

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2190 of 2023

In the Matter of:

Petition for approval of Power Purchase Agreement signed by GUVNL for Procurement of Power from Bagasse based Co-Generation Project under Order No. 03 of 2022 dated 27.06.2022 issued by the Commission for "Determination of Tariff for Procurement of Power by the Distribution Licensees and Others from Biomass based Power Projects and Bagasse based Co-generation Projects", for Control Period from FY 2020-21 to FY 2022-23 in the State of Gujarat.

Petitioner : Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course Circle, Vadodara – 390007.

Represented by : Ms. Vaishali Dalal and Mr. Amit Chavda

Respondent : Kedareshwar Khandsari Udyog Pvt. Limited
At village Nimbhora, Taluka: Kukarmunda District –
Tapi – 394380, Gujarat.

Represented by : Mr. Akhilesh Goya and Mr. Sourabh Chouhan.

CORAM:

**Anil Mukim, Chairman
Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 25/06/2024

ORDER

1. The present Petition filed by the Petitioner seeking following reliefs:
 - i. To admit the present Petition.
 - ii. To approve the Power Purchase Agreement for Procurement of Power by the Distribution Licensees and Others from Kedareshwar Khandsari Udyog Pvt. Ltd. from their Bagasse based Co-generation Project.

iii. To condone any inadvertent omissions/errors/shortcomings and permit the petitioner to make addition/change/modification/alter this filing and make further submissions as may be required at a future date;

2. The facts mentioned in the brief in the Petition are as under:

- 2.1. The present Petition filed by the Petitioner, which is a licensee undertaking bulk purchase of electricity from generating companies and other sources and bulk sale of electricity to the State Distribution Licensees.
- 2.2. The Distribution Companies are mandated to procure power from Renewable Energy Sources as per the section 86(1)(e) of the Electricity Act, 2003 and in terms of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Energy Sources) Regulations, 2010 as amended from time to time.
- 2.3. The Petitioner on behalf of its four Distribution Companies has been entering into Power Purchase Agreements amongst others with various Renewable Energy Generators for procurement of renewable power from time to time.
- 2.4. It is submitted that Section 3 (1) of the Electricity Act 2003 requires the Central Government to formulate National Electricity Policy in consultation with CEA & State Government for inter alia, development of renewable sources of energy. In compliance with this provision the Central Government has notified the NEP 2005 and Tariff Policy 2016 elaborating the role of Regulatory Commissions, mechanism for promotion and harnessing of renewable source of energy, time frame for implementation etc.
- 2.5. It is submitted that Sections 61 and 62 of the Electricity Act 2003 empower the State Commissions to specify the terms and conditions for the determination of tariff for generation, transmission, distribution and supply of electricity in their State.
- 2.6. In exercise of the powers conferred under Sections 61(h), 62(1)(a) and 86(1)(e) of the Electricity Act, 2003 and all other powers enabling it in this behalf, the Commission has determined the tariff for procurement of power by the

Distribution licensee and others in Gujarat from biomass-based power projects and bagasse based co-generation projects.

- 2.7. In support of the case, the Petitioner has referred Clause (a), (b) and (e) of the Section 86 (1) of the Electricity Act, 2003 regarding the function of the State Commission.
- 2.8. The Petitioner has also referred the National Electricity Policy 2016 formulated by the Ministry of power has given specific guidance on purchase of power generated from renewable energy sources.
- 2.9. The Commission has notified GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 dated 17.04.2010 and thereafter 1st Amendment dated 03.03.2014, 2nd Amendment dated 20.04.2018 and 3rd Amendment Regulations dated 08.04.2022.

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)				
	Wind (%)	Solar (%)	Hydro Power Purchase Obligation (HPO) (%)	Others (Biomass, Bagasse & Bio-fuel based cogeneration, MSW and Small/Mini/Micro Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)	(6)
2017-18	7.75	1.75		0.50	10.00
2018-19	7.95	4.25		0.50	12.70
2019-20	8.05	5.50		0.75	14.30
2020-21	8.15	6.75		0.75	15.65
2021-22	8.25	8.00		0.75	17.00
2022-23	8.25	8.00		0.75	17.00
2023-24	8.40	9.50	0.05	0.75	18.70
2024-25	8.55	11.25	0.10	0.80	20.70

- 2.10. In view of above, the purchase of power from bagasse-based co-generation power plants can help in RPO compliance of GUVNL. Additionally, power from bagasse-

based co-generation projects will also contribute to diversify the energy mix of GUVNL. The local generation from bagasse-based projects is expected to improve grid scenario of the State Grid as generation from the bagasse based plants is more predictable compared to other RE sources like Wind and Solar.

2.11. The Petitioner has received request from following Developer for signing of PPA for procurement of power from their Bagasse based Co-generation Projects as per terms and conditions set out by the Commission vide Order No. 3 of 2022 dated 27.06.2022 for procurement of power by distribution licensees from Biomass and Bagasse based co-generation projects.

- i. Shree Khedut Sahakari Khand Udyog Mandli Ltd., Bardoli, Surat vide letters dated 20.04.2022, 22.07.2022, and 06.10.2022 had requested for signing of PPA for supply of 31.19 MW power during Crushing Season and 25.78 MW during Non-crushing season from their 50 MW Bagasse based co-generation project.
- ii. Kedareshwar Khandsari Udyog Pvt. Ltd., Nimbhora, Kukarmunda, Tapi vide letters dated 18.09.2021, 23.11.2021, 05.07.2022, 25.07.2022, and 12.09.2022 had requested for signing of PPA for supply of 10 MW power during Crushing Season and 0 (zero) MW power during non-crushing season from their 15 MW Bagasse based co-generation project.

2.12. The Petitioner had forwarded the draft PPA to above developer and in response Kedareshwar Khandsari Udyog Pvt. Ltd. had approached GUVNL for signing of PPA. Accordingly, GUVNL has signed Power Purchase Agreement (PPA) on 14.12.2022 with Kedareshwar Khandsari Udyog Pvt. Ltd. incorporating the relevant provisions in line Commission's order dated 27.06.2022. The PPA silent features signed with the Bagasse based co-generation project developer is as under:

- (i) As per Commission's order dated 27.06.2022, the term of the PPA has been kept as 20 years from the commercial operation date of the entire project.

- (ii) The time period available to the project developer for commissioning of the project is kept as 36 months from date of signing of PPA.
- (iii) If the project is commissioned within the control period of the Commission order dated 27.06.2022, the applicable tariff shall be i) The fixed charges of Rs. 1.98/Kwh payable on the Scheduled Energy as certified in the monthly SEA by SLDC upto cumulative PLF of 60% per annum and ii) The energy charges determined by GERC from time to time on the scheduled energy as certified in the monthly SEA by SLDC.
- (iv) In case the project is commissioned in the control period of subsequent tariff order, the applicable tariff shall be lower of applicable tariff in two control periods i.e. (i) Date of signing of PPA, (ii) Date of actual CoD.
- (v) The Power Producer shall construct the project and its Interconnection Facilities including Plant Switchyard upto Delivery Point at its own cost. The transmission line from the Delivery Point to the sub-station of GETCO shall be constructed by GETCO. All charges and losses upto Delivery Point shall be borne by the power producer.
- (vi) The projects can meet the start-up / stand-by power requirement from the existing power supply available at the sugar factory from the power project. For energy drawn from grid for start-up / stand-by power, the power producer shall pay at HT tariff applicable for power supply at the sugar factory from time to time as determined by the Commission.
- (vii) If the project is not commissioned by its Scheduled Commercial Operation Date except due to Force Majeure, the Power Producer shall pay to the GUVNL liquidated damages for delay at the rate of Rs.3000 (Rupees Three Thousand Only) per day per MW with a ceiling of Rs.5,00,000 (Rupees Five Lakhs only) per MW. The delay in commissioning with levy of Liquidated Damages shall be allowed for a maximum period of 365 days after which

GUVNL may terminate this Agreement or give a chance to the Power Producer to complete the construction to get to the Commercial Operation.

(viii) Under the PPA, the "Crushing Season" has been defined as the period during each year in which the Power Producer is processing sugarcane and producing Bagasse which typically starts around 15th October and ends by 15th April each year. However, if there is any variation in the same, the Power Producer shall inform GUVNL through written communication at-least 10 days prior to commencement of Crushing Season.

2.13. The Petitioner submitted that the PPA signed with the developer is subject to approval of the Commission. It is specifically mentioned in the recitals of the PPA that *"the parties hereby agree that GUVNL shall approach the Hon'ble Gujarat Electricity Regulatory Commission for approval of this Power Purchase Agreement under Section 86 of the Electricity Act 2003 and that all terms & conditions of this Power Purchase Agreement shall be subject to aforesaid approval of the Hon'ble Commission and shall also be subject to all other terms & conditions that may be stipulated by the Hon'ble Commission in pursuance of the approval"*.

2.14. In view of the above, the Petitioner has filed the present petition for the approval of Power Purchase Agreement, for Procurement of Power by the Distribution Licensees and Others from Bagasse based Cogeneration Project of Kedareshwar Khandsari Udyog Pvt. Ltd.

3. During the pendency of aforesaid Petition, the Petitioner has filed IA No. 59 of 2023 in the present petition and requested to implead Kedareshwar Khandsari Udyog Limited as Respondent who has signed the Power Purchase Agreement with the Petitioner for supply of power generated from 10 MW bagasse based co-generation projects set up by the Respondent during crushing season and 0 MW during non-crushing season from 15 MW bagasse based co-generation power project.

4. The matter was heard on 24.05.2023, 2.09.2023 and 22.12.2023.

5. Shri Amit Chavda, appearing on behalf of the Petitioner reiterated the facts stated in para 2 above. He further submitted that the present Petition has been filed by the Petitioner seeking approval of the Commission for procurement of power from the 10/15 MW bagasse-based co-generation power plant set up by the Respondent at the tariff rate determined by the Commission by Order No. 03 of 2022 dated 27.06.2022 or the tariff determined by the Commission after completion of the control period specified in the said Order in which if the Respondent plant commissioned in that situation the lower of tariff of Order No. 03 of 2022 dated 27.06.2022 or the new tariff determined by the Commission after completion of control period specified in aforesaid Order.
- 5.1. He submitted that the Commission has notified GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendments made in it where it is provided to procure the renewable energy for fulfillment of RPO by the obligated entities. The Petitioner is procuring power in bulk on behalf of the State distribution licensees. Hence, it is an obligated entity requires to procure renewable energy for fulfillment of RPO notified by the Commission. The procurement of energy generated from the Respondent plant will be helpful to the Petitioner for fulfilment of the Renewable Purchase Obligation of the State distribution licensee.
- 5.2. He further submitted that the Petitioner has complied with the directive of the Commission to invite comments and suggestions on the Petition by issuing public notice. The Petitioner has not received any comments/suggestion from the stakeholders.
6. Mr. Akhilesh Goya, on behalf of the Respondent, Kedareshwar Khandsari Udhyog Pvt. Ltd. submitted that the Commission may approve the PPA executed between the Petitioner and the Respondent.

7. Heard the parties. The present Petition filed by the Petitioner GUVNL which is a licensee procuring the power and sale it on behalf of State Distribution Licensees of the State. We note that the present Petition has been filed by the Petitioner seeking approval of power procurement from the 15 MW bagasse-based co-generation plant set up by the Respondent wherein 10MW supply during crushing season and Zero MW during non-crushing season. As the procurement of power from the Respondent power plant at the tariff rate determined by the Commission in its Order No. 03 of 2022 dated 27.06.2022 under the provision of Electricity Act, 2003, it is necessary to refer the relevant provisions of Electricity Act, 2003 read with policy and regulations notified under it.

Section 61 of the Act which reads as under:

Section 61. (Tariff regulations):

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;]

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

7.1. The aforesaid Section state that the appropriate Commission notify the terms and conditions for Tariff Regulations. While framing the Regulations the Commission is guided by the provisions specified in clause (a) to (i) of aforesaid Section 61 of the Act as stated above. Clause (h) of Section 61 state regarding promotion of co-generation and generation of electricity from renewable sources of energy.

7.2. It is also necessary to refer Section 62 (a) of the Act, reads as under:

Section 62. (Determination of tariff): ---

(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

.....”

The aforesaid Section provides that appropriate Commission shall determine the tariff in accordance with the provisions of Act wherein supply of electricity by generating company to a distribution licensee.

7.3. It is also necessary to refer Section 86 (1) (a), (b), and (e) of the Act, reads as under:

“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;

.....

(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;”

Section 86 state regarding functions of the Commission. Section 86 (1) (a) state determination of tariff for generation, supply, transmission and wheeling of electricity wholesale bulk or retail as case may be.

Section 86 (1) (b) of the Act state regarding regulate procurement of power of distribution licensee by the State Commission which include price, quantum from sources by way of agreement between the distribution licensee and supplier within the State.

Section 86 (1) (e) of the Act state regarding promotion of co-generation and generation of electricity from renewable sources by providing suitable measures for connectivity with the grid and sale of electricity to any person. It also provides

to specify the purchase of electricity from such sources as a percentage of total consumption of electricity in the area of distribution licensee.

7.4. On combined reading of the aforesaid provisions, it is clear that the procurement of energy by the distribution licensee for fulfilment of its power requirement is regulated activity and needs approval of appropriate Commission. Further, the aforesaid provisions also provide for promotion of procurement of power through renewable energy sources as a part of total consumption of energy in its license area.

7.5. It is also necessary to refer clause 6.4.2 of National Tariff Policy, 2016 which provides for promotion of renewable energy generation-based sources reads as under:

"States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources, from Solar PV Power Projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government. However, till such notification, any such procurement of power from renewable energy sources Projects, may be done under Section 62 of the Electricity Act, 2003."

The aforesaid provisions provides that the power procurement from renewable sources be carried out through competitive bidding process except waste to energy plants as per the competitive bidding guidelines issued by the Government. However, till such guideline/notification issued the procurement of renewable energy may be done under Section 62 of the Electricity Act, 2003 by the licensee. Thus, in absence of competitive bidding guidelines issued by Government of India, the licensee may procure the renewable energy under Section 62 of the Act.

7.6. We note that the Commission has notified GERC (Procurement of energy from renewable sources) Regulations, 2010 and amendments made in it from time to time. 3rd Amendment made in aforesaid Regulations vide notification dated

8.04.2022. As per aforesaid notification the stipulated RPO percentage for the obligated entities of the State of the Gujarat are as under:

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)				
	Wind (%)	Solar (%)	Hydro Power Purchase Obligation (HPO) (%)	Others (Biomass, Bagasse & Bio-fuel based cogeneration, MSW and Small/Mini/Micro Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)	(6)
2017-18	7.75	1.75		0.50	10.00
2018-19	7.95	4.25		0.50	12.70
2019-20	8.05	5.50		0.75	14.30
2020-21	8.15	6.75		0.75	15.65
2021-22	8.25	8.00		0.75	17.00
2022-23	8.25	8.00		0.75	17.00
2023-24	8.40	9.50	0.05	0.75	18.70
2024-25	8.55	11.25	0.10	0.80	20.70

7.7. As per aforesaid notification the obligated entities which include the Petitioner who is procuring power on behalf of the distribution licensees of the State. The procurement of energy from biomass, bagasse and biofuel co-generation, MSW and small/mini/micro hydel projects shall be minimum 0.75% in 2023-24 and the same is minimum 0.80% in FY 2024-25 of total purchase of energy from renewable energy sources. Thus, it is mandatory on the distribution licensee to procure renewable energy generated from the aforesaid renewable energy sources for fulfilment of RPO.

7.8. We note that the Petitioner GUVNL has submitted the details vide letter No. 895 for compliance of RPO for FY 2022-23, wherein the GUVNL has informed that the renewable energy from biomass, bagasse, small/mini/micro hydro power plants and MSW is available 5.5 MUs, 137.3 MUs, 43.3 MUs, 22.5 MUs totaling to 209 MUs

against 888 MUs requirement for fulfillment of RPO for FY 2022-23. Thus, there is shortfall in availability of renewable energy from biomass, bagasse, small/mini/micro hydro power plants and MSW against the required energy for fulfillment of RPO.

7.9. Further, we note that the energy requirement for supply by the distribution licensees consists of conventional energy and renewable energy increases on year-to-year basis like in 2022-23 the energy requirement was 1,09,487 MUs. The same increase to 1,19,381 MUs in 2023-24 and the same is anticipated 1,32,666 MUs in FY 2024-25 in tariff petition filed by the Petitioner GUVNL. Thus, the quantum of renewable energy from biomass bagasse or small mini micro hydro power plants and MSW is required higher quantum on year-to-year basis.

7.10. We note that the energy available from the 10 MW power during crushing season and Zero MW during non-crushing season from 15 MW bagasse based co-generation plant of the Respondent and with consideration of the PLF of 60% of the plant, the same is, if added, to the existing biomass bagasse or small mini micro hydro power plants and MSW project the additional energy from the said 10 MW power during crushing season and Zero MW during non-crushing season from 15 MW plant of bagasse based project as per submissions of Petitioner in compliance of RPO for FY 2023-24, then also the total energy available from other sources, i.e. Biomass, Bagasse, Hydro, MSW based power plant is lower than required for fulfillment of RPO for FY 2023-24 and subsequent years. Considering the above, we are of view that the power procurement by way of execution of the PPA by the Petitioner with the Respondent for 15 MW is in interest of the Petitioner as well as consumers of the State and also helpful in fulfill the RPO requirement of the Petitioner which is statutory requirements.

7.11. We note that the tariff agreed between the Petitioner and the respondent is stated in Article 5.2 of the PPA, which is reproduced as under:

“.....

Article 5

RATES AND CHARGES

5.2 GUVNL shall pay the tariff determined by GERC vide Order No. 03 of 2022 dated 27.06.2022, i.e.

(a) Fixed tariff of Rs. 1.98 per KWH on the Scheduled Energy as certified in the monthly SEA by SLDC upto cumulative PLF of 60% per annum, for the entire project life of 20 years and

(b) Energy Charges determined by Hon'ble GERC from time to time on the Scheduled Energy as certified in the monthly SEA by SLDC. It is to clarify that the Energy Charge rate of Rs. 4.63 per kWh determined by GERC is applicable for the period upto 30.03.2023."

7.12. We also note that the Commission has passed Order No. 3 of 2022 dated 27.06.022 wherein the tariff determined by the Commission as under:

"

19.22. The Commission noted that Government of India had allowed biomass power project and bagasse-based co-generation power project owners to avail accelerated depreciation at the rate of 40% in the first year on written-down value (WDV) basis as per Union Budget. In addition to this, the amendment in the Finance Act 2012 allowed an additional depreciation of 20% to the power generation projects during the first year of commissioning of project. With this the biomass power project and bagasse-based co-generation project owners can avail 60% depreciation in first year of commissioning. The Commission, therefore, in the discussion paper had proposed two tariffs (i) with accelerated depreciation benefit and (ii) without accelerated depreciation benefit for procurement of power by utilities from biomass power project and bagasse-based co-generation power projects. The Commission in the Draft Order had calculated the annual levelized tariff.

Suggestions from Objectors: No comments have been received from the stakeholders.

Commission's Decision

19.23 The Commission has in earlier para of this Order decided that the fixed cost of the (i) Biomass based Power Projects with Water-cooled Condensers, (ii) Biomass based Power Projects with Air-cooled Condensers and (iii) Bagasse

based Power Projects with consideration of escalation of 4% as discussed in this Order. Similarly, the energy charge/variable cost for above type of projects is decided with consideration of escalation of 5% on year-to-year basis in energy charge/variable charge of earlier order. The same are stated below:

Parameters	Biomass based Power Projects with Water-Cooled Condensers	Biomass based Power Projects with Air-Cooled Condensers	Bagasse based Co-generation Projects
<i>Tariff</i>	<p>Levelised Fixed Component of Tariff for 20 years for the projects commissioned during FY 2020-21 to FY 2022-23</p> <p>(a) without AD benefit: Rs. 1.87/kWh (b) with AD benefit: Rs. 1.72/kWh</p>	<p>Levelised Fixed component of tariff for 20 years for the projects commissioned during FY 2020-21 to FY 2022-23</p> <p>(a) without AD benefit: Rs. 1.99/kWh (b) with AD benefit: Rs. 1.82/kWh</p>	<p>Levelised Fixed component of tariff for 20 years for the projects commissioned during FY 2020-21 to FY 2022-23</p> <p>(a) without AD benefit: Rs. 1.98/kWh (b) with AD benefit: Rs. 1.81/kWh</p>
	<p>Energy Charge/Variable cost</p> <p>FY 2020-21 – Rs. 4.21/kWh, FY 2021-22 – Rs. 4.42/kWh, FY 2022-23 – Rs. 4.65/kWh.</p>	<p>Energy Charge/Variable cost</p> <p>FY 2020-21 – Rs. 4.38/kWh, FY 2021-22 – Rs. 4.60/kWh, FY 2022-23 – Rs. 4.84/kWh.</p>	<p>Energy Charge/Variable cost</p> <p>FY 2020-21 – Rs. 4.20/kWh, FY 2021-22 – Rs. 4.41/kWh, FY 2022-23 – Rs. 4.63/kWh.</p>

On verification of the aforesaid rates, it transpires that the rate acquainted in the PPA is as per Order of the Commission which is determined by the Commission under Section 62 of the Electricity Act, 2003. Hence, we decide to approve the tariff rate of Article 5.2 of the PPA.

7.13. We note that as the present Petition has been filed by the Petitioner for procurement of power from the Respondent bagasse-based co-generation plant, it is necessary to hear the stakeholders/objectors on the power purchase agreement dated 14.12.2022 executed between the parties. The Commission vide its Order dated 31.05.2023 directed the Petitioner to issue public notice and invite comments and suggestions from the stakeholders on the PPA.

7.14. In compliance to aforesaid directives the Petitioner has issued public notice dated 23.06.2023 in Indian Express and Gujarat Samachar and Divya Bhaskar daily newspapers and invited comments and suggestions on the PPA. The Petitioner has also filed compliance affidavit dated 27.06.2023 in this regard. Thus, the Petitioner

has complied with the directives given by the Commission. Neither the Commission nor the Petitioner or the Respondent received any objections/suggestions on the Petition or PPA.

7.15. The silent features of the PPA are as under:

- (i) As per Commission's order dated 27.06.2022, the term of the PPA has been kept as 20 years from the commercial operation date of the entire project.
- (ii) The time period available to the project developer for commissioning of the project is kept as 36 months from date of signing of PPA.
- (iii) If the project is commissioned within the control period of GERC order dated 27.06.2022, the applicable tariff shall be i) The fixed charges of Rs. 1.98/kWh payable on the Scheduled Energy as certified in the monthly SEA by SLDC upto cumulative PLF of 60% per annum and ii) The energy charges determined by GERC from time to time on the scheduled energy as certified in the monthly SEA by SLDC.
- (iv) In case the project is commissioned in the control period of subsequent tariff order, the applicable tariff shall be lower of applicable tariff in two control periods i.e. (i) Date of signing of PPA, (ii) Date of actual CoD.
- (v) The Power Producer shall construct the project and its Interconnection Facilities including Plant Switchyard upto Delivery Point at its own cost. The transmission line from the Delivery Point to the sub-station of GETCO shall be constructed by GETCO. All charges and losses upto Delivery Point shall be borne by the power producer.
- (vi) The projects can meet the start-up / stand-by power requirement from the existing power supply available at the sugar factory from the power project. For energy drawn from grid for start-up / stand-by power, the power producer shall pay at HT tariff applicable for power supply at the sugar factory from time to time as determined by the Commission.

(vii) If the project is not commissioned by its Scheduled Commercial Operation Date except due to Force Majeure, the Power Producer shall pay to the GUVNL liquidated damages for delay at the rate of Rs.3000 (Rupees Three Thousand Only) per day per MW with a ceiling of Rs.5,00,000 (Rupees Five Lakhs only) per MW. The delay in commissioning with levy of Liquidated Damages shall be allowed for a maximum period of 365 days after which GUVNL may terminate this Agreement or give a chance to the Power Producer to complete the construction to get to the Commercial Operation.

(viii) Under the PPA, the "Crushing Season" has been defined as the period during each year in which the Power Producer is processing sugarcane and producing Bagasse which typically starts around 15th October and ends by 15th April each year. However, if there is any variation in the same, the Power Producer shall inform GUVNL through written communication at-least 10 days prior to commencement of Crushing Season.

On verification of the PPA, it is observed/found following provisions needs re-visit and modify and amended.

1. In Article 1, Definitions, Clause 1.1(c) and (f) are stated "not used" be deleted and renumbered clause 1.1 (d) as 1.1 (c) and clause 1.1 (e) as clause 1.1 (d). While clause 1.1 (g) to 1.1 (kkk) be re-numbered as 1.1 (f) to 1.1 (jjj).
2. In Clause 1.1 (v) re-numbered as 1.1 (u) pertaining to definition of "Electricity Laws" the word "The Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003" be added and the words "Regulations" be added between the words "Rules" and "Notification".
3. In "clause w" of Article 1.1 pertains to "Emergency" the word "generating plant" be added between the word "situation of physical damage to" and "GETCO's/Discom's electrical system....."
4. In Article 4 pertains undertaking "Clause 4.1 (l)" state "not used" be deleted.

5. In Article 4.3 pertains liquidated damages for delay in commissioning of the project beyond Scheduled Commercial Operation date, it is provided as under:

“.....the power producer shall pay to the GUVNL liquidated damages for the delay at the rate of Rs. 3000 per day per MW with a ceiling of Rs. 5 per MW.....”. “The delay in commissioning with liquidated damages shall be allowed for a period of 365 days after which the GUVNL may terminate this agreement.....”.

The aforesaid clause creates ambiguity with regard to penalty payable by the power producer in case of default in achieving SCOD, it states the rate of liquidated damages be Rs. 3000 per day per MW and ceiling of Rs. 5 lakhs per MW. The penalty at rate of Rs. 3000 per day per MW works out for a period one year as Rs. 10,95,000/- per MW. While the ceiling limit keep as Rs. 5,00,000 per MW, it works out the liquidated damages as Rs.1369.86 day/kVA. Thus, there is wide difference in penalty amount payable by the project developer as liquidated damages in case of delay of project. Therefore, it is directed to amend the PPA with providing ceiling of Rs. 10,95,000/- per MW in case of non-commissioning of the project for the period of 365 days.

7.16. In Article 5.3 of the PPA which states regarding the drawl of reactive power from the grid by the power producer shall be liable to pay the reactive charges as per Order No. 3 of 2022 dated 27.06.2022 of Commission or as decided by the Commission in Tariff Order of GETCO read with the provisions of GERC (Grid Code) Regulations, notified by the Commission be applicable whenever the drawl of reactive energy by the power producer from the grid in case of lagging power factor as under

“.....

10 paisa/kvarh -for the drawl of reactive energy at 10% or less of the net active energy exported.

50 paisa/kvarh – for the drawl of reactive energy at more than 10% of the net active energy exported.

.....”

Accordingly, necessary changes be made out in the PPA by the parties.

7.17. In sub-Clause (iii) Clause (a) of Article 8.1 of the PPA, the word ‘Bank Strike’ as stated be deleted from the aforesaid provisions as Bank Strike is not qualify for Force Majeure.

7.18. In Article 13.8 pertains to ‘Amendments’ wherein it is stated that the amendments/alteration/change/modify by written instrument by an authorized representative by each party is stated. However, such amendments need approval of the Commission is not stated. Hence, we direct to add the following sentences at end of said Article:

“Any amendments if made by the power producer, and power procurer amendments/alteration/change/modification made in the PPA is subject to approval of the Commission.”

8. Considering the above, we direct the Petitioner and the Respondent to amend the PPA as decided above and sign the agreement and submit the same to the Commission for records in this Petition.

9. In view of the above, we decide to approve the PPA with the above modifications.

10. With this Order present Petition stands disposed of accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 25/06/2024.