Open Access Regulations, 2011 and amendments thereto, Intra State ABT Order and amendment thereto and other applicable GERC Regulations and as per the terms and conditions contained in the Application Form filed by the Company with GEDA and as per the terms and conditions of this Agreement

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"3.0 Maximum allowable capacity of solar

As per Policy, the maximum allowable capacity of solar power for wheeling is 50% of the Contract Demand/Sanctioned Load. Hence the consumer shall ensure that at all the time, Contract Demand/Sanctioned Load shall be double of the capacity of SPG"

10.7. It is stated that in the letter dated 31.03.2016 of DGVCL the solar capacity allocated to recipient unit was clearly mentioned as 1.21 MW. Even, the Petitioner in the Agreement had accepted the above but had only reserved the right with regard to the representation made by it to the Government of Gujarat for an exemption from such restriction. The amendment, if any, had to be only in accordance with any directive of the Government of Gujarat. Since the Government had not granted any exemption, there can be no change in the terms of the contract. Having accepted the above, it is not open to the Petitioner to now claim any exemption from the Commission, which has not been granted by the Government.

10.8. It is submitted that the Hon'ble Supreme Court in the case of *Gujarat Urja Vikas Nigam Ltd v. Solar SemiConductor [(2017) 16 SCC 498]* has already held that the Commission does not have general powers to extend the control period for commissioning of the project. Similarly, in the present case, the Commission cannot extend the control period of the earlier Government Policy or otherwise prevent the application of the Solar Policy 2015.

10.9. It is submitted that when Policy or control period of Tariff Orders are notified, there may be a cut-off date prior to which the projects have to be commissioned or fulfill the criteria as laid down in the policy. If the project do not come within the said cut-off date, it cannot claim the benefits under such Policy or Tariff Order.

10.10. In fact, since previous 2009 Solar Policy had already expired by the time of commissioning of the project of Petitioner and new Solar Policy 2015 was already in place, the previous Policy cannot apply in any case. The 2009 Policy had provided for operative period until 31.03.2014:

"2. Operative Period
This policy will come into effect from the date of issuance and shall remain in operation up to 31.03.2014. Solar Power Generators (SPGs) installed and commissioned during the operative period shall become eligible for the incentives declared under this policy, for a period of twenty-five years from the date of commissioning or for the life span of the SPGs, whichever is earlier."

10.11. It is further stated that the Petitioner cannot claim the benefits of 2009 Solar Power merely on the basis that the registration of project with GEDA was done under the operative period of 2009 policy. The Policy can apply only if the project is commissioned within the operative period of the said Policy and not based on the registration with GEDA. In any case, even the registration with GEDA as claimed by the Petitioner on 20.05.2015 was after 31.03.2014 and therefore there is no basis for the Petitioner to claim applicability of 2009 Policy.

10.12. It is further stated that when a new Policy or Order or Notification is issued either to impose conditions or to provide benefits or a combination of both, it provides for effective date when the benefits/conditions would commence. The projects that are commissioned on or immediately after the effective date of new policy may have been and in fact likely to have been planned in the earlier Policy/Order. But this does not mean that the said earlier Policy or earlier Order would continue to apply even after the new Policy/new Order has come into effect as there will always be a date for the commencement of any Policy or Order or Notification.

10.13. It is stated that in this regard, the Hon'ble High Court of Gujarat in *Vishal Keshubhai Chudasama vs. State of Gujarat and Ors.*, dated 14.02.2014 in Special Civil Application No. 12866 of 2012 has held that once the new policy comes and the old Policy is abolished, even a person whose application under the old Policy was pending cannot claim application of the old policy:

"8..................There is no challenge in this petition to the competence or the power of the State Government in changing its policy, or to the Government Resolution dated 05.07.2011. It is settled law that the State can change its policy and substitute it with a new one, especially when the policy has financial implications, as policy decisions are exclusively within the domain of the executive Government [Balco Employees' Union (Regd.) Vs. Union of India and others reported in (2002) 2 SCC 333].

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10. As per the Government Resolution dated 05.07.2011, all pending applications as on that date, are to be decided under the new policy. A submission has been advanced that the Government Resolution dated 05.07.2011, having came into effect on that date, is prospective in nature, and cannot be applied retrospectively to applications made before it came into effect. It may be kept in mind that in Paragraph-3 of the said Government Resolution, it is specifically stated that the previous policy of appointment on compassionate grounds has been abolished by the new policy contained in this Government Resolution. This would mean that as on 05.07.2011, the earlier policy of giving appointment on compassionate grounds, ceased to exist. The only policy that now prevails, with effect from 05.07.2011, is the new policy of granting financial aid. It is clearly stated in Paragraph-5 of the Government Resolution dated 05.07.2011, that all pending applications will be decided under the new policy. Can this be said to result in retrospective application of the new policy? On the surface, the submissions advanced to this effect may seem attractive. However, on deeper consideration, in the view of this Court, the answer is in the negative. The reason for this conclusion is that by the Government Resolution dated 05.07.2011, the earlier policy has been abolished and ceases to exist on that date. When the erstwhile policy no longer exists, it cannot be made applicable to applications pending on the date of coming into force of the new policy. There is no doubt that the Government Resolution dated 05.07.2011 is prospective in nature. It is, therefore, being applied prospectively - that is, from the date it comes into force. Applications pending on 05.07.2011 would be governed by the new policy, as the earlier policy has ceased to exist once the new policy comes into effect. To the mind of this Court, it cannot be said that the stipulation in the said Government Resolution dated 05.07.2011 that pending applications are to be decided under the new policy, would amount to a retrospective application of the new policy. On the contrary, if it is concluded that pending applications are to be decided under the old policy, it would tantamount to reviving a policy that has been abolished and has ceased to exist, by legal fiction.

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19. In the considered view of this Court, the case of the petitioner is squarely covered by the ratio of the judgments of the Apex Court in State Bank of India and another vs. Raj Kumar (Supra) and MGB Gramin Bank Vs. Chakrawarti Singh (Supra). The petitioner cannot claim any right to have his application decided under the erstwhile Government Resolution dated 10.03.2000. The old policy no longer exists and the only right of consideration available to the petitioner is under the new policy laid down in Government Resolution dated 05.07.2011, which provides for payment of financial aid. The petitioner has declined to accept financial assistance under the new policy, while insisting that his application be decided under the old policy contained in Government Resolution dated 10.03.2000. As held by the Supreme Court in MGB Gramin Bank Vs. Chakrawarti Singh (Supra), the petitioner cannot insist that his application be decided under the old policy, once that policy has been abolished and a new policy has come into

force. The application of the petitioner can only be considered under the Government Resolution dated 05.07.2011. To take the benefit of financial assistance under the new policy, or not, is entirely a matter of choice on the part of the petitioner. However, in the event that the petitioner changes his mind and is desirous of availing of the benefit under the new policy, his initial refusal shall not deprive him of such consideration under the Government Resolution dated 05.07.2011, as his application has not been rejected by the respondents. For the aforestated reasons, the petition must fail. Accordingly, it stands rejected. Rule is discharged. There shall be no orders as to costs.

10.14. It is well settled that there has to be some cut-off date and choice of such date cannot be termed arbitrary. In this regard, the Respondent relies on the following decisions:

(A) Union of India Vs. M.V. Valliappan, reported in [(1999) 6 SCC 259]

"13. Secondly, the cut-off date of 31-12-1978 cannot be said to be arbitrary. The amending Bill was introduced in June 1980 and is given effect to from Assessment Year 1980-81. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances; while fixing a line, a point is necessary and there is no mathematical or logical way of fixing it; precisely, the decision of the legislature or its delegate must be accepted unless it is very wide off the reasonable mark. (University Grants Commission v. Sadhana Chaudhary.) The learned counsel for the respondent was not in a position to point out any ground for holding that the said date is capricious or whimsical in the circumstances of the case. In this view of the matter, the finding given by the High Court that there is no valid basis of justification for treating a Hindu undivided family separately in a hostile manner with reference to the date, i.e., 31-12-1978, is on the face of it erroneous."

(B) Ramrao and Ors. vs. All India Backward Class Bank Employees Welfare Association and Ors. [(2004) 2 SCC 76]

"33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution"

(C) Satya Nand Jha and Ors. vs. Union of India and Ors. [2017 (3) J.L.J.R. 187] dated 05.07.2016 in W.P.(T) No. 4858/15 and Batch (High Court of Jharkhand)

"8. REASONS:

……..

(iii)……….

We are not in agreement with this contention. It ought to be kept in mind that whenever any cut off date is prescribed, there are bound to be few persons who will fall on wrong side of the cut off date, but, it does not mean that the cut off date chosen by the legislature is arbitrary. In a statute relating to taxation, more liberty should be given to the legislature. The legislature enjoys a greater latitude for classification in the field of taxation.

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(xiv)......

Thus, in view of the aforesaid decision, how the cut off date has to be fixed and the nature of the cut off date etc. is to be left at the discretion of the legislature. The court should be slow to interfere or in altering a cut off date. As stated hereinabove, the cut off date in question is 6th August, 2014 and looking to the second proviso to Section 35F if any stay application or appeal is already preferred and pending before the appellate authority before 6th August, 2014, those will not be governed by the newly substituted Section 35F. This is the intention of the legislation, in no uncertain terms, meaning thereby that with respect to appeals preferred on or after 6th August, 2014, the newly substituted Section 35F shall be applicable.

(xv).......... We are not in agreement with this contention, mainly for the following reasons:

(a) whenever any cut off date is fixed by the legislature, there are bound to few persons who may fall on the wrong side of cut off date, but, that alone cannot be a ground for quashing the said provision.

(b) what should be the cut off date and how it should be fixed is the absolute prerogative power of the legislature and the court will be extremely slow in interfering with such type of fixation of cut off date as the court is neither a Cost Accountant, Chartered Accountant or Economist nor the court has the expert knowledge. Such type of cut off date is being fixed, keeping in mind certain factors, including economic aspects of the matter. As stated hereinabove, there are several objects for substitution of Section 35F. Always, all these objects and purposes are not to be mentioned in black and white. They can be inferred also.

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(xix)……….

Merely because in one case the assesse is getting benefit and in the other he is not, the substituted Section 35F cannot be termed as unconstitutional. Whenever, any cut off date is prescribed, there are bound to be few persons who will fall on the

wrong side of the cut off date. This fact neither makes the classification void nor the provision unconstitutional.

(xx) The Circular issued by the respondents dated 16th September, 2014 (Annexure-3 in W.P.(T) No. 4858 of 2015) as well as Circular issued by the respondent dated 14th October, 2014 (Annexure-4 in W.P. (T) No. 4858 of 2015) to be read with Circular issued by the respondent-State dated 5th January, 2015 are also absolutely constitutional in nature, because, by virtue of these Circulars there is a clarity about the cut off date in question i.e. 6th August, 2014 onwards."

10.15. It is submitted that the Petitioner was granted open access for wheeling of solar energy for 50% of the contract demand i.e. 1.21 MW. The Petitioner could not have and should not have injected more than the said capacity. Despite that, the Petitioner has without any open access and being aware that the agreement had been executed only for adjustment of 50% of the contract demand, on its own risk and cost injected power into the grid. Merely because the Petitioner injected the power into the grid cannot be a reason for claiming any adjustment or any consideration. If such adjustment is allowed, this would give a premium to the Petitioner for its wrongful act. The Petitioner cannot claim financial loss when it injected the power knowing fully well that it would not get compensated for such injection. The Petitioner cannot compel the Respondents to procure more power than agreed to. The Respondent had not agreed to purchase such power and the Respondents cannot be forced to pay for such power. Further, said injection power is treated as inform power. There is no equity in favour of the Petitioner and any consideration of the contentions, contrary to the specific terms of the Wheeling Agreement would be inequitable, unreasonable and would amount to destroying the sanctity of the contract and the Policy.

10.16. It is also stated that the Petitioner cannot pick and choose the terms of the 2015 Policy. The Petitioner had elected to accept the 2015 Policy and signed wheeling agreement with the Respondent DGVCL, which means that all terms of the 2015 would apply to the Petitioner. Having elected to do so, the Petitioner cannot go back on its election and cannot claim benefits under the 2015 Policy but refuse to adhere to the limitation and restrictions for eligibility under the 2015 Policy.

10.17. It is submitted that the Petitioner is seeking to reprobate and aprobate and the contentions of the Petitioner are contrary to doctrine of election. Having elected to enter into the agreement and take benefits as per the 2015 Policy, it is not open for the Petitioner to claim that the 2015 policy is not correct or refute certain terms of the 2015 Policy or Agreement. In this regard following decisions are relied upon:

(a). State of Rajasthan v. Union of India, [(2018) 12 SCC 83]

"3. After hearing the arguments of the learned counsel for the parties, we find substance in the aforesaid submission of the defendants. Even if we presume that the suit was maintainable, at the same time the plaintiff also had remedy of filing the statutory appeals, etc. by agitating the matter under the Finance Act. It chose to avail the remedy under the Finance Act. The doctrine of election would, therefore, become applicable in a case like this. After choosing one particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action."

(b). Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation, [(2011) 5 SCC 435]

"………
11. In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683: AIR 1993 SC 352] this Court observed as under: (SCC pp. 687-88, para 10)

> *"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."*

12. The doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily. [Vide Babu Ram v. Indra Pal Singh [(1998) 6 SCC 358]. P.R.. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] and Mumbai International Airport (P) Ltd. v. Golden Chariot Airport [(2010) 10 SCC 422: (2010) 4 SCC (Civ) 195].]
….."

10.18. It is submitted that the contention of the Petitioner that the 50% limitation is disincentivizing is not correct. This Commission has already recognized the validity of such limitation of 50% in the Net Metering Regulations 2016.

10.19. While reiterating the above preliminary submissions and stating that there is no merit in the Petition filed by the Petitioner, the Respondents have filed para-wise reply to the Petition as under:

(a). With regard to para 1 of the Petition, the description of the Petitioner, the agreements executed and the Government of Gujarat Policy 2015 are a matter of record. The Respondent craves leave to refer to the agreements for their true interpretation and scope. It is submitted that the agreement with GETCO is not relevant and the relevant agreement is the wheeling agreement with the distribution companies. It is submitted that the 2015 Policy provides certain benefits to solar power projects and also provides eligibility conditions and restrictions. It is the policy discretion of the Government of Gujarat to provide benefits as well as impose restrictions for getting such benefits, as may be considered appropriate.

(b). The Petitioner has stated that it had made a representation to the Government of Gujarat for an exemption from the restriction which has not been granted. The Wheeling Agreement had been executed by the Petitioner under the dispensation of 2015 Policy and in absence of any exemption and amendment of the Wheeling Agreement, the terms of the 2015 Policy and Wheeling Agreement dated 30.03.2016 would apply, including the capacity of 1.21 MW being 50% of the contract demand. DGVCL has agreed for only such 50% capacity and therefore the adjustment can only be with respect to such 50%. The contentions of financial loss etc. are misconceived. The Petitioner was well aware of the limitation of 50% and had specifically executed the wheeling agreement based on the same. It is not open for the Petitioner to inject more power than agreed to and claim financial loss. It was the Petitioner's choice and action and in fact such action was contrary to the Wheeling Agreement and 2015 Policy. The Petitioner cannot claim benefit or compensation for its own wrongful act. There is no justification for the

Petitioner to inject more than it was entitled and then further claim compensation for such injection. There is no compensation provided under Electricity Act, 2003 for captive power for injection of inform power without any contract or agreement and in fact contrary to the specific agreement and Policy.

(c). With regard to para 2 of the Petition, it is not disputed that the Commission would have jurisdiction with regard to any dispute between the Petitioner and the distribution licensees. However, any challenge to 2015 Policy by Government of Gujarat cannot be subject matter of a Petition before this Commission.

(d). With regard to para 3 of the Petition, it is submitted that the Respondent is not aware of the events prior to commissioning of the plant and same are also not relevant. The 2015 Policy applies from 13.08.2015 until 31.03.2020 and the Petitioner clearly falls within the operative period of the Policy 2015. There is no dispute on the same. The registration of the Project with GEDA is not relevant. The only relevant date is the date of commissioning of the project and effective date of applicable policy.

(e). In the normal course, all Policies, Tariff Orders etc. apply to projects commissioned in the operative period of the said Policy or Tariff Order. Any law would apply from the date it is notified and it cannot be claimed that since a person had initiated the process prior to such law, the law would not apply to it. Whether the Petitioner intended to set up under the previous Policy or not and the reason, if any for its delay is not relevant. The 2015 Policy applies to all projects commissioned in the operative period of the Policy and the Petitioner entered into the Wheeling Agreement based on such 2015 Policy. Having accepted the applicability of the 2015 Policy, it is not open for the Petitioner to now claim capacity contrary to the said Policy.

(f). It is further submitted that the Petitioner cannot challenge the 2015 Policy by way of the present Petition or in any way claim that the said Policy is arbitrary or otherwise not applicable. There is no legitimate expectation in such cases. The Petitioner cannot assume that merely because the 2009 Policy

(which had expired prior to the 2015 Policy) did not have a limitation or provided certain benefits, the subsequent policy would also do so. There is no natural justice or equity in the claim of the Petitioner.

(g). In any case, the alleged facts stated by the Petitioner are not admitted. The Petitioner was in fact aware prior to commissioning of the project that the limitation of 50% introduced in the 2015 Policy had been effective and the Petitioner despite the same, installed higher capacity of 4 MW without correspondingly maintaining contract demand with Distribution Licensee. It is also denied that the delay in commissioning of solar project was for reasons not attributable to the Petitioner.

(h). It is denied that there would be no material impact on the Distribution Companies. The Distribution Companies have entered into the wheeling agreement for a certain capacity and they cannot be compelled to wheel/procure more power than agreed to. Further the benefits and limitation under the 2015 Policy have been balanced by the Government of Gujarat and the Petitioner cannot claim all benefits but refuse the restrictions and limitations.

(i). With regard to Para 3.1 of the Petition, it is submitted that the Petitioner cannot challenge the 2015 Policy introduced by the Government of Gujarat before the Commission. In any case, it is submitted that admittedly, the Government of Gujarat has the jurisdiction to incentivize solar power and accordingly, the Government of Gujarat had provided certain benefits to the solar projects under 2015 Policy. The said Policy also provided certain restrictions or limitation to such benefits. The Petitioner had accepted the terms of the 2015 Policy and is seeking the benefits of the 2015 Policy. It is not open for the Petitioner to then claim that the other terms of the 2015 Policy would not apply. The benefits under 2015 Policy are applicable with restriction of capacity cap of 50% of contract demand.

(j). The 50% limitation under the policy is not disincentivizing nor is it a restriction. The intension for incorporating such provisions in the policy, is to balance the interest of solar project and general body of consumers. When the

Government of Gujarat is granting certain benefits to solar projects under the policy, it can put certain limit for applicability of those benefits. There can be no claim that benefits in a unrestricted manner should be granted to the solar projects/captive power projects. Having accepted the applicability of 2015 Policy and entered into an agreement based on the terms of the said Policy, it is not open to the Petitioner to claim contrary to the 2015 Policy and the Wheeling Agreements. The Petitioner out of its own free will chose to accept the terms of the 2015 Policy and it is not open for the Petitioner to now claim otherwise.

(k). With regard to Para 3.3, it is submitted that the terms of the Government Policy cannot be challenged before this Commission, nor can any contentions of promissory estoppel be raised against the Policy of Government. Even assuming but not admitting, that there can be any claim of promissory estoppel, the same is against the Government and cannot be raised in the present Petition.

(l). The previous Solar Power Policy 2009 was not applicable to Solar Power Project of the petitioner and cannot be relied upon. The Solar Power Policy 2009 specifically provided for operative period from date of issuance upto 31.03.2014 and generators who are commissioned within that period would be entitled to the benefits under the 2009 Policy. Thus the Petitioner was well aware that it had to commission the plant within the said period and not merely register or otherwise make part investment or anything less than commissioning. In fact the alleged registration with GEDA as claimed by the Petitioner, is also not within the operative period of 2009 Policy. Therefore it is not conceivable as to how the Petitioner had envisioned its projects to get the benefits of 2009 Policy.

(m). The 2009 Policy was to apply for certain operative period as mentioned in the policy and applicable only to solar projects commissioned in such period. Merely because the Petitioner may have hoped that the benefits would continue does not mean that there was any legitimate expectation, let alone any vested right for the benefits to continue as per the old Policy.

(n). If the contention of the Petitioner is accepted, then the Government or any authority or this Commission can never introduce new laws / rules /regulations / notifications / policy /orders which may vary the earlier new laws/rules / regulations/notifications/policy/orders.

(o). In any case, the Petitioner chose to accept the 2015 Policy and entered into the Wheeling Agreement on the basis of the said 2015 Policy and therefore it is not open to the Petitioner to now raise any issues on the terms of the Policy.

(p). With regard to para 4 of the Petition, it is submitted that there cannot be any consideration of solar energy injected for the period of 2015-16 as the Wheeling Agreement was entered on 30.03.2016 and the set off was to be given from the effective date of agreement i.e. 30.03.2016 (Page 25 Item No. 6). Therefore the claim for the period prior to 30.03.2016 cannot be sustained in any case (besides being time barred). Further the time period three years prior to the filing of the Petition is also time barred.

(q). In any case, it is submitted that the allocation was made for the capacity of 50% of the contract demand which was in accordance with the 2015 Policy and the terms of the Agreement.

(r). With regard to para 5, it is denied that there is financial loss to the Petitioner and in any case, the loss, if any was caused by the Petitioner wrongfully injecting power in excess to the wheeling agreement. When the distribution licensee has agreed for wheeling of certain capacity in terms of applicable policy, it is not open for the Petitioner to inject more and then claim any benefit or credit for the excess infirm injection. The Petitioner cannot take advantage of its own wrong. Any such injection is to be treated as inadvertent injection.

(s). With regard to para 6, the alleged communications have not been annexed and the contents are not be admitted. In any case, admittedly the Petitioner had accepted that the authority to grant exemption is the Government of Gujarat and accordingly it had approached the Government. Admittedly, the Government has not accepted the request of the Petitioner. The Government

had after due deliberation issued the 2015 Policy and the Petitioner cannot now claim a benefit contrary to the said Policy as a right. Further the act or omission of the Government cannot be challenged before the Commission.

(t). The contents of para 7 need no specific reply. It is however submitted that the Petitioner was commissioned within the operative period of 2015 Policy and has entered into the wheeling agreement on certain terms and conditions. The same cannot be changed.

(u). The contents of para 8 are wrong and denied. The Petitioner is not entitled to any relief, as claimed or otherwise. The claim of the Petitioner is contrary to the specific terms of the Wheeling Agreement executed by it as well as the terms of 2015 Policy and therefore cannot be entertained. There can be no adjustment or credit for the 100% and there can be no interest, even assuming but not admitting that the claim is accepted. The Respondent has acted in a bona fide manner as per the terms of the 2015 Policy and there can be no penalty or otherwise any late payment surcharge/interest for the same.

(v). With regard to para 9 of the Petition, it is submitted that the Petitioner had made representations to the Government which were not accepted.

(D). COMPLIANCE SUBMISSION OF THE PETITIONER ON JURISDICTION ISSUE

11. The Petitioner in compliance to the directives of the Commission in its Daily Order dated 20.12.2019 has filed its submissions on the issue of jurisdiction as under:

11.1. It is stated that the Petitioner has already submitted views in detail on jurisdiction in the Petition and has thereafter, relied by referring Section 9 and Section 86 (1) of the Electricity Act, 2003 in support of the issue of jurisdiction.

11.2. It is stated that the principal dispute between the Petitioner and the Respondents is pertaining to credit due to Petitioner for generation from its Captive Power Plant and that the dispute is principally between Generator (the Petitioner) and the Distribution Licensee. Predominantly the dispute is not a billing dispute but that of rights of the Petitioner as a Captive Power Plant owner in terms of Section 9 of the Electricity Act, 2003. It is further stated that during the first hearing of the matter

on 22.10.2019, none of the Respondents have raised the issue of jurisdiction and not objected to admission of the Petition.

11.3. It is stated that even in the response filed by Respondent No. 4 GUVNL it is mentioned that *"It is not disputed that the Hon'ble Commission would have jurisdiction with regard to any dispute between the Petitioner and the Distribution Licensees…."* The Petitioner has categorically stated that Policy by Government of Gujarat is not challenged but it is only prayed for granting credit for generation as Captive Power Plant from its Solar Power Plant established for captive consumption after obtaining all necessary approvals from statutory authorities.

(E). SUBMISSIONS OF THE RESPONDENT NO. 2 TORRENT POWER LTD. ON ISSUE OF MAINTAINABILITY / JURISDICTION

12. The Respondent No. 2 TPL has vide affidavit dated 06.02.2020 filed its preliminary reply for deciding the maintainability of the present matter and response to submission dated 07.01.2020 of the Petitioner. It is submitted that the Petitioner has filed Petition with reference to Section 9 and 86 (1)(e) and (f) of the Electricity Act, 2003 and Section 45 of the GERC Regulation 3 of 2011 regarding payment of solar energy injected into the system by Captive Solar Power Plant of 4 MW at Dahej corresponding to 100% of aggregate contract demand.

12.1. It is stated that the matter was heard on 22.10.2019 for which Daily Order dated 20.12.2019 is passed by the Commission wherein at Para 6.6, it is observed that 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.

12.2. It is stated that pursuant to the above, the Respondent received submission dated 07.01.2020 of the Petitioner, wherein it has been contended that the Petition filed is not a billing dispute but pertains to the rights of Captive Power Plant owner in terms of Section 9 of the Electricity Act, 2003.

12.3. It is submitted that proviso to Section 9 (1) of the Electricity Act, 2003, provides as under:

"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."

12.4. It is also stated that the present matter pertains to wheeling of Solar power generated from Captive Power Plant through the grid. Hence, the same is subject to the regulatory framework.

12.5. The Section 86(1)(f) of the Act, 2003 provides as under:

"(1) The State Commission shall discharge the following functions, namely:

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;"

12.6. It is stated that above Section casts duty on the State Commission to adjudicate upon the disputes between the licensees and the generating companies and it may be noted that the Petitioner has set up the project for its Captive consumption and not for sale of power to the Respondent.

12.7. It is further stated that the Petitioner has installed a Solar Photovoltaic plant of 4 MW capacity. As per the provisions of the erstwhile Solar Power Policy 2009, the minimum capacity cap of Solar Power Generator, in case of Solar Photovoltaic and Solar Thermal was of 5 MW each. Accordingly, the Petitioner's project was not eligible even under the Solar Power Policy, 2009. As such said Policy was applicable upto 31.03.2014 and the Petitioner's project has been installed in 2016.

12.8. It is stated that the Petitioner has prayed to the Commission to consider adjustment and credit of 100% solar energy injected in the grid. However, the Petitioner's prayer is contradictory to the Solar Power Policy, 2015 which restricts installation of Solar capacity only upto 50% of Contract Demand. It is the case of the Petitioner that its project was registered before issuance of Solar Power Policy, 2015. Per contra, as per the said Policy, any project after the date of Policy shall fall within its purview, irrespective of the date of registration.