

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1221 of 2012.

In the matter of:

Petition for adjusting the tariff fixed by the Commission in Order No. 1 of 2010 dated 30.01.2010 on "Determination of the tariff for procurement of power by Distribution Licensees from Wind Energy Generators and other commercial issues" due to not availing accelerated depreciation by the Petitioner.

Petitioner : Vaayu (India) Power Corporation Pvt. Ltd.

Represented by : Ld. Adv. Mr. Ashutosh Kumar Srivastava.

Vs.

Respondent No. 1 : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Adv. Ms. Harsha Rao along with Mr. Urmil R Master

Respondent No. 2 : State Load Despatch Centre

Represented by : Mr. Hitesh K. Bhandari

Respondent No. 3 : Gujarat Energy Development Agency

Represented by : Nobody remain present

Objector : Utility Users' Welfare Association

Represented by : Nobody remain present

CORAM:

Anil Mukim, Chairman

Mehul M. Gandhi, Member

Date: 20.11.2024.

DAILY ORDER

1. The matter was kept for hearing on 13.11.2024.
2. When the matter was called out, nobody has appeared on behalf of the Respondent No. 3 and the Objector or any written communication about their inability to remain present has been made, despite notice.
3. At the outset, Ld. Adv. Ashutosh K. Srivastava appearing on behalf of the Petitioner submitted that the present matter pertains to adjustment in the tariff fixed by the Commission in Order No. 01 of 2010 dated 30.01.2010 and incorporated in the PPA with the Respondent No.1 GUVNL, due to not availing the benefits of accelerated depreciation by the Petitioner, in terms of liberty granted in the said Order No.1 of 2010 dated 30.01.2010. He further submitted that earlier the Commission passed the Order deciding the maintainability of the present petition. In the Appeal filed by GUVNL against the Order of the Commission, Hon. APTEL upheld the maintainability of the Petition. Presently, the issue of maintainability is pending before Hon. Supreme Court in the Civil Appeal filed by GUVNL against the judgment of Hon. APTEL, with the recent direction that the proceedings for redetermination of tariff be continued in the Commission subject to permission of Hon. Supreme Court for passing of final Order.
 - 3.1 He further submitted that the Petitioner has already filed its written submission and also placed on record all the required documents sought by the Respondent, GUVNL in its various submissions. It is further submitted that GUVNL is seeking various documents which are not relevant in the present matter and also raising issues with regard to related party transactions in placement of purchase order / work order for plants and machineries and other transactions. The Petitioner has already placed on record the relevant documents and details to show as to how placement of purchase order/ work order and other transactions with related party was prudent. On the issue of not claiming the benefits of Accelerated Benefits, the petitioner has placed on record the certificate of Chartered Accountant along with Income Tax Returns of the Petitioner Company. The Petitioner has also provided loan documents and documents related to equity infusion in the project etc.
- 4 Ld. Adv. Ms. Harsha Rao on behalf of the Respondent, GUVNL submitted that the PPA was executed with the Petitioner at the fixed tariff determined by the Commission in the Order No.1 of 2010 dated 30.01.2010. The petitioner has not provided any justification for seeking higher tariff than fixed tariff

determined in the Order No.1 of 2010 dated 30.01.2010 and incorporated in the PPA due to not availing the benefits of Accelerated Depreciation and once the fixed tariff as per the Order No.1 of 2010 dated 30.01.2010 is agreed in the PPA, GUVNL may not be obligated to continue with the PPA to bear the burden of higher tariff as a result of redetermination sought by the Petitioner.

- 4.1 It is further submitted that the issue involved in present matter is squarely covered by the judgment of Hon. Supreme Court in case of Gujarat Urja Vikas Nigam Limited v. EMCO Limited (2016) 11 SCC 182 involving similar provisions of PPA and Tariff Order No. 02 of 2010 dated 30.01.2010 related to solar power project. The Petitioner has failed to demonstrate as to why the above referred judgment of Hon. Supreme Court is not applicable in the present case specifically when the present matter involves identical issues of seeking higher tariff than fixed tariff agreed in the PPA on account of not availing the benefits of accelerated depreciation emanating from identical provisions of PPA and tariff order of the Commission related to wind power project.
- 4.2 It is further submitted that the GUVNL in its written submission has already provided list of documents to be placed on record by the Petitioner in present matter. Considering the related party transactions involved in present case, the burden lies on the Petitioner to show that such related party transactions were arm length transactions. The documents sought by GUVNL are relevant to ascertain that such transactions were prudent and arm length transactions. It is further submitted that in support of loan amount the petitioner has only provided certificate from Chartered Accountant and no complete loan documents has been placed on record more particularly when the claim for rate of interest is higher and claimed to be no project specific loan. She further requested the Commission to grant four weeks' time to GUVNL to file its written submission in the matter including submission on the documents to be placed on record by the Petitioner for determination of project specific tariff in the matter.
- 4.3 In response to query of the Commission as to why the Petitioner is not placing on record all necessary documents sought by GUVNL for determination of project specific tariff, Ld. Adv for the Petitioner submitted that the Petitioner has already placed on record all the required documents and also ready to place on record additional documents as required for determination of project specific tariff, however, certain documents sought by GUVNL is not relevant and /or not contemplated in the Tariff Regulations of the Commission for determination of tariff under Section 62 of the

Electricity Act, 2003. He further requested that the Commission may grant some time to the Petitioner to file its written submissions in the matter with a copy to the Respondent including submissions on the contention of GUVNL regarding documents still to be placed on record by the Petitioner in the matter for determination of project specific tariff.

4. We have heard the parties. We note that the Petitioner and the Respondent have sought time to file their written submissions including submissions regarding documents to be placed on record by the Petitioner in the matter for determination of project specific tariff, hence let the respective written submissions be filed within four weeks' time from the date of hearing with a copy to other side.
5. The next date of hearing would be intimated separately.
6. Order accordingly.

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 20.11.2024.

