

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR

Petition No. 2335 of 2024.

In the Matter of:

Petition under Section 86 of the Electricity Act, 2003 read with Regulations 80 and 82 of the GERC (Conduct of Business) Regulations, 2004 read with Gujarat Wind-Solar Hybrid Power Policy, 2018 and amendment thereof and the Tariff Order 03 of 2021 praying before the Commission to exercise its power under Section 86 of the Electricity Act, 2003 and direct the Respondent, Gujarat Energy Transmission Corporation Ltd. to grant extension of time for execution of the 70 MW Solar-Wind Hybrid Project.

Along with

IA No. 06 of 2024 in Petition No. 2235 of 2024.

In the matter of:

Application seeking add interim stay on the encashment of Bank Guarantee of the Petitioner furnished to the Respondent No. 1 GETCO, under Regulation 61 read with Regulation 80 of the GERC (Conduct of Business) Regulations, 2004.

Along with

IA No. 07 of 2024 in Petition No. 2335 of 2024.

In the Matter of:

Application for urgent listing of the Petition under Regulation 61 read with Regulation 80 of the GERC (Conduct of Business) Regulations, 2004.

Petitioner /Applicant : Renew Green Energy Solutions Pvt. Ltd.  
Represented By : Ld. Adv. Gaurav Mathur, Adv. Mannat  
Waraich and Mr. Mridul Gupta  
Vs.  
Respondent No. 1 : Gujarat Energy Transmission Corp. Ltd.

Represented By : Ld. Adv. Srishti Kindaria along with Dr. A J  
Chavda and Mr. S.K. Nair

Respondent No. 2 : Gujarat Energy Development Agency

Represented By : Nobody was present.

**CORAM:**

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

**Daily Order**

**Date: 13/03/2024**

1. The matter was kept for hearing on 20.02.2024.
2. At the outset Ld. Adv. Mr. Gaurav Mathur appearing on behalf of the Petitioner submitted and referred the prayer filed in the present Petition, for seeking directions to the Respondent No. 1, GETCO, to grant an extension of 18 months-time for execution of the 70 MW Solar-Wind Hybrid Project which was to be developed in terms and in accordance with the Hybrid Policy, 2018 of the State of Gujarat and the Tariff Order dated 03.04.2021. Further, Ld. Adv. on behalf of the Petitioner submitted that the IA in the present Petition has been filed to refrain from invoking the Bank Guarantee till the expiry of the extended time period so granted for Commissioning the evacuation infrastructure.
  - 2.1. He submitted that the Petitioner has made an application dated 20.07.2021 for approval of evacuation/connectivity for 70 MW Solar-Wind Hybrid Project with the Respondent No.1 in terms of and in accordance with Hybrid Policy, 2018 for captive and third party Sale under Type -B category. It is submitted that upon confirmation of feasibility regarding connectivity the Petitioner commenced the work, further the Petitioner has submitted the bank guarantee before the Respondent No. 1. He submitted that while undertaking the works towards the completion of the evacuation infrastructure a Regulatory uncertainty on account of various aspects

created impediments for the Petitioner and proceeded to delay the execution of the infrastructure.

- 2.2. It is further submitted that the reply is yet to be filed by the Respondent in aforesaid IA. It is further submitted that the control period of the Tariff Order dated 03.04.2021 was expired which was valid up to 31.03.2021, however the Hybrid Policy, 2018 was valid for five years expiring on 19.06.2023 as this created vacuum for the project developer. However, the Commission extended the Control period of the Tariff Order till 19.06.2023 align with the Hybrid Policy, 2018.
- 2.3. It is submitted that various steps that has been taken by the Petitioner to construct the evacuation networks for its Projects. He has requested time limit extension of 8 month before the GETCO for same. Further, uncertainty was in existence on account of the absence of Tariff Order as well as the Project approval process for the captive projects being put on hold. It is also submitted that the Tariff Order mandates the Petitioner to provide the Bank Guarantee but if the Petitioner is unable to complete its work within time then there are provisions for the same and the Respondent No. 1 GETCO could have approached the Commission. It is further submitted that the Petitioner has written many letters to Respondent No. 1 GETCO for the extension of time period due to the reasons beyond its control but the Respondent GETCO have not considered it. If at that time Respondent GETCO had come before the Commission then the issue would not be raised now. It is also submitted that there is only one and half year for the Petitioner to commission its project after the PPA is signed between the parties. Further, it is submitted that in this period the Petitioner has to take approval of the Respondent No. 1 GETCO for system study, payment of supervision charges, and other activities by GETCO, in the present case the GETCO has taken eight months to issue estimate for supervision charges for evacuation of infrastructure. Hence in such situation the project of the Petitioner could not completed in a specified time period. As the relief was neither given by the Respondent No. 1 GETCO nor it had come before the Commission, hence the Petitioner had to approach before the Commission for stay on the encashment of the bank guarantee.

- 2.4. It is further submitted that the Gujarat State Hybrid Policy, 2018 was issued on 20.06.2018 and there was Regulatory Vacuum and Uncertainty till the issuance of the implementation of the Tariff Order dated 03.04.2021 for the execution of the Hybrid Policy. It is further submitted that the fulfilment of the prerequisites in itself is a time taking process for Hybrid projects, as GEDA would require time to assess such applications by Hybrid project developers and issue the requisite permission to the developers.
3. Ld. Adv. Srishti Kindaria on behalf of the Respondent GETCO has submitted that the issue of Bank Guarantee is purely legal aspect. It is well settled principle that there cannot be any stay of invocation of such unconditional bank guarantee which is an independent contract between the GETCO and the bank. She further referred the letter dated 19.12.2023 of GETCO written to the Petitioner informing to complete the entire evacuation line with bays and metering system within period of 18 months, failure to complete the work by 21<sup>st</sup> February 2024, the Bank guarantee would be encashed. There is no case for extension of time period for commissioning of the power project. Further, Ld. Adv. sought time to file its reply in the present matter.
4. Ld. Adv. of the Petitioner in response to the contentions of the Respondent submitted that there are two issues involved herein, 1). Respondent GETCO took longer period for the activity like system study and issuing estimate for supervision charges for evacuation of infrastructure 2). Respondent GETCO ought to have to approach before the Commission when the Petitioner has requested to grant 8 months-time for construction of infrastructure in view of uncertainty of the Regulatory regime, discontinuance of the grant of Hybrid power project., the said issue was not responded by the Respondent No. 1. He further submitted that the claim expiry date as mentioned in the bank guarantee is till 21.12.2024 and the Respondent GETCO has time to execute it, if the matter is not decided in Petitioner's favour.
- 4.1. Referring to the Judgement in M/s. Bottle Glass Pvt. Ltd. New Delhi vs. Union of India and Ors. AIR 1985 Delhi 400, Ld. Adv. of the Petitioner submitted that in the case of

Bank Guarantee where the decision has to be taken by the Government then it is required to act fairly and judiciously.

5. In response to the said arguments of the Petitioner, Ld. Adv. of the Respondent submitted that the Bank Guarantee is not encashed by them on the date of hearing and it is unconditional. It is further referred the Hon. APTEL has dealt with such situation in detail and decided on 22.12.2022, in Appeal No. 378 of 2022 and IA No. 1467 of 2022, wherein the issue of bank guarantee was decided by the Hon. APTEL stating that it is separate contract between the bank and the party. It is submitted that there are two grounds to be considered while deciding the issue of Bank Guarantee, one is whether there is fraud done in favour Bank Guarantee issued and other one is of special equities when the denial of encashment of Bank Guarantee. In the present case there is neither of the two above mentioned ground here in the case. It is further submitted that Bank Guarantee No. 0548NDDG00042023 issued by the Petitioner was amended on 12.09.2022 is going to expire on 28.02.2024 the timeline of the bank Guarantee is going to be over and if the Petitioner does not renew the same then the Respondent would have no remedy. The Respondent has right under the PPA to deal with bank guarantee issue and it falls and govern between the bank and the beneficiary.
6. Heard the parties. We note that the Petitioner has requested to stay the execution of the Bank Guarantee in the present matter. The Respondent GETCO has objected the same. We also note that there was no one present nor any intimation for its inability to remain present on behalf of Respondent No. 2 GEDA, despite of issuing the hearing notice. On the issue of encashment of the Bank Guarantee, the matter is governed by the contract between bank and the Respondent GETCO. It is different and distinct from PPA. The encashment of Bank Guarantee is governed in accordance with the settled law.
7. We note that the Respondent has requested to allow to file its reply in the matter, hence let it be filed within three weeks-time with a copy to the Petitioner. The

Petitioner is at liberty to file its rejoinder, if any, within one weeks-time, with a copy to the Respondent.

8. As the Petitioner has filed an IA in the present Petition seeking urgent listing of the matter stands satisfied hence, the IA No. 07 of 2024 in the Petition No. 2335 of 2024 stands dispose of.
9. The next date of hearing will be intimated separately.
10. Order accordingly.

**Sd/-**  
**(S. R. PANDEY)**  
**MEMBER**

**Sd/-**  
**(MEHUL M. GANDHI)**  
**MEMBER**

**Sd/-**  
**(ANIL MUKIM)**  
**CHAIRMAN**

Place: Gandhinagar  
Date: 13/03/2024.

