee entity who owns and operates the project for end use of energy generated from such project or parts) thereof. Commissioning of projects connected with the State Grid will be undertaken on execution of Wheeling Agreement / Power Purchase Agreement with DISCOM or consumer(s)."*

- 10.64. Thus the Policy recognizes the Project developers / RE project developers who carry out various activities related to set up of RE projects.

- 10.65. It is also necessary to refer provisions related to RE Parks provided in the Gujarat RE Policy, 2023, which read as under:

## *12. Renewable Energy Parks*

*12.1 In order to minimize the cost of common infrastructure and optimize the evacuation infrastructure along with fulfilling the objectives of this Policy, it is also desirable to promote the development of RE parks, which include solar parks, wind parks, and hybrid parks (i.e., solar-wind).*

*12.2 Park Size: The minimum capacity of RE park shall be 50 MW, and the maximum park capacity shall be in accordance with the guidelines or schemes of MNRE as issued from time to time.*

*12.3 The Government of Gujarat may designate the Renewable Energy Park developer on a nomination basis, which may be Gujarat Power Corporation Limited or any other state government agency. The Guidelines issued by Central Government from time to time for development of Solar Parks shall be applicable to all Park Developers.*

10.66. The aforesaid provision envisages for development of RE parks by developer with intent to minimize the cost of common infrastructure and optimize the evacuation infrastructure to fulfil the objectives of Policy, for promotion of RE projects which include solar parks, wind parks, and hybrid parks (i.e., solar-wind). The RE park developers be facilitator for the person/industries/consumers who may not having expertise to execute the projects be able to set up their RE projects with economically viable and technically feasible to own and operate the projects to either meet their requirement or sale such energy to other entities. It will also helpful in optimum utilisation of resources. Hence, we are of the view that the development of RE park is beneficial to State. We also note that the request of GETCO that the enabling provisions under the clause 4.5 of the connectivity procedures dated 07.01.2023 approved by the Commission and in the Order No. 01 of 2024 dated 22.02.2024 under Clause 3.10 (c) be incorporated, seems valid, legal and justified.

10.67. Hence, we decide to add following provisos under clause 3.10 (c) of Order no. 01 of 2024 dated 22.02.2024

*“Provided that where RE Park Developer (as declared in the application for connectivity) developing the infrastructure facilities for the RE Projects to be established in the RE Park obtains connectivity for evacuation of power from RE projects located in the RE Park, such arrangement between the RE Park Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Park Developer shall be deemed to be on behalf of the RE Projects also.*

*Provided further that where under any scheme duly declared in the application for connectivity, the RE Developer develops the RE Projects in aggregate, with Connectivity to the Grid taken by the RE Developer with intent to allocate, transfer and assign individual RE Projects to identified entities, such arrangement between the RE Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Developer shall also be deemed to be on behalf of the RE Projects also for all intents and purposes”*

- 10.68. We also decide and allow to add following proviso under clause 4.5 of “grant of connectivity to projects based on RE sources to intra-state transmission system” dated 7.01.2023:

*“Provided that where RE Park Developer (as declared in the application for connectivity) developing the infrastructure facilities for the RE Projects to be established in the RE Park obtains connectivity for evacuation of power from RE projects located in the RE Park, such arrangement between the RE Park Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Park Developer shall be deemed to be on behalf of the RE Projects also for all intents and purposes. The RE Park Developer shall be required to declare the intent at the time of filing of the application for Connectivity.*

*Provided further that where under any scheme duly declared in the application for connectivity, the RE Developer develops the RE Projects in aggregate, with Connectivity to the Grid taken by the RE Developer with intent to allocate, transfer and assign individual RE Projects to identified entities, such arrangement between the RE Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Developer shall also be deemed to be on behalf of the RE Projects also ”*

*“Provided that where RE Park Developer (as declared in the application for connectivity) developing the infrastructure facilities for the RE Projects to be established in the RE Park obtains connectivity for evacuation of power from RE projects located in the RE Park, such arrangement between the RE Park Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Park Developer shall be deemed to be on behalf of the RE Projects also.*

*Provided further that where under any scheme duly declared in the application for connectivity, the RE Developer develops the RE Projects in aggregate, with Connectivity to the Grid taken by the RE Developer with intent to allocate, transfer and assign individual RE Projects to identified entities, such arrangement between the RE Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Developer shall also be deemed to be on behalf of the RE Projects also for all intents and purposes”*

- 10.69. We note that the definition of “Project Developer / RE Project Developer” and description of “RE Parks” as provided in the Gujarat RE Policy, 2003 is just and adequate for the purpose imparting more clarity to above provisos. Therefore, we decide that for the purpose of above provisos:

*“RE Park Developer” shall mean the entity that develops RE park which include solar parks, wind parks, and hybrid parks (i.e., solar-wind), and the description of RE parks shall be governed as under:*

*Park Size: The minimum capacity of RE park shall be 50 MW, and the maximum park capacity shall be in accordance with the guidelines or schemes of MNRE as issued from time to time.*

*The Government of Gujarat may designate the Renewable Energy Park developer on a nomination basis, which may be Gujarat Power Corporation Limited or any other state government agency. The Guidelines issued by Central Government from time to time for development of Solar Parks shall be applicable to all Park Developers.*

Further, for the purpose of above provisos:

*“Project Developer / RE Project Developer” shall mean “Project Developer / RE Project Developer” shall mean an entity that makes investment for setting up solar or wind or wind-solar hybrid power project for the purpose of generation of electricity. Provided further that in case of wind Power Projects and also Wind-Solar Hybrid Power Projects wherein the development of project is being undertaken by an entity with requisite infrastructure in terms of land, internal roads, pooling sub-station, dedicated transmission line upto grid substation etc. and thereafter the project is transferred by such entity to another entity(ies), the RE project developer in such cases for the period upto transfer of project, shall mean*



*the transferor entity and after the transfer of project shall mean the transferee entity who owns and operates the project for end use of energy generated from such project or parts) thereof. Commissioning of projects connected with the State Grid will be undertaken on execution of Wheeling Agreement / Power Purchase Agreement with DISCOM or consumer(s)."*

- 10.70. We also note that the GETCO has in its additional submission dated 17.09.2024 submitted that the requirement of declaration of RE project developer and RE park developer at the time of application as referred to above amendment can only applied to entities who apply in future since the entities who had already apply and granted connectivity, there was no provision for such declaration at the time of connectivity application, seems correct.
- 10.71. We note that some of the objectors have made submission against the proposed provision that the entity shall require to declare the intention at the time of connectivity application if they are applying as RE park developer or RE developer (aggregate) and only such entity shall be allowed for transfer. They have submitted that it is not feasible to declare such intention at the time of connectivity application, instead of this, the entity may be allowed to declare at the time of seeking open access whether they are transmitting/wheeling electricity for captive use and/or sale to third party, is concerned, we note the submission of the Petitioner GETCO that the objective for declaring intention at the time of connectivity application is to ensure that only genuine cases of developer model or RE park model be granted for transfer of permission so as to address the concerns that the connectivity should be sought only by genuine applicants who apply for themselves and only exception being a recognized methodology of developer model or RE park model. It seems force in submission of GETCO. Hence, the aforesaid objection/suggestion of the objectors are not acceptable and rejected.
- 10.72. We also note that some of the objectors have made suggestions that the transfer permission be provided for all entities without any restriction that only RE project developer/RE park developer will be permitted for transfer



permission is concerned the aforesaid suggestion/objection is already dealt and discussed and covered in earlier part of this Order.

- 10.73. As regard to seeking clarification by the Petitioner to the effect that if the provisions as sought in the Petition is made in the Order No. 01 of 2024 dated 22.02.2024, such provision in Regulation 13 (XI) of GERC (Green Energy Open Access) Regulations 2024 would be equally apply to such transferee entities, the same seems valid.
- 10.74. As regard other suggestions such as revisiting of supervision charges, time frame provided for commissioning of project, allowing submission of bank guarantee in lieu of land documents for applying stage II connectivity, flexibility in procedure for grant of connectivity, grant of extension in commissioning of the project etc. are concerned the aforesaid suggestions/objections which are not relevant to the subject matter of the present Petition and beyond the scope of the prayer and issues involved in the present Petition and are not accepted and the same are rejected.

### **ORDER**

11. In view of above the present Petition succeeds as under.
- 11.1. While allowing the Petition, we decide and clarify that the RE projects which have been implemented based on connectivity granted by GETCO prior to 07.01.2023 i.e. prior to date of connectivity procedure approved by the Commission, were eligible for grant of transfer permission, transfer of connectivity, grant of open access, signing of transmission / wheeling agreement and commissioning of projects for transmitting / wheeling of energy from generating stations to consumption place and therefore transferee entities of such projects are allowed for the same, if already not permitted by GETCO/ DISCOMs/ GEDA.
- 11.2. We further decide to add following provisos in para 3.10 (c) of Order No. 01 of 2024 dated 22.02.2024:

*“Provided that where RE Park Developer (as declared in the application for connectivity) developing the infrastructure facilities for the RE Projects to be established in the RE Park obtains connectivity for evacuation of power from RE projects located in the RE Park, such arrangement between the RE Park Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Park Developer shall be deemed to be on behalf of the RE Projects also.*

*Provided further that where under any scheme duly declared in the application for connectivity, the RE Developer develops the RE Projects in aggregate, with Connectivity to the Grid taken by the RE Developer with intent to allocate, transfer and assign individual RE Projects to identified entities, such arrangement between the RE Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Developer shall also be deemed to be on behalf of the RE Projects also for all intents and purposes”*

- 11.3. We also decide and allow to add following provisos under clause 4.5 of “grant of connectivity to projects based on RE sources to intra-state transmission system” dated 7.01.2023:

*“Provided that where RE Park Developer (as declared in the application for connectivity) developing the infrastructure facilities for the RE Projects to be established in the RE Park obtains connectivity for evacuation of power from RE projects located in the RE Park, such arrangement between the RE Park Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Park Developer shall be deemed to be on behalf of the RE Projects also for all intents and purposes. The RE Park Developer shall be required to declare the intent at the time of filing of the application for Connectivity.*

*Provided further that where under any scheme duly declared in the application for connectivity, the RE Developer develops the RE Projects in aggregate, with Connectivity to the Grid taken by the RE Developer with intent to allocate, transfer and assign individual RE Projects to identified entities, such arrangement between the RE Developer and the RE Projects shall not be in breach of the above and the connectivity so taken by the RE Developer shall also be deemed to be on behalf of the RE Projects also ”*

- 11.4. We note the submission of the Petitioner and clarify that the requirement of declaration of RE project developer and RE park developer at the time of

connectivity application as referred to above amendment shall only apply to entities who apply in future since the entities who had already applied and granted connectivity, there was no provision for such declaration at the time of connectivity application made by them.

- 11.5. We also clarify that the aforesaid amendment would apply to transferee entities as referred under Regulation 13 (XI) of GERC (Green Energy Open Access) Regulations, 2024.
- 11.6. We further clarify that aforesaid amendment and decision taken in this Order with regard to grant of connectivity and transfer of connectivity for RE projects shall be equally applicable to all types of RE projects, which include Wind, Solar and Wind-Solar Hybrid Projects.
12. Order accordingly.
13. The present Petition stands disposed of as above.

**Sd/-**  
**(S.R. Pandey)**  
**Member**

**Sd/-**  
**(Mehul M. Gandhi)**  
**Member**

**Sd/-**  
**(Anil Mukim)**  
**Chairman**

Place: Gandhinagar

Date: 21/ 09 / 2024.