

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR

Petition No. 1882 of 2020.

In the matter of:

Review petition under Section 94 of the Electricity Act, 2003 read with Regulation 72 of the GERC (Conduct of Business) Regulations, 2004 for review of Order No. 03 of 2020 dated 08.05.2020 for tariff framework for procurement of power by distribution licensees and others from Solar Energy Projects and other commercial issues for the State of Gujarat.

Petitioner : Kutch Sea Water Desalination Pvt. Limited
Co-Petitioner : Bhavnagar Desalination Pvt. Limited
Co-Petitioner : Dwarka Sea Water Desalination Pvt. Limited
Co-Petitioner : Gir Somnath Desalination Pvt. Limited

Represented by : Learned Advocates Shri Kunal Nanavati and Shri Nisarg Desai along with Shri Prayag Bhavsar, Shri Neeraj Nair & Shri Banlumlang Phira

V/s.

Respondent No. 1 : Energy and Petrochemicals Department, GoG.
Represented by : Shri J. J. Gandhi

Respondent No. 2 : Paschim Gujarat Vij Company Limited
Represented by : Shri J. J. Gandhi

Respondent No. 3 : Dakshin Gujarat Vij Company Limited
Represented by : Shri P. P. Choudhary

Respondent No. 4 : Madhya Gujarat Vij Company Limited
Represented by : Nobody was present.

Respondent No. 5 : Uttar Gujarat Vij Company Limited
Represented by : Shri K. D. Barot

Respondent No. 6 : Gujarat Water Infrastructure Limited
Represented by : Nobody was present.

CORAM:

Shri Anand Kumar, Chairman

Shri P.J. Thakkar, Member

Date: 24/08/2020

DAILY ORDER

1. The matter was listed for admission on 19.08.2020 for virtual hearing through Video Conferencing, physical presence being not insisted on account of prevailing COVID 19 pandemic and containing its spread. The Petitioners and the Respondents were intimated regarding the said hearing through letter dated 06.08.2020 & Email dated 07.08.2020 and thereafter the link for virtual hearing was also provided to them.
2. Learned Advocate Shri Kunal Nanavati, on behalf of the Petitioners, submitted that the present Petition has been filed by the Petitioners through 'E-filing' mechanism of the Commission on 07.07.2020 for which the requisite fees are paid electronically on 06.07.2020 and therefore, the Review Petition is filed within the stipulated time period. He submitted that the Petitioners through the present Petition is seeking review of the Commission's Order No. 3 of 2020 dated 08.05.2020, wherein the Commission has determined the Tariff Framework for procurement of power by distribution licensees and others from Solar Energy Projects and other commercial issues for the State of Gujarat. He submitted that the Commission in the aforesaid Order has not taken into account the provisions of GR No. SLR-11-2018-1602-B1 dated 15.05.2019 issued by Energy and Petrochemicals Department, Government of Gujarat with regard to 'Desalination Plants within Integrated power generation

units in the State of Gujarat'. The aim of the aforesaid GR is to reduce the cost of desalinated drinking water by utilizing renewable energy sources since energy consumption is one of the main elements of desalinated water cost and the total cost of power for desalination process comprises more than 60% of total cost of desalination project. He submitted that the process for desalination of water being highly energy intensive, the intent of the aforesaid policy is not only to reduce the cost of desalinated water but also to encourage the renewable energy sources.

- 2.1. He submitted that the Petitioners are established as Special Purpose Vehicles (SPVs) Companies of M/s Shapoorji Pallonji Private Company Limited and M/s Aquatech Systems Asia Pvt. Limited. The objective of these SPVs is to Design Build Operate and Transfer (DBOT) scheme and deliver the desalination plants to Gujarat Water Infrastructure Limited (GWIL) and to implement the Desalination Project, as per the terms and conditions of a Concession Agreement dated 26.02.2020.

- 2.2. He submitted that the aforesaid GR dated 15.05.2019 as a special case, in respect of water desalination plants to be set up through Narmada, Water Sources, Water Supply and Kalpsar Department, Government of Gujarat provides certain relaxations with regard to the ceiling norms regarding capacity of Wind/Solar Power Projects and allowed upto 400% of contract demand with distribution licensees. He submitted that thus the capacity of Wind/Solar Plants which are set up for meeting the entire energy requirements of desalination plants can be up to 400% of the contracted demand with the distribution licensee. The said GR also provides regarding power banking facility for one billing cycle for consumption of power from Wind/Solar power project for the Water Desalination plants. It also states that

purchase of excess power from Solar/Wind Power Plant after meeting the requirements of the desalination plant to be purchased by GUVNL/DISCOMs at the tariff discovered and contracted by GUVNL through competitive bidding process during previous six months before signing of agreement with GUVNL/DISCOMs for the said purpose and to be applicable for entire term of the agreement. The said GR also states about the eligibility criteria of the desalination plant for availing the relaxations available under the said GR. He submitted that the GR dated 15.05.2019 was also amended by Government of Gujarat through subsequent GR No. SLR-11-2018-1602-B1 dated 19.07.2019.

- 2.3. He submitted that the Commission while issuing Order No. 3 of 2020 dated 08.05.2020 has taken note of all the amendments made by the State Government through various GR in Solar Policy, 2015 including in respect to MSME projects and accordingly made provision in Regulation 3.3 pertaining to "Capacity", wherein it has allowed MSMEs for setting up Solar Power Project of any capacity irrespective of their sanctioned load/contracted demand but in case the Solar Power Projects set up by MSME (Manufacturing) Enterprise is above 50% of its contracted demand, energy account settlement shall be carried out on 15 minute time block basis. He submitted that in the aforesaid Order, the Commission has observed that the maximum capacity for Solar Power Projects shall be up to maximum of 50% of consumer's sanctioned load for captive use, third party sale, power projects set up under NSM with sale of power to consumers within the State with an exception that MSME Enterprise allowed to set up Solar Project irrespective of their sanctioned load/contract demand. While observing the same, the Commission has not considered the GR dated 15.05.2019 in respect of water desalination plants to be set

up through Narmada, Water Sources, Water Supply and Kalpsar Department, Government of Gujarat which needs to be reflected in the Order of the Commission. He submitted that the Petitioners are intending to avail the said relaxation in the ceiling norms regarding capacity of Wind/Solar Power Projects to be used for meeting the entire power consumption at Water Desalination Plants and therefore, the Commission may relax and allow setting up of Wind/Solar Power Projects upto 400% of contract demand with distribution licensees.

2.4. He submitted that the banking facility for the energy generated from such Wind/Solar Power Plants as per the aforesaid GR is permitted for desalination plants sourcing power from Wind/Solar Power Plants to meet their entire energy demand. He further submitted that although the provision in the said GR in this regard is 'one billing cycle', the Petitioners are pressing for extending the banking facility upto one year and also requesting to clarify the methodology for energy settlement and calculation of banking charges and open access charges. He submitted that the Petitioners are also seeking full wavier of the Cross Subsidy Surcharge and Additional Surcharge on the entire energy consumed by the desalination plant from Wind/Solar Power Plants set up either by Captive route or third-party installation by the Petitioners.

2.5. He submitted that since the Order of the Commission does not deal with the provisions of the GR dated 15.05.2019 and issues as stated above, the Petitioners have approached the Commission by way of filing the present Review Petition. He submitted that as the aforesaid Order of the Commission suffers from an error apparent on face of the record, the Commission may review the Order No. 3 of 2020

duly considering the relaxations provided in the GR dated 15.05.2019 and amendment dated 19.07.2019 of Energy & Petrochemicals Department, Government of Gujarat.

3. Shri J. J. Gandhi, on behalf of the Respondent No. 2 PGVCL, submitted that with regard to the prayers of the Petitioners which are sought as per the GR dated 15.05.2019 of Government of Gujarat pertaining to the ceiling norms regarding capacity of Solar Power Projects are to be relaxed and allowed up to 400% of contract demand with distribution licensees and the banking facility up to one billing cycle from the distribution companies be permitted for desalination plants for sourcing their power requirement to meet its energy demand is concerned, PGVCL has no objection to the aforesaid prayers of the Petitioners. He further submitted that banking facility be limited to one billing cycle in accordance to the provisions of the aforesaid GR. As far as the other prayers of the Petitioners in respect of full wavier of Cross-subsidy Surcharge and Additional Surcharge on the entire energy consumed by the desalination plant from Solar Power Plants set up either by Captive route or third-party installation is concerned, he submitted that the Respondent No. 2 PGVCL wants to file its reply in the matter. He requested the Commission to grant 3 weeks' time to file the reply in the matter.

4. On a query from the Commission about the status of the all four desalination projects and whether the sites for desalination plants are identified or not, Learned Advocate Shri Kunal Nanavati appearing for the Petitioners submitted that the sites for desalination plants are identified by the Petitioners but the financing for the plants are still under progress.

5. On a further query from the Commission as to why the Petitioners have mentioned 'Wind/Solar' in its Review Petition when the Petitioners are seeking the review of the Solar Tariff Order No. 3 of 2020 dated 08.05.2020, Learned Advocate Shri Kunal Nanavati, on behalf of the Petitioners, submitted that since the words 'Wind/Solar' is mentioned in GR dated 15.05.2019, the Petitioners have mentioned the same in their Review Petition. However, the Commission may record his statement that the 'Prayers' in the present Petition be restricted with respect to the 'Solar' Energy Power Projects only and consider the present Review Petition for seeking review of the Solar Tariff Order No. 3 of 2020 dated 08.05.2020 issued by the Commission. He further submitted that the Petitioners shall file necessary amendment through affidavit in the matter. He requested the Commission to grant sometime to the Petitioners to file the affidavit in this regard and also to file the rejoinders to the reply/submissions to be filed by the Respondent No. 2 PGVCL and other Respondents, if any.

6. We have considered the submissions made by the parties. The present Petition has been filed by the Petitioners seeking review of the Commission's Solar Tariff Order No. 3 of 2020 dated 08.05.2020. The Petitioners have submitted that the Commission has not taken into account the provisions of the GR No. SLR-11-2018-1602-B1 dated 15.05.2019 of Energy & Petrochemicals, Government of Gujarat and its subsequent amendment with regard to 'Desalination Plants within Integrated power generation units in the State of Gujarat', in its Order No. 3 of 2020 dated 08.05.2020 and has therefore, approached the Commission by way of present Petition seeking review of the aforesaid Order.

- 6.1. When the matter was called out, nobody was present on behalf of the Respondents No. 4 and 6 although the hearing notice was issued well in advance by Post as well as email and link for today's hearing was shared with the Respondents. Moreover, the Commission has not received any communication from these Respondents about their inability to remain present during today's hearing.
- 6.2. We also note that the Petitioners on the basis of Government of Gujarat's Resolution dated 15.05.2019 and its amendment, are seeking review of Solar Tariff Order No. 3 of 2020 dated 08.05.2020 proposing that the ceiling norms regarding installed capacity of Wind/Solar Energy Power Projects of the Petitioners to be relaxed up to 400% of contract demand with the distribution licensee and also to allow the banking facility from the distribution licensee for desalination plants sourcing power to meet its entire energy requirements. The Petitioners also requested the Commission to provide full waiver of Cross-Subsidy Surcharge and Additional Surcharge on the entire energy consumed by the desalination plants from their Wind/Solar Power Plants set up either by Captive route or third party installation.
- 6.3. We also note that Shri J. J. Gandhi appearing for the Respondent No. 2 PGVCL submitted that PGVCL has no objection to the two prayers of the Petitioners which are in accordance with the relevant provisions of GR dated 15.05.2019 of Government of Gujarat i.e. (i) With regard to relaxing the ceiling norm of installed capacity of Solar Power Projects and allowing up to 400% of contract demand with distribution licensee and (ii) With regard to the banking facility for one billing cycle be permitted for desalination plants sourcing power from Solar Power Plants to meet their energy requirements. However, with regard to the other prayers of the

Petitioners regarding waiver of Cross-subsidy Surcharge and Additional Surcharge on the entire energy consumed by desalination plant from Solar Power Plants set up either by Captive route or third party installation is concerned, he submitted that the Respondent No. 2 PGVCL wants to file its reply in the matter and accordingly, sought 3 weeks' time to file the reply in the matter.

6.4. We note that the Petitioners in its Petition and Prayer clause mentioned "Wind/Solar", whereas, in the subject matter, the Petitioners have mentioned that review of the Commission's Solar Tariff Order No. 3 of 2020 date 08.05.2020 is sought under Section 94 of the Electricity Act, 2003 read with Regulation 72 of GERC (Conduct of Business) Regulations, 2004. We note that so far as Wind Project is concerned, the Commission has passed Order No. 2 of 2020 dated 30.04.2020 regarding Tariff framework for procurement of power by distribution licensees and others from Wind Turbine Generators and other commercial issues for the State of Gujarat. On a query from the Commission in this regard, Learned Advocate Shri Kunal Nanavati, on behalf of the Petitioners, submitted that since the words 'Wind/Solar' is mentioned in the GR dated 15.05.2019, the Petitioners have mentioned the same in their Review Petition. However, the Commission may record his statement that the 'Prayers' be restricted with respect to the 'Solar' Energy Power Projects only and consider the present Review Petition for seeking review of the Commission's Solar Tariff Order No. 3 of 2020 dated 08.05.2020. He further submitted that the Petitioners shall file necessary amendment to the Petition and accordingly, sought time to file the same on the affidavit. Hence, we direct the Petitioners to suitably amend the Petition and prayers by filing the same through

affidavit duly notarised, within 7 days from the date of this Order and also to make available the copy of same to all the Respondents.

- 6.5. We also note that the Respondent No. 2 PGVCL has not filed the reply in the matter till date and accordingly sought time to file the same. Therefore, we direct PGVCL to file its reply, if any, within two weeks' time from the date of this Order, with a copy to the Petitioners. We also note that the other Respondents have also not filed their reply/submissions in the present matter. Accordingly, we also direct them to file their reply, if any, within two weeks' time from the date of this Order, with a copy to the Petitioners. The Petitioners are at liberty to file its rejoinder reply, if any, within one week after the receipt of replies from the Respondents.
7. The next date of hearing will be intimated after due compliance of the Commission's directives by the parties.
8. We order accordingly.

Sd/-
[P. J. THAKKAR]
Member

Sd/-
[ANAND KUMAR]
Chairman

Place: Gandhinagar.

Date: 24/08/2020.