

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1998 of 2021.

In the matter of:

Petition seeking extension of Scheduled Commercial Operation Date (SCOD) on (i) account of Force Majeure Events and (ii) delays solely attributable to Gujarat Energy Transmission Corporation and consequential reliefs under Section 86(1)(f) of the Electricity Act, 2003 read with Article 10.4 of Power Purchase Agreement executed between Goodwatts WTE Jamnagar Pvt Limited and GUVNL.

Petitioner : Goodwatts WTE Jamnagar Pvt. Limited
Represented by : Ld. Senior Counsel Mr. Mihir Thakore and Advocates Mr. Saunak Rajguru, Ms. Gayatri Aryan, Ms. Poonam Verma & Mr. Tarak Damani alongwith Mr. Aditya Handa, Mr. Arjun Handa, Mr. Ashish Mehta, Mr. Anup Pillai and Mr. Pankaj Patel

V/s.

Respondent No. 1 : Gujarat Urja Vikas Nigam Limited
Represented by : Ld. Advocates Mr. Anand Ganesan and Ms. Harsha Manav alongwith Ms. Shailja Vachhrajani, Ms. Girija Dave & Mr. Kandarp Mistry

Respondent No. 2 : Jamnagar Municipal Corporation
Represented by : Nobody was present.

Respondent No. 3 : Gujarat Energy Development Agency
Represented by : Mr. H.S. Silajiya and Ms. N.C. Bhuptani

Respondent No. 4 : Gujarat Energy Transmission Corporation Limited
Represented by : Ld. Advocate Mr. Anand Ganesan alongwith Mr. Y.J. Gamit and Mr. V.R. Patel

Respondent No. 5 : State Load Despatch Centre - Gujarat

Represented by : Ld. Advocate Mr. Anand Ganesan alongwith Mr. A.B. Rathod, Mr. D.N. Shah and Ms. Rashmi Vasava

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 03/01/2022

DAILY ORDER

1. The present matter was listed on 23.12.2021 through virtual hearing on Microsoft teams.
2. At the outset, Ld. Senior Adv. Mr. Mihir Thakore for the Petitioner objected the application filed by the Objector Mr. Nitin Madam and submitted that the aforesaid objector having no locus standi to be heard in the present matter. It is submitted that the reliefs sought by the Petitioner is purely contractual in nature in respect of raising Force Majeure issue and accordingly seeking extension of SCOD and no reduction in tariff agreed between the parties and restoration of Bank Guarantee invoked by GUVNL under Section 86(1)(f) of the Electricity Act, 2003 read with Article 10.4 of Power Purchase Agreement executed between the Petitioner and the Respondent GUVNL. It is further submitted that the objector has filed his objections raising various issues such as functioning of the Petitioner's plant at construction stage creates disturbance, increase in tariff are not relevant and baseless as the present matter is not tariff matter. It is submitted that Mr. Madam has also filed his sick note today requesting for adjournment in the matter. Therefore, the Commission may not allow such application and reject the same and may proceed with the matter.
3. Heard Ld. Adv. Mr. Anand Ganesan, for the Respondent GUVNL arguing on various factual aspects, provisions of the PPA executed between the parties while citing & referring relevant judgments/orders in the present matter.
- 3.1. Referring to definition of SCOD as stated in Article 1 of the PPA, the SCOD as per the PPA was 30.06.2020. Further, referring to Article 4 in respect of obligations of the parties, it is submitted that it is responsibility of the Petitioner to obtain all statutory approvals, clearances and permits for its project at his cost and the Petitioner has to construct operate and maintain the project during the terms of PPA at his cost and risk including the interconnection facilities for which approval has to be sought from GETCO by the Petitioner. It is also submitted that the Petitioner has to construct the transmission line from its plant switchyard to the sub-station of the

GETCO at its cost and expenses and also to co-ordinate with GETCO for evacuation arrangement including the appropriate sub-station to be decided by GETCO and to install Remote Terminal Units so that SLDC to monitor the injection of the power by the Petitioner. It is also duty of the Petitioner to undertake maintenance of the interconnection facilities as per specification of GETCO in accordance with prudent utilities practices and to submit the forecast for availability of power to SLDC as per the Regulations of the Commission.

- 3.2. Further referring to Article 4.2 of the PPA, it is submitted that there is no default on part of GUVNL in performing of its obligations under the PPA. Referring to Article 4.3 of the PPA in respect of liquidated damages for delay in commissioning the project beyond SCOD, it is submitted that SCOD as per the PPA was 30.06.2020 which is extended by GUVNL upto 5 months and therefore, revised SCOD for the Petitioner's project was 30.11.2020 and the Petitioner has not commissioned the project upto 15.11.2021. Therefore, the bank guarantee of the Petitioner has been encashed by GUVNL. GUVNL is entitled for the liquidated damages from SCOD to the actual date of commissioning in term of Article 4.3 of the PPA. It is submitted that the issue would arises about the obligation of the Petitioner to pay the liquidated damages in terms of Article 4.3 of the PPA for delay beyond SCOD of 30.11.2020 to 15.11.2021 and the tariff that would be made applicable for the power which was not supplied to GUVNL during such period under the PPA. It is submitted that in case of delay of more than one year, GUVNL has no obligation and has right to terminate the PPA by giving one month notice. He also referred the exception as provided in Article 4.3 of the PPA and submitted that the Petitioner would only be benefited of such exception for not paying the liquidated damages in case the project is not commissioned on account of Force Majeure event or the Petitioner is not able to perform its obligations because the default on part of GUVNL or SCOD is not achieved due to delay in transmission facilities/evacuation system for reasons solely attributable to GETCO.
- 3.3. Moreover, referring to Article 5.1 of the PPA, it is submitted that GUVNL's obligation to pay the tariff is only Rs. 6.31/kWh as per Government's GR date 01.05.2018 upon receipt of monthly invoices for scheduled energy as certified in the monthly SEA by SLDC. It is also submitted that GUVNL has received first invoice recently from the Petitioner at the tariff of Rs. 6.31/kWh or 7.07/kWh. The Petitioner has not given the undertaking to GUVNL in terms of the PPA confirming that the Petitioner has not availed any capital subsidy, generation based incentive, accelerated depreciation or any financial support from the MNRE or any other agency. Referring to last proviso of Article 5.1 of the PPA, it is submitted that this proviso is absolute provision and there is no exception of Force Majeure to the said proviso and if the project has not commissioned before 31.03.2021, the tariff would be the tariff applicable on the date of commissioning of the project or Rs. 6.31/kWh whichever is lower. Therefore, the Petitioner has to raise the invoices by applying the tariff that would be applicable after 31.03.2021 as determined by the Commission for

MSW projects in terms of this proviso of Article 5.1 of the PPA and if the Commission direct GUVNL to pay the tariff to the Petitioner at present, if any, the same has to be provisional tariff subject to the undertaking provided by the Petitioner confirming of not availing any capital subsidy, generation based incentive, accelerated depreciation from MNRE or any other agency and also subject to tariff determined and applicable after 31.03.2021 by the Commission. It is also pointed that though the Petitioner has raised the invoices but till date the Petitioner has not given the commissioning certificate of GEDA for commissioning of the project. Referring to definition of 'Commercial Operation Date' as stated in Article 1 of the PPA, it is submitted that the certificate of GEDA is evidence of date of commissioning of the project which shall be provided by the Petitioner to GUVNL at least 10 days in advance which is not being done in the present case and therefore the invoice raised by the Petitioner itself is as on date defective as the Petitioner has not complied as per the PPA.

- 3.4. Referring to Article 8.1 of the PPA in respect of Force Majeure Events, it is submitted that the Petitioner has not issued notice for Force Majeure as per the provisions of Article 8 of the PPA and also not provided requisite data to verify the claim of the Force Majeure. It is submitted that as per the PPA the notice of Force Majeure has to be issued within 7 days from commencement of event of Force Majeure and therefore it is mandatory requirement that notice shall be issued and without such notice, no claim can be made or relief granted and only exceptional that if any event of Force Majeure results in breakdown of communication rendering it not reasonable to give notice within the applicable time limit then the Petitioner to give notice as soon as reasonably practicable after reinstatement of communication not later than one day after such reinstatement. It is also submitted that such notice shall include full particulars of event of Force Majeure i.e. how its effects the Petitioner's claim and what remedial measures has been proposed by the Petitioner and also give regular reports on the progress of such remedial measures and such other information as the other party may reasonably request about the situation. It is further submitted that as soon as the Force Majeure completed, the Petitioner to give notice that period of Force Majeure has ceased to exist. Even during the Force majeure events, the Petitioner has to continue with its other obligations under the PPA and try to mitigate the effect of any event of Force Majeure as soon as practicable. It is submitted that the Petitioner is required to demonstrate how the events falls under the Force Majeure clause under the PPA. It was responsibility of the Petitioner to make all requisite applications on time and take approvals, consents or clearance etc. It is submitted that the Petitioner itself has delayed various activities and trying to hide the same by making vague and unsubstantiated claim.
- 3.5. Referring Article 12.6 of the PPA, it is submitted that the said clause specifically states about the manner in which notices are to be served upon other party. It is further argued that Force Majeure Clause is being an exceptional to the principle of

performance of the PPA and therefore Force Majeure Clause is not liberal/broadly construed but the same has been construed strictly in the PPA. It is further submitted that there is no any hindrance or impact on part performance or that the same fall within the Force Majeure Clause. It is also submitted that the Petitioner cannot be excused from any of its liabilities and is responsible for the consequences for the failure to commission the power project within time including the encashment of bank guarantee and the liquidated damages. In support of this, he relied upon the following judgements:

- (i) Energy Watchdog Vs. CERC & Ors., Para 45 (2017) 14 SCC;
- (ii) Halliburton Offshore Services Inc. Vs. Vedanta Limited and Ors., (2020) SCC Online Del 2068, Judgement dated 29.05.2020 in OMP (I) (COMM) No. 88 of 2020, Para 61 to 70.

3.6. Referring to letter dated 05.07.2016 of Abellon Clean Energy Limited addressed to Executive Engineer, Solid Waste Management Department, Jamnagar Municipal Corporation (JMC), it is submitted that the aforesaid letter is written in July 2016 intimating JMC to inform the route for 'to and fro movement' of waste and also requested to provide motorable approach road upto the site for appropriate movement of heavy equipments/machinery, water connection & electricity to site, etc., whereas the PPA was signed by the Petitioner with GUVNL in May 2018. Therefore, even prior to two years of signing of the PPA, the Petitioner was following up for road with JMC and that the Petitioner is well aware about factual position on date of signing of the PPA with GUVNL.

3.7. Further, referring to various letters written by the Petitioner to the Respondent GUVNL, it is submitted that the Petitioner has stated the construction being in advance stages in various cumulative updates during the period of January 2019 to March 2019 and April 2019 to June 2019 to GUVNL. Despite the alleged issues of approach road, the Petitioner had continued with the project. In various letters, Petitioner has continued to claim that the construction and civil work was being carried out including boiler erection etc. The Petitioner vide letter dated 06.08.2019 addressed to GUVNL has stated that major boiler parts have been received at the Site. Moreover, in the letter dated 13.01.2020, the Petitioner has stated that boiler erection is in progress while claiming that the approach road is required for transporting heavy equipment which includes boiler. Thus, it is clear that boiler was already at site which means that it was possible to bring in the heavy equipments. Moreover, the Petitioner vide its letter dated 02.06.2020, even while referring to the issue of approach road, stated that the construction was started and it is in advance stage and works related to boiler erection etc. had been done. It is submitted that the delay, if any, was in getting the equipment and the alleged issues in approach road did not affect the Petitioner. The Petitioner had not sought any extension at any time for such alleged reasons of any issue with approach road. It is submitted that when the heavy equipments needs to transport by way of road

transport, it requires to obtain various approval from different authority with consideration of road safety for avoidance of any accident etc. Such permissions are mandatory which includes crossing of electricity supply line, Railways, NHA etc. There is no whisper about what types of permissions from which authorities were applied by the Petitioner, when such permission/approval sought, when permission granted by authorities etc. if permission was delayed, what action were taken by the Petitioner expeditiously. The PPA was executed by the Petitioner on 30.05.2018 and the Petitioner was well aware of the site and any issues in this regard. The Petitioner had knowingly signed the PPA and it cannot now claim that there was any issue with the approach road. The Petitioner has not provided any details for what it had done from 20.04.2017 to the signing of the PPA.

- 3.8. It is also submitted that while the Petitioner has claimed the issues of approach road from 19.09.2018 in the status updates to GUVNL until January 2020, the Petitioner did not express concern over the alleged issues of approachable road and no extension in SCOD was sought by the Petitioner. The Petitioner had sought extension only after the COVID 19 which has already been granted to the Petitioner and the SCOD was revised to 30.11.2020. Therefore the alleged issues of approach road were not relevant and did not affected the Petitioner and accordingly no extension had been sought by the Petitioner in this regard. Therefore, the same had not been considered as Force Majeure Event as it has only raised as an afterthought.
- 3.9. After referring the para 33 to 36 of the Petition, it is submitted that the Petitioner has sought to raise the height of the overhead transmission line from PGVCL which in any case would take time and the Petitioner also could have anticipated that it would take time for such activity. It is further submitted that the power lines had been pre-existing and therefore the Petitioner was well aware of the same at the time of PPA. The Petitioner is seeking to raise height of the power lines which is not a necessary approval and the Petitioner has no right to seek such raising of height. In any case, it is the Petitioner who is seeking to change an existing position and time taken for such change cannot be considered as Force Majeure Event. It is also submitted that the letters exchanged between the Petitioner and PGVCL are not within knowledge of GUVNL and the Petitioner has not substantiated the delay of 41 days that how this has impacted the project. There is no rationale or computation to substantiate the claim of 41 days. Further, there is no basis for consideration of alleged delay of 41 days. It is submitted that the issues sought to be raised by the Petitioner are an afterthought and no notice of Force Majeure was raised in this regard. Even in the status updates, the Petitioner had never mentioned about any such issues and had not sought for any extension of SCOD in this regard.
- 3.10. After referring the para 37 to 47 of the Petition, it is submitted that the Petitioner is required to obtain all statutory approvals, clearances and permits for the Project under the PPA and the Petitioner was also well aware of the clearances required for the project. It is submitted that there was no delay by any authority and the

Petitioner cannot expect that the approvals and clearances can be granted immediately on filing of the application by the Petitioner. It is submitted that the Petitioner applied for grant of NOC for construction of Chimney near the IAF station only on 28.09.2018 even though the Concession Agreement and PPA was signed on 20.04.2017 and 30.05.2018 respectively. Thus, there was delay by the Petitioner itself as the Petitioner did not follow the correct procedure and failed to apply to the Nodal Ministry and Department. The Petitioner failed to comply with legal requirements and cannot now claim any relief in this regard. Further, it cannot be expected that the Petitioner would get the approvals immediately as Government departments would take some time, particularly when the issue involves approvals from Ministry of Defence in relation to construction near the IAF station. The Petitioner has not provided any communication of follow up or otherwise any effort taken by the Petitioner to GUVNL.

3.11. It is further contended that the chimney does not constitute a critical part as the construction and installation activities were continuing in the project site even while the clearance for the chimney was pending. It is submitted that the NOC was received on 11.03.2020 but the chimney was erected only on 03.10.2020. The NOC for the chimney came more than three months prior to the original SCOD and more than 6 months prior to revised SCOD. Therefore there was no impact of such alleged pendency. It is also submitted that the Petitioner itself admitted that it would have erected the chimney within the SCOD but has claimed that it was delayed due to COVID 19. In this regard, the Petitioner has already been granted extension of 5 months and there was plenty of time for the Petitioner to complete the process prior to the revised SCOD. Since the SCOD was already revised to 30.11.2020, there was clearly no impact of the alleged delay in NOC for chimney height. It is submitted that the Petitioner had itself delayed in seeking of such approval and further failed to comply with the procedural requirements and therefore, the same cannot be qualified as Force Majeure Event. It is also submitted that no notice of Force Majeure was raised in this regard and no extension of SCOD was sought at the relevant time by the Petitioner and also the Petitioner has not provided any justification for the claim of 92 days of delay. Hence, the claim of Force Majeure on that ground is not permissible.

3.12. In respect of para 48 to 53 of the petition with regard to delay in RTU connectivity is concerned, Ld. Adv. Mr. Ganesan on behalf of the Respondent SLDC submitted that State Transmission Utility has granted RTU connectivity to the Petitioner and even as per Article 4.1 of the PPA it is an obligation on part of the Petitioner to obtain and install RTU to enable SLDC to monitor the injection of power. It is submitted that there has been no delay by SLDC and the time taken is normal procedural time and SLDC has acted in a bonafide manner to assist the Petitioner. In fact it was the Petitioner who had failed to submit the requisite documents and make payments of the estimate given to the Petitioner in time. The Petitioner has claimed to file the Application on 02.06.2020 and follow ups. The PPA had been executed on

30.05.2018 and the Petitioner chose to wait until June 2020. At the outset it is submitted that the alleged application was not an application but only an informal letter seeking estimate and technical data sheet of data transmission. Further the Petitioner had not provided complete information and the supporting documentation such as GST Number, copy of GEDA's Approval, companies' authorized representative details etc. The required technical and commercial documents for processing the applications are not received and the SLDC could not have processed the application. The Petitioner further on 15.12.2020 wrote to SLDC and SLDC on 16.12.2020 informed the Petitioner for provision of GST detail and address which is necessary to generate invoice. Though the Petitioner had sent a communication on 17.12.2020, the same was without supporting documentation and therefore the process could not be completed. It is also submitted that the complete documents were submitted on 17.12.2020 and thereafter SLDC has processed the application and issued the estimate vide its letter dated 09.01.2021 to the Petitioner. SLDC in the said letter had provided the list of documents to be submitted to SLDC. The Petitioner was required to make the payment within 10 days failing which the application would be rejected. However the Petitioner submitted the payment to SLDC for real time RTU made only on 05.02.2021 and the same intimated to SLDC only on 08.02.2021. However SLDC accepted the payment even though the same was paid with delay. After the payment of RTU estimate, though the party is required to install the RTU and inform SLDC and submitted documents within one month for further process of integration, SLDC did not receive any conformation or RTU installation report or any documents from the Petitioner within stipulated time.

- 3.13. It is also submitted that GETCO vide its letter dated 11.03.2021 had sought submission of RTU installation certificate and Minutes of Meeting with GETCO Jetpur (ALDC) from the Petitioner for data transmission so that the work completion report could be submitted to the GETCO's Corporate Office for charging permission. The Petitioner vide email dated 15.03.2021 provided the RTU installation certificate and work completion letter of 66 KV Switchyard. SLDC on 09.01.2021 and 15.02.2021 had indicated about the pending dues of UI Charges. However, the Petitioner provided the requisite undertakings only on 21.06.2021 after 5 months of letter dated 09.01.2021 . There is no explanation as to why the Petitioner did not respond to the letter dated 09.01.2021 before 18.02.2021 when the Petitioner had intimated that they were nearing the commissioning of the project. Therefore, the Petitioner was not otherwise ready for other reasons and was delaying submission of necessary documents and procedure due to the same. On receiving the letter dated 21.06.2021, SLDC had processed the request of the Petitioner and clearance was considered and allowed in the Minutes of Meeting on 24.06.2021. Thus, the claim of the Petitioner that delayed in respect of aforesaid matter is not on part of SLDC.

- 3.14. After referring the letter dated 09.01.2021 of SLDC, it is submitted that SLDC has followed up the same with the Petitioner vide its letter dated 15.02.2021 and SLDC has asked about the outstanding payments payable by the Petitioner while the Petitioner has provided the undertaking for payments. Referring the undertaking dated 21.06.2021 of the Petitioner, it is submitted that the Petitioner has admitted that the total outstanding amount is Rs. 10.37 Crores for UI/DSM charges for group companies of the Petitioner and SLDC had rightly sought for payment of UI charges related to group companies of the Petitioner which was not challenged and therefore no issue can be raised at this stage. It is submitted that the RTU installation is an activity which occurs in parallel alongwith other statutory compliances and commissioning of the plant and switchyard. The alleged delay in RTU installation does not prevent the Petitioner from establishing the power project. In fact the Petitioner's project was not completed and was not ready to be commissioned. Even after the RTU clearance on 24.06.2021 and charging of the Sub-Station on 26.06.2021, the Petitioner did not immediately commission its power project and in fact the power project was not commissioned upto October 2021. Therefore, the Petitioner's Project was not ready and the alleged non-readiness of sub-station does not affect the commissioning of the Petitioner's project and hence, the Petitioner cannot hide its own defaults and delay under the guise of RTU installation.
- 3.15. In respect of the Petitioner's contention of delay on part of GETCO in providing substation for the Petitioner's Project is concerned, Ld. Adv. Mr. Ganesan on behalf of the Respondent GETCO submitted that the Petitioner has sought to refer to alleged delays on part of GETCO. It is submitted that there has been no delay on part of the Respondent GETCO as the Petitioner has not placed the complete facts on record and has omitted the fact that it was the choice of the Petitioner to opt for the connectivity to 66 KV Navagam Ghed Sub-Station of GETCO instead of existing Hapa Sub-Station provided by GETCO. Therefore the non-readiness of the Navagam Sub-Station cannot be claimed as Force Majeure or beyond the reasonable control of the Petitioner. GETCO had already clarified the Petitioner that GETCO would not be responsible for the consequences of delay.
- 3.16. It is further contended that the connectivity was initially granted by GETCO to the Petitioner in the existing 66 KV Hapa Sub-Station proposing 66 kV S/C Dog on panther tower from the Petitioner's Project to Sub-Station and creation of 1 number of 66 kV feeder bay at Sub-Station. However, the Petitioner has requested for the connectivity to 66 KV Navagam Ghed Sub-Station, which was under construction. In this regard, GETCO vide its letter dated 17.07.2019 clarified the position to the Petitioner that it would not be responsible for any delay in commissioning of the Sub-Station and in such a case, delay in the connectivity is not agreed for delay in commissioning of the power plant on GETCO's part. Despite having full knowledge, the Petitioner has confirmed and undertaken for evacuation of power through the Navagam Ghed Sub-Station on 18.07.2019. Therefore, it cannot be claimed by the

Petitioner that the delay in evacuation system was attributable to GETCO. The Petitioner has given undertaking on 25.06.2019 that it would transmit power only after commissioning of the Navagam Ghed Sub-Station. Therefore, it was the action of the Petitioner itself to choose Navagam Sub-Station instead of the existing Hapa Sub-Station. The Respondent is not responsible for delay claimed by the Petitioner on the aforesaid ground.

- 3.17. It is submitted that the Petitioner vide its letter dated 04.09.2017 had sought for the system study and connectivity of 7.5MW Municipal Solid Waste Power Plant at Village Navagam Ghed Dist. Jamnagar. In response GETCO vide its letter dated 11.09.2017 had conveyed the Petitioner for completion of the necessary documents prior to granting 66 KV connectivity with GETCO Sub-Station. It was informed that as per the provision of the Commission's Order No. 4 of 2016, the transmission line up to GETCO Sub-Station will have to be laid by MSW developer at their own cost including the meters for measurement of the generation which shall be installed at GETCO' end receiving Sub-Station. Further, it was also informed that agreement for start-up power, Auxiliary power consumption and purchase of power will be carried out with PGVCL/GUVNL. The Petitioner vide letter dated 01.10.2018 requested GETCO for approval of the proposed power evacuation scheme at 66 KV from upcoming 7.5 MW Waste to Energy (WTE) Jamnagar. Also, Petitioner vide its letter dated 24.10.2018 requested to carry out system study for evacuation of power at upcoming 66 KV Sub-Station at Gandhinagar STP Plant, Navagam Ghed.
- 3.18. After referring the letter dated 28.12.2018 of GETCO addressed to the Petitioner, it is submitted that GETCO had conveyed the Petitioner about the system study and the connectivity at 66 KV GETCO Hapa Sub-Station for proposed Municipal Solid Waste to Energy processing plant of 7.5 MW at Jamnagar. It was also specifically stated in the aforesaid letter that it was not clear when the work of Sub-Station and connectivity with GETCO network would be completed and system study is carried out with existing Sub- Station. The system study was carried out for evacuation of 7.5 MW Waste to Energy Generation to 66 KV Hapa GETCO Sub-Station and the possible evacuation scheme by (i) laying 66 KV S/c Dog line on panther tower from M/s Goodwatts WTE Jamnagar to 66 KV Hapa GETCO Sub-Station and (ii) Creation of 1 No. of 66KV feeder bay at Hapa Sub-Station. The Petitioner vide its letter dated 08.04.2019 requested to GETCO for connectivity from 66 kV Navagam Ghed Sub-Station (under construction) instead of 66KV Hapa Sub-Station which was granted for connectivity.
- 3.19. After referring the letter dated 25.06.2019 of the Petitioner, it is submitted that the Petitioner has submitted undertaking dated 25.06.2019 and requested for conditional load flow at 66 KV Gandhinagar STP (Navagam Ghed) Sub-Station. It is stated in the undertaking that the Petitioner had undertaken to transmit power only when the Sub-Station is fully charged by GETCO. It is submitted that the Petitioner

has attached the letter in the Petition but omitted to attach the undertaking alongwith the said letter.

- 3.20. Referring the letter dated 25.06.2019 addressed to the Petitioner by GETCO, it is submitted that based on the Petitioner's request and undertaking, GETCO has carried out the system study for evacuation at 66 KV Navagam Ghed which was still under construction and the system study in upcoming Sub-Station of GETCO 66 KV Navagam Ghed was conveyed to the Petitioner and it was specifically stated that GETCO is not responsible for further delay on account of RoW and no claim can be made to GETCO. Accordingly, GETCO had issued the estimate dated 03.09.2019 of Rs. 1.19 Crores to the Petitioner for erection of 66 KV transmission network for evacuation of 1.5 MW Power from Municipal Solid Waste to Energy Plant of the Petitioner under "Option- III (Developer carries out the work)."
- 3.21. It was also specifically stated in the estimate that original connectivity was granted by GETCO was 66 KV Hapa Sub-Station but in view of the Petitioner's undertaking dated 25.06.2019, connectivity would be granted only after commissioning of 66 KV Navagam Ghed Sub-Station. It was clarified that the Petitioner shall not be held responsible to GETCO for any financial loss due to delay in commissioning of Navagam Ghed Sub-Station due to non-evacuation of power.
- 3.22. Moreover, referring to various letters addressed to the Petitioner, it is submitted that in response to letter dated 03.09.2019, the Estimate was to be paid within one month from date of issue by the Petitioner. However, the Petitioner on 20.11.2019 i.e. after one month period, further sought extension for payment of estimate stating that the Electrical contractor was not finalized. Accordingly, GETCO has granted extension for payment of estimate up to 10.12.2019. However, the Petitioner once again requested vide its letter dated 20.01.2020 to GETCO for extension for payment of the estimate and the same was granted by GETCO up to 28.02.2020 for payment of estimate by the Petitioner.
- 3.23. Thereafter, the Respondent GETCO vide letter dated 10.08.2020 has revised the estimate duly incorporating revised route i.e. route length changed and deadline facility for erection of 66 KV Transmission network for evacuation of 7.5 MW Power from Petitioner's project. In the revised estimate, it is also reiterated that original connectivity was granted by GETCO 66 KV Hapa Sub-Station, however in continuation to the undertaking dated 25.06.2019 of the Petitioner, connectivity would be granted only after commissioning of 66 KV Navagam Ghed Sub-Station. It was clarified that the Petitioner shall not be held GETCO responsible for any financial loss or any delay in commissioning of project due to delay in commissioning of Navagam Ghed Sub-Station due to non-evacuation of power.
- 3.24. It is also submitted that after getting initial inspection report from Chief Electrical Inspector by the Petitioner for 66 KV underground Cable, 66 KV feeder bay, the

Petitioner had requested to GETCO for work completion. Upon receipt of the work confirmation form SE (TR) Jamnagar, the Respondent GETCO vide its letter dated 31.03.2021 had granted permission for charging and conveyed again that connectivity would be granted only after commissioning of 66 KV Navagam Ghed (66 KV Gandhinagar) Sub-Station and that the Petitioner shall be solely liable to bear any financial implication/liquidation damages etc. under PPA as the Petitioner was willing to obtain conditional connectivity by submitting undertaking dated 26.06.2019. The Petitioner submitted the application dated 20.03.2021 for the connectivity and connection agreements for 7.5 MW WTE power plant at village Navagam Ghed in prescribed formats.

- 3.25. It is also submitted that the Petitioner also vide its letter dated 05.08.2021 sought for clarification on drawal of startup power from GETCO 66 KV Navagam grid for commissioning. The Petitioner claimed that it was in final stage of commissioning of the project and for charging their auxiliary equipment's during commissioning activity, they need to draw power from GETCO grid. The Petitioner has requested to PGVCL for surrender of their LTMD (construction power) connection on 30.06.2021 and PGVCL has disconnected the construction power connection on 29.07.2021.
- 3.26. It is also submitted that GETCO vide its letter dated 06.09.2021 has provided the clarification in respect to the Power Purchase Agreement with GUVNL that Article 4.1 (ix) of the PPA states that the construction and commissioning power required from the plant was to be procured by the Petitioner from the respective local Distribution Company, i.e., it is the obligation of Power Producer. It is further submitted that the Petitioner thereafter has applied to PGVCL and paid registration charges on 09.09.2021 and requested for requirement of new 1750 KVA power demand on 66 KV system voltage for start-up power for 7.5 MW WTE Power Plant for unit located at Village: Navagam Ghed, Dist. Jamnagar. In response PGVCL vide letter dated 13.09.2021 informed GETCO to check the technical feasibility and issue the estimate for the new 1750 KVA on 66 KV system voltage for start- up power for 7.5 MW WTE Power Plant to the Petitioner and GETCO vide its letter dated 30.09.2021 has issued the estimate of Rs. 24.77 lakhs under Option III for requirement of new 1750 KVA power demand on 66 KV system voltage for start-up power for 7.5 MW WTE Power Plant. It is also submitted that the Petitioner was yet to pay the estimate amount for start-up power and that upon the payment of Estimate amount for Strat-up Power, the start-up power will be provided. In support of this, he is relied upon the following judgement:
- (i) Hon'ble APTEL Judgement dated 13.10.2015 in Appeal No. 6 of 2015 in case of Gujarat Energy Transmission Corporation Limited V/s. OPGS Power Gujarat Pvt. Limited & Ors.

- 3.27. Ld. Counsel appearing for the Respondents and the Petitioner requested the Commission to give another date for hearing through virtual mode in the present matter.
4. We note that an application from Mr. Bharat T. Gohil on behalf of the Utility Users' Welfare Association (UUWA) is received by the Office of the Commission seeking impleadment as party in the present matter on Affidavit. Hence, the Applicant UUWA is directed to serve copy of Application alongwith relevant documents to the Petitioner and the Respondents mentioned as parties in this Order within 3 days from date of this Order, if not already served and file affidavit of service before the Commission. The Petitioner and the Respondents are also directed to file their submissions/reply on affidavit to the above Application of UUWA seeking impleadment as party in present matter within 3 days from receipt of same.
5. With joint consent of the parties for virtual hearing, the next date of hearing is 11.01.2022 at 11:30 A.M. through V.C. on Microsoft teams. Staff of the Commission is directed to provide copy of this Order to all through email also and supply necessary link to the parties and also to (i) Mr. Nitin Madam & (ii) UUWA in connection with their application for impleadment in the present matter.
6. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 03/01/2022.