

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 1815 of 2019**

**In the Matter of:**

**Petition under Section 9 and Section 86 (1) (e), (f) of the Electricity Act, 2003 and Regulation 45 of the GERC (Terms and Conditions of Intra - State Open Access) Regulations, 2011 and for payment of the unaccounted Solar Energy injected into the System by Captive Solar Power Plant.**

Petitioner : Rallis India Limited  
23<sup>rd</sup> Floor, Lodha Excellus at New Cuffe Parade  
Off. Eastern Freeway, Wadala, Mumbai – 400 037

Represented By : Learned Advocate R. N. Purohit with Shri Nikesh  
Mehta and Shri P. R. Mehta

V/s.

Respondent No. 1 : Dakshin Gujarat Vij Company Limited  
Represented By : Shri P. M. Patel and Shri M. D. Chaudhari

Respondent No. 2 : Torrent Power Limited  
Represented By : Shri Jignesh Langalia and Ms. Luna Pal

Respondent No. 3 : State Load Dispatch Centre – Gujarat  
Represented By : Nobody was present.

Respondent No. 4 : Gujarat Urja Vikas Nigam Limited  
Represented By : Shri Hetal Patel

Respondent No. 5 : Energy & Petrochemicals Dept., Govt. of Gujarat  
Represented By : Nobody was present.

Respondent No. 6 : Gujarat Energy Development Agency.  
Represented By : Nobody was present.

**CORAM:**

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

**Date: 19/10/2022.**

**INTERIM ORDER ON AMENDMENT SOUGHT IN MAIN PETITION**

1. The present Petition is filed by the Petitioner M/s Rallis India Limited under Section 9 and 86 (1) (e) and (f) of the Electricity Act, 2003 and Regulation 45 of the GERC (Terms and Conditions of Intra – State Open Access) Regulations, 2011 (Notification No. 3 of 2011) in the matter of getting credit adjustment for the 100% quantum of captive Solar Energy injected from 4 MW Captive Solar Power Plant installed and commissioned at Dahej by the Petitioner instead of 50% energy considered by the Respondents and direct the concerned utilities to pay interest on the amounts becoming due for payments for the period till actual month of payment to the Petitioner. The reliefs sought by the Petitioner in said Petition No. 1815 of 2019 are as under:

*“8.0 PRAYER*

- (a). admit the above petition*
- (b). Direct the concerned Utilities and hold that Adjustment and Credit of 100% solar energy injection be considered instead of only 50% considered as per Solar Power Policy – 2015*
- (c). Direct the concerned utilities to pay interest on the amounts becoming due for payments for the period till actual month of payment*
- (d). Consider passing on any other relief as this Honorable Commission may deem fit”*

2. The above matter was heard by previous bench of this Commission on 22.10.2019 for which Daily Order dated 20.12.2019 was passed. After hearing the parties and noting that issue involved in the main Petition has arisen due to setting up of Solar Power Plant for which activities were started during the Government of Gujarat Solar Policy, 2009 which had no limitation on capacity of the plant that can be set up. However, the plant was commissioned during the Government of Gujarat Solar Policy, 2015, wherein restriction of installing and commissioning of Solar Plant permitted being 50% of the contract demand of the consumers. The wheeling of energy is also permitted to 50%. In such a situation, the energy generated from the

Solar Power Plant of 4 MW and injected in to the grid but adjustment in the bill given by the Respondents is limited to 50% instead of 100% to the Petitioner's recipient units. Accordingly, in para 6.6 of the above Daily Order it is stated as under:

".....

6.6. *Considering the above, it is necessary to decide as to whether the issue involved is a billing dispute where the generation, injection, wheeling and adjustment of the energy in the bill is done by the Respondents who are distribution licensees and whether it falls within the jurisdiction of this Commission or the Consumer Grievance Redressal Forum and Electricity Ombudsman?*

7. *We, therefore direct all the parties to file their submissions on the jurisdiction issue within 21 days from the receipt of this Order, with a copy to other parties.*

....."

3. Thereafter, during the pendency of above main matter, the Petitioner vide an amendment application dated 28.02.2020 through affidavit dated 25.02.2020 has sought amendment in the original Petition requesting to allow insertion of para 3.4 at the end of para 3.3.0 and before para 4.0 with following prayer clause:

*"8.0 PRAYER*

- (a). Permit the Petition amendment as above*
- (b). Direct and hold that Adjustment of 100% solar energy injection be considered instead of only 50% considered as per Solar Power Policy – 2015*
- (c). Direct the concerned utilities to pay interest on the amounts becoming due for payments for the period till actual month of payment*
- (d). Direct and hold and declare that adjustment of Remaining unadjusted 50% Captive Solar Energy Injection be adjusted without policy specific benefit available under SSP – 2015; if at all remaining 50% captive solar energy injection is not considered feasible in terms of the SPP – 2015 as prayed for*
- (e). Direct and hold and declare that credit adjustment of 100% of energy injection be given*
- (f). Consider passing on any other relief as deem fit"*

4. Thereafter, the matter was taken up for hearing on 03.09.2021 by this bench wherein it emerged that some Respondents had not been served with the aforesaid amendment affidavit filed by the Petitioner in main matter. Therefore, while directing the Petitioner to provide amendment affidavit, the Respondents were directed to file their reply, if any, on the amendments sought in the Petition and prayer clauses by the Petitioner vide affidavit dated 25.02.2020 with copy to the Petitioner with liberty of filing rejoinder reply, if any, by the Petitioner.

**(A). AMENDMENT SOUGHT BY THE PETITIONER VIDE AFFIDAVIT DATED 25.02.2020**

5. The facts stated in the affidavit seeking Amendment in main Petition are as under:
- 5.1. The Petitioner has filed amendment to original Petition No. 1815 of 2019 in the matter of getting credit adjustment for the 100% quantum of Captive Solar Energy injected instead of 50% considered into the GETCO system for the Petitioner from its legitimately registered 4 MW Captive Power Plant (CPP) with GEDA which is installed and commissioned.
- 5.2. Permission of the Commission to allow the amendment in original Petition by way of amendment in prayer (as noted above) and to include following para in addition to those included in original Petition:

*“At the end of para 3.3.0 and before para 4.0 of the petition:*

*3.4 The Petitioner has initiated and received all statutory approvals for his 4 MW Solar Plant before promulgation of GOG Solar Policy dated 13<sup>th</sup> August 2015 and as such, this Petitioner is eligible for 100% adjustment of power generated. Without prejudice to our stand that we are eligible for adjustment of total solar generation. In any event if the same is not being granted, this Petitioner prays for considering this Solar Generating Plant as a Captive Power Plant under Sec. 9 of the Electricity Act, 2003 and under the provision of the same, allow this Petitioner credit for 100% generation of this Captive Power Plant as provided under Sec. 9 of the Electricity Act, 2003 for own consumption is irrespective of the type of fuel - be it Fossil Fuel or Nuclear or Wind or Solar or any other type capable of generating Electricity -and as such it is the Petitioner's unfettered right to get adjustment of power generated by this Captive Power Plant. Status and designation of our plant*

*is CAPTIVE POWER PLANT as per GEDA Registration letter Ref. GEDA/SOL/2015/11/OW/5814 dated 20% May, 2015. The Petitioner is agreeable to relinquish whatever additional benefits that might accrue under GOG Solar Policy, 2015 for balance 50% generation (other 50% qualify for benefits as per said policy) but our right to have our own Captive Power Plant for our own consumption is unambiguous as enshrined in the Electricity Act, 2003 and it is a cardinal principle of jurisprudence that any policy is subservient to the Act and not vice versa."*

6. As noted above, the original Petition has been filed under Section 9, Section 86 (1), (e) & (f) of the Electricity Act, 2003 and Regulation 45 of the GERC (Terms and Conditions of Intra – State Open Access) Regulations, 2011 in the matter of getting credit adjustment for the 100% quantum of captive Solar Energy injected from 4 MW Captive Solar Power Plant installed and commissioned at Dahej by the Petitioner instead of 50% energy considered by the Respondents as per the Government of Gujarat Solar Policy, 2015 and for payment of interest on the amounts becoming due for payment for the period till actual month of payment. Thus, the original Petition filed by the Petitioner is for issuing directions to the concerned Utilities i.e. Respondent No. 1 and 2 to credit 100% solar energy injection as considered from its solar power plant to its place of consumption in the Respondent No. 1 and 2 licensee area instead of only 50% considered as per Solar Power Policy - 2015. Further the Petitioner has prayed to direct the concerned utilities for payment of interest on the amounts becoming due for the payments for the period till actual month of payment.
7. Hence, it is necessary to refer the said Original Petition in which the Petitioner has sought amendment in certain paragraphs as well also prayer clause as stated above.

**(B). ORIGINAL PETITION FILED BY THE PETITIONER**

8. The facts stated in main Petition in brief are as under:
  - 8.1. It is stated that the Petitioner has installed 4 MW Solar Power Plant at Dahej, Taluka Vagra, which was registered on 20.05.2015 by Gujarat Energy Development Agency (GEDA) and is a "Generating Company" in accordance with Section 2, (28)

of the Electricity Act. The Solar Power generated is evacuated and transmitted through 66 KV GETCO line.

- 8.2. The Petitioner has signed a Long Term Open Access (LTOA) agreement with GETCO for full capacity of 4 MW for transmission of power from their Solar Power Generator (SPG) at Dahej to their places of consumption as Captive Generation by Recipient units at two different locations being (i) one in Dakshin Gujarat Vij Company Ltd. (DGVCL) area at Plot No. 3301, GIDC Ankleshwar, Dist. Bharuch with 2500 KVA Contract Demand with Utility - DGVCL; Ankleshwar (Ind.) Division and (ii) second one being at Plot No. Z/110, Dahej SEZ II, Dahej, Ta. Vagra, Dist. Bharuch, having Contract Demand of 2000 KVA (11 kV) with Utility Torrent Power Ltd.; Dahej. The copy of LTOA Agreement with GETCO and recent bills of above licensee/DISCOMs are filed with Petition.
- 8.3. It is further stated that for wheeling of Captive Solar Generation, the Wheeling Agreements are also signed with the Distribution Utilities viz. DGVCL and Torrent Power after completing all statutory and regulatory approvals prior to that and copies of said agreements are also filed. It is also stated that with the Solar Power Policy 2015 being declared by the Government of Gujarat in August 2015, the unforeseen limitation in installed capacity of Solar Power Plant viz. 50% of the Contract Demand has suddenly come up and therefore full capacity of 4 MWp is not permitted for wheeling and adjustment of power is not given in full as required.
- 8.4. It is stated that Wheeling Agreement dated 31.03.2016 with DGVCL under para 5 reads as under:

*".....5. M/s. Rallis India Ltd has made a representation to the Department of Energy & Petrochemicals seeking exemption from the applicability of the capacity of 50 % of Contract Demand of the consumer as stipulated in the Gujarat Solar Power Policy 2015. Pending final disposal of the representation, this agreement is entered for 50% of the Contract Demand of 2.5 MVA of the Consumer Unit in the event of the final disposal of the said representation, DGVCL hereby accepts to amend this agreement in accordance with directive of Govt. of Gujarat....."*

8.5. It is also stated that the matter had been pursued with the Government of Gujarat (GoG) but no decision/approval is received and no payment is received from Utilities for unadjusted Solar Power injected in to the system for which no credit is given. This has been causing substantial financial loss to the Petitioner and hence present Petition is filed for considering full (100%) quantum of Solar energy injection for credit adjustment from Utility bills or appropriate and just compensation on this account as may be deemed fit by this Commission in accordance with the provisions under the Electricity Act 2003 for Captive power.

8.6. Brief detail of events till commissioning of Solar Plant as stated in the Petition are as under:

- (a) It is stated that the Captive Solar Plant with 4.0 MW capacity was conceived by the Petitioner and taken up for execution much before the Solar Power Policy 2015 decided by the Government of Gujarat and due to delay in execution on account of reasons beyond the control of the Petitioner, its commissioning could be achieved after the date of promulgation of the Solar Power Policy 2015 by Government of Gujarat as can be seen from the chronology of events mentioned here below.

Sr.	Event	Date
1	Order to Tata Power Solar for EPC for Solar Plant	17.04.2015
2	After System Study, Evacuation Scheme approved by GETCO	30.04.2015
3	Solar Project Registered by GEDA	20.05.2015
4	Solar Project Registered by MNRE	05.06.2015
5	Land Issue caused by locales called for intervention and resolution through GIDC, Police, Collector etc. causing delay	During June '15
6	DGVCL consented to Wheel 4 MW Solar Power	29.06.2015
7	GPCB consent given	01.07.2015
8	Irreversible Financial Commitments (Rs. 31.5 Cr.) firmed up	31.07.2015
9	New Solar Policy Declared by Govt. of Gujarat	13.08.2015
10	After signing Connectivity Agreement with GETCO, obtaining CEI's permission for charging system connected to Grid	18.12.2015
11	Solar Plant commissioning certificate issued by GEDA	11.01.2016

12	Long Term Open Access Agreement signed with GETCO	19.01.2016
13	Agreement with DGVCL signed for Wheeling of Captive Solar Power Generation (Option 1) to Recipient unit of Petitioner at GIDC; Ankleshwar	30.03.2016
14	Agreement with TPL; A'bad signed for Wheeling of Captive Solar Power Generation (Option 1) to Recipient unit of Petitioner at Dahej SEZ-II Dist. Bharuch	29.04.2016

- (b) It is stated that from the above it may be observed that the land related problems which precipitated during June-15 got resolved by October-15 i.e. causing a substantial delay by more than 3 months in commissioning of the project and during that period only, Solar Power Policy - 2015 was declared by the Government of Gujarat which imposed an unforeseen limitation on Captive Solar Generation to 50 % of the Contract Demand of the end user. This caused a severe blow to the Company as Contract Demands (CD) of both the recipient units totaling to  $2.0 + 2.5 = 4.5$  MVA could get Solar power adjustment limited to 2.25 MW (With Unity pf) only and balance Solar power beyond permitted 50% CD could not qualify for adjustment as Captive Solar power. The date of applicability of aforesaid policy is stipulated as date of commissioning of the project which in this case of the Petitioner being December-2015/January-2016) being after the date of notification of the policy on 13.08.2015 and unanticipated 50% limitation being made applicable. The policy/Notification is silent on projects already taken up and registered as required in accordance with the Solar Policy prevailing then and lined up for commissioning. Such projects including that of the Petitioner, suffered heavy and fatal blow causing severe financial loss for no fault and/or negligence on part of the Petitioner.
- (c) It is stated that all actions, intentions and intents of the Petitioner for developing the Captive Solar Power plant were congruous with the Solar Power Policy of the Government of Gujarat as prevailing then and more importantly the plant with 4 MW was registered before the promulgation of Solar Power Policy - 2015 by the State Nominated Agency GEDA as a Captive Solar Plant as required. Therefore, in accordance to natural justice, the



Petitioner needs to be allowed credit adjustment of 100% Solar energy injected in the Utility bills for the Solar energy generation injected in to the system but could not be adjusted to the Petitioner's account and gainfully utilized by the Utilities concerned particularly considering the facts and circumstances of the matter of Solar power injected in to the system since as per information of the Petitioner, such plant was under construction before the policy but commissioned after the declaration of the policy are rare and will not have material impact on the Utilities. The copy of commissioning certificate from GEDA for the 4 MWp Captive Solar Power Plant is filed.

8.7. References and facts relied upon by Petitioner including this Commission having jurisdiction are as under:

(i). Section 9 of the Electricity Act, 2003 provides for Captive Power Plant as under.

"....

*9. (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:*

*Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.*

*(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:*

*Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:*

*Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission....."*

From the above, it may be noted that there is no provision for limitation on installed capacity of Captive Power Plant irrespective of its being conventional fuel-based plant or renewable energy plant. Hence as far as Captive Power Plant is concerned, the limitation of 50% of Contract Demand capacity may turn out to be *ultra-virus ab initio*, as far as injection of Captive power, Solar power or any other power and its wheeling to its destination for use as captive power is concerned. The Petitioner, however, does not dispute authority of the Government of Gujarat for further incentivizing the Solar Power and ss such, no State Government Policy can do away with or dilute the provisions (a) under the Central Act i.e. the Electricity Act, 2003 and (b) under the Regulations viz. Open Access Regulation under Order No. 3 of 2011.

(ii). Limitation Provision of 50% is against the intent and objectives of the Solar/Renewable Energy Policy at least for Captive Use:

(iii). The Electricity Act, 2003 under Section 86 (1) (e) provides that:

“.....

*(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 licence;*

.....”

Accordingly, the Electricity Act, 2003 also mandates this Commission to ensure that renewable generation is incentivized and limitation of 50% is a clear dis-incentivizing provision and therefore against the Electricity Act, 2003 as also the GERC Regulations. When there is no such restriction in installed capacity for conventional fuel based Captive Power Plant under the Act or under any Notification or Policy of the Gujarat Government, restriction in capacity in case of Solar Captive Plant is absolutely against

the intent and objectives of the Solar/Renewable Energy policy as it causes much disincentive for the same.

- (iv). Despite above Solar policy by the Government of Gujarat, the Solar Project was then taken up the Petitioner which was registered by GEDA and other concerned authorities and implemented in accordance with the Solar Policy prevailing then by the Petitioner although it was not possible to accommodate the restriction imposed under the new Solar Power Policy of 2015 of Government of Gujarat. Therefore, the Petitioner requests protection from perpetual financial loss by qualifying him for all the Solar power injected but not paid for.
- (v). It is stated that for any Captive Power Plant, following incentives/benefits are already available under the Electricity Act, 2003, the Electricity Duty Act, 1958 and/or the other policies of the Govt. of Gujarat, the GERC Regulations as under:
- (a). Exemption in Electricity Duty Payment for Renewable Power
  - (b). Exemption from payment of Cross Subsidy Charge and
  - (c). Exemption from payment of Additional Surcharge
- (vi). The benefits available under the Solar Power Policy - 2015 to Captive Solar Plant are very meagre (a) Banking of Solar generation and (b) APPC rate compensation for unadjusted Solar generation. However, in case of the Petitioner being continuous process industry there is very limited/negligible advantage on this account.
- (vii). Therefore, in totality for the Petitioner, the Policy intended for incentivizing Solar energy has *de facto* resulted in disincentivizing and hence it is requested to resolve the issue keeping view not only provisions under the Law viz. the Electricity Act, 2003 and the GERC Regulations but natural justice also.
- 8.8. It is stated that the Power Generation Policy, 2009 of the Government of Gujarat; Energy and Petrochemicals Department issued vide G.R No. IPP-102008-3258-K dated 02.01.2009 *inter alia* provide as under:

"... 2. AIMS & OBJECTIVES

- 1.1 To develop the state of Gujarat as a power generation hub
- 1.2 To have adequate availability of power in the state for agriculture, households, industry etc.
- 1.3 To ensure effective and efficient utilization of conventional fuels by the power generation industry
- 1.4 To build power generation capacity to encourage competition for procurement of electricity by state utility/distribution licenses
- 1.5 To encourage environment friendly and efficient power generation technologies....."

8.9. It is further stated that with the above policy and its provisions and subsequent "Vibrant Gujarat" summits inviting Developers to put up power plants including Solar Power Plants, this Petitioner also ventured in investing in Captive Solar Power Plant anticipating due support from the Government of Gujarat in letter and spirit. In light of the above policy, imposition of restriction in Captive Solar Plant capacity already registered prior to declaration of the new policy, being against the above policy and intents expressed therein, was absolutely unwarranted and unimaginable and breach of *promissory estoppel*. Hence 50% installed capacity of the Solar plant put up by the Petitioner got stranded for no fault and therefore regulatory support in the overall interest of power sector, laid down policies in regard to incentivizing Captive Power and Renewable power generation and the natural justice is needed.

8.10. Details of Solar Energy from 4.0 MW Plant of the Petitioner is as under:

Financial Year	FY-15-16	FY-16-17	FY-17-18	FY-19-20	Total
Unit injected in grid	2180589	6902298	6934410	5689941	21707237
Unit Allocated to Ankleshwar Unit F	13482	2087945	2097659	1718033	5917119
Allocated Dahej Unit	0	1525080	1671190	1368748	4565018
Total Unit Allocated to Plant	13482	3613025	3768849	3086781	10482137
Net unit unaccounted	2167107	3289273	3165561	2603160	11225100
Average Credit rate in Rs/Unit 6.7	1,45,19,618	2,20,38,126	2,12,09,258	1,74,41,169	7,52,08,171

- 8.11. It is stated that from the above table it can be seen that cumulative loss as of January-2019 to the Petitioner is approximately Rs. 7.52 Crore approximately on account of Unadjusted Solar Power. Considering interest at the rate of 15% p.a., from the date of payments becoming due, additional financial loss to the Petitioner towards interest charges has also been caused which need be compensated in the interest of justice.
- 8.12. It is stated that issues raised and response received by the Petitioner from other authorities is as under:

Date	Authority	Matter/ Reply
22.02.2016	Principal Secretary, EPD, GoG, Gandhinagar	Request for granting exemption on 50% capacity under Gujarat SPP 2015 to SPP for Captive consumption
23.08.2016	US to GoG, EPD	Reply -> Regretted
28.10.2016	Addl. Chief Secretary; EPD; GoG, Gandhinagar	Request for granting coverage under Gujarat SPP 2009 to set up SPP or Captive consumption at Dahej. No Reply Received but denied request during meetings.
21.08.2017	Addl. Chief Secretary; EPD; GoG, Gandhinagar	Request for granting permission to utilize 100% generation from Solar Power Plant set up for Captive consumption at Dahej. No Reply Received but denied request during meetings.
05.03.2019	Principal Secretary; EPD, GoG, Gandhinagar	Appeal to issue clarification/ interpretation to remove difficulties as per Para 22 & 23 of Gujarat Solar Power Policy - 2015 for permitting wheeling of 100% Captive generation of Rallis India Ltd. No Reply Received but during 09.05.2019 meeting difficulties in accepting request by the department expressed.
15.05.2019 /16.05.2019	Principal Secretary; EPD; GoG; Gandhinagar	Additional request/proposal given to clarify that the SPP-2015 would be applicable to those who opt for it and not to those who do not opt for it and its benefits. Reply / Action yet awaited

9. The Petitioner has thereafter filed an affidavit of service dated 14.10.2019.

**(C). REPLY FILED BY THE RESPONDENTS GUVNL AND DGVCL IN MAIN PETITION.**

10. The Respondent No. 1 DGVCL and Respondent No. 4 GUVNL have filed their reply to the original Petition vide their respective affidavits dated 16.11.2019 and 26.11.2019 which are almost similar *inter alia* submitting that the Petition is filed on 20.06.2019 and the period of three years prior to such date is time barred. Further, any claim for setting aside the specific terms of the contract being the Wheeling Agreement dated 31.03.2016 cannot be entertained as being time barred. The time period to claim for setting aside any terms of the agreement is only three years and accordingly, apart from raising preliminary issue of limitation all contentions and averments raised by the Petitioner are denied. Moreover, the Respondents have raised various other contentions, which are almost similar and are stated in brief as under:
- 10.1. That the Petitioner has filed the instant Petition for consideration of the adjustment of 100% of captive solar energy injected instead of the 50% being considered wherein the 50% has been considered in pursuance to the Government of Gujarat Policy 2015 as well as the Wheeling Agreements executed by the Petitioner itself with DGVCL accepting such conditions. The Petitioner in effect is seeking to contravene the provisions of the Policy as well as the Agreements which is not permissible.
- 10.2. It is submitted that the Government of Gujarat Solar Policy 2015 was introduced in August 2015 and would operate until 31.03.2020. The Policy would apply to the solar power generators who commissioned during the operative period of the Policy.

***“5. OPERATIVE PERIOD***

*5.1 This Policy shall come into effect from date of its notification and shall remain in operation up to March 31, 2020.*

*5.2 Solar Power Generators (SPGs) installed and commissioned during the Operative Period shall become eligible for the benefits and incentives declared*

*under this Policy, for a period of 25 years from their date of commissioning or for the lifespan of the SPGs, whichever is earlier.”*

10.3. It is stated that undoubtedly the plant of the Petitioner was commissioned within the operative period of the 2015 Policy and therefore the project is governed in accordance with the provisions of said Policy.

10.4. It is stated that the 2015 Policy provides benefits for the solar projects set up for captive use such as purchase of surplus power, electricity duty, wheeling loss, banking for wheeled solar energy, cross subsidy and additional surcharge etc. The 2015 Policy also recognizes the solar capacity cap of 50% of the contract demand of the consumer with respective distribution licensee as under:

*“9.2 Solar Projects for Captive Consumption Solar projects set up for captive use, both directly and under the REC mechanism.*

*CAPACITY: Up to a maximum of 50% of the contract demand of the Consumer.  
.....”*

10.5. It is submitted that the Petitioner was well aware of the above and accordingly had entered into Wheeling Agreements agreeing to the limitation of the 50% of the Contract Demand for wheeled solar energy.

10.6. It is submitted that the Petitioner intended for wheeling of power at two locations - (i) in the area of DGVCL having Contract Demand 2500 KVA and in the supply area of Torrent Power Limited having Contract Demand of 2000 KVA in Dahej SEZ area. With regard to DGVCL, the contract demand of the unit is 2500 KVA and accordingly the Wheeling Agreement was executed for 50% of Contract Demand of 2500 KVA. This was a specific condition accepted by the Petitioner. The relevant provision of wheeling agreement with DGVCL read as under:

*AND WHEREAS*

*“DISCOM is agreeable for wheeling of power on behalf of the Company in accordance with the Government of Gujarat's Solar Policy-2015 (Solar Policy), Gujarat Energy Regulatory Commission (GERC)'s Order No. 3 of 2015 "In the matter of Determination of Tariff for Procurement of Power by Distribution Licensees and Others from Solar Energy Projects for the State of Gujarat", GERC*