

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2375 of 2024

In the Matter of:

Petition under Section 86 of the Electricity Act, 2003 seeking clarification qua the procedure for Grant of Connectivity to projects based on Renewable Energy Sources to Intra-State Transmission System and refund of Bank Guarantee amounting to Rs. 2.5 Crores towards grant of Stage-II Connectivity at 220 kV/66kV Gondal Sub-Station.

Petitioner : Suzlon Global Service Limited
'Suzlon', 5, Shrimali Society
Near Shri Krishna Complex, Navrangpura
Ahmedabad-380009.

Represented by : Ld. Adv. Mr. Mridul Chakravarty along with
Adv. Ms. Lavanya Panwar

V/s.

Respondent : Gujarat Energy Transmission Corporation Ltd
Sardar Patel Vidyut Bhavan
Race Course Circle, Vadodara – 390007.

Represented By : Ld. Adv. Ms. Srishti Khindaria alongwith
Mr. Shobhraj Jayswal

**CORAM:
Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 12/11/2025

ORDER

1. The present Petition has been filed by the Petitioner seeking the following reliefs:

- (a) To direct the Respondent to return the Bank guarantees dated 16.06.2023 bearing BG No. 230390IBGP00327 for an amount of Rs. 2.5 Cr. as furnished by the Petitioner ;
- (b) To grant ad-interim protection to the Petitioner qua invocation and encashment of the aforesaid Bank Guarantee 16.06.2023 bearing BG No. 230390IBGP00327 for an amount of Rs. 2.5 Cr. as furnished by the Petitioner during the pendency of the present Petition.
- (c) To direct the Respondent to further refund an amount of Rs. 5,84,382 paid by the Petitioner vide demand order No. 322070 dated 05.09.2023 drawn at the State Bank of India as Supervision Charges.
- (d) To issue requisite clarification(s) *qua* the Procedure for Grant of Connectivity to projects based on Renewable Energy Sources to the Intra-State Transmission System issued by GETCO in exercise of Regulation 20 of GERC (Terms and conditions of Intra State Open Access) Regulations, 2011, approved by the Commission on 07.01.2023 to the effect that where the Petitioner is faced with an

unprecedented situation as elucidated *qua* construction and execution of its 50 MW Wind Power Project, it would be the necessary implication of law that the Petitioner would absolved of any liability, financial or otherwise, which may arise against it

2. The facts mentioned in the Petition, in brief, are as under:
 - 2.1. The Petitioner being RE generator is setting up 50 MW of Wind Power project at Village Jetpur in the State of Gujarat.
 - 2.2. The Respondent, Gujarat Energy Transmission Corporation limited, which is the State Transmission Utility as envisaged under Section 39 of the Electricity Act, 2003.
 - 2.3. On 07.01.2023 the Commission approved the procedure for “Grant of Connectivity to projects based on Renewable sources to Intra – State Transmission system”.
 - 2.4. The Petitioner with the intention to set up its Wind Power project issued a letter dated 04.04.2023 to GETCO for obtaining the requisite approval *qua* its proposal to set up 33/66 kV, 2 X 35 MVA Wind Farm sub-station near Village Jetpur Dist. Rajkot.
 - 2.5. The Petitioner applied for Stage-I connectivity for its project on 03.04.2023 before the Respondent which was approved on 29.05.2023 by the Respondent.
 - 2.6. The Petitioner made an application for Stage-II connectivity on

17.06.2023. The Respondent granted the Stage-II connectivity to the Petitioner's project on 28.07.2023 for 50 MW at 220 kV /66kV Gondal Sub-station.

2.7. The Respondent vide communication dated 19.08.2023 mandated the Petitioner to pay the provisional estimate of supervision charges for carrying out the work of erection the requisite transmission network for evacuation of 50 MW of Wind Energy at the 220 kV/66kV Gondal Sub-Station of the Respondent GETCO from the WPP of the Petitioner for captive use under Option-III.

2.8. The Petitioner provided a Bank Guarantee dated 16.06.2023 for an amount of Rs. 2.5 Crores in favour of the Respondent / GETCO with an expiry date of 20.12.2024 and a claim expiry date up to 20.12.2025.

2.9. On 05.09.2023 the Petitioner made payment of Rs. 5,84,382/- vide Demand Draft No. 322070 drawn at the State Bank of India in favour of the Respondent.

2.10. On 13.09.2023 the Petitioner and the Respondent executed a connectivity agreement.

2.11. The Petitioner also undertook the exercise of route alignment for the construction of the 66 kV Bay at 220 kV/66 kV Gondal GETCO Sub-station and proceeded to finalise the contractors to complete the construction of the line.

- 2.12. The representative of the Petitioner undertook joint site visit with the field officers of the Respondent regarding the construction of the 66 kV Bay, whereby, certain augmentation work (s) were suggested by the Respondent, for which, the Petitioner submitted two (2) proposals to the Respondent for their necessary approval.
- 2.13. The line survey work was completed and the WTG locations for setting up the 50 MW Wind Power Project was also acquired with a plan to submit necessary and requisite applications under Section 68 and 164 of the EA 2003 to the Government of Gujarat.
- 2.14. After having made considerable headway in its work(s), the Petitioner garnered knowledge of the fact that the NIWE in consultation with the MoD has notified a map on its website, whereunder certain areas in the State of Gujarat were declared as “NO WTG” Zone. The Wind Power Plant of the Petitioner was to be setup in village Jetpur which was also covered under the ambit of the above notification thereby being declared as “NO WTG” Zone.
- 2.15. The Petitioner was constrained to inform about the same to the Respondent vide letter dated 17.01.2024, while requesting for return of the BG and refund of the supervision charges. Furthermore, in the said letter, an alternative option was also suggested to allow the Petitioner to adjust the said amount i.e. BG and supervision charges in the new

connectivity approvals, if possible, as the Petitioner expressed its willingness to develop other wind farm projects in the State of Gujarat.

2.16. The Petitioner faced an unprecedented situation, which has hampered, jeopardized and stalled the Wind Power Project of the Petitioner. This situation was completely beyond the reasonable control of the Petitioner and either the Petitioner or the Respondent could not have contemplated it.

2.17. In such kind of situation where the project of the Petitioner cannot be set up due to a subsequent change and impossibility, Section 56 of the Contract Act, 1872 becomes applicable invoking the doctrine of frustration to come to the rescue of a person who is at the threshold of facing unwarranted consequences for no fault of its own and performing an act becomes impossible.

2.18. It is essential that the financial payments made and deposited in the form of charges and BG ought to be returned and furnished to the Petitioner. If not so done it would amount to a situation of unjust enrichment on the part of the Respondent at the cost and consequence of the Petitioner wherein there is no foreseeable or fathomable infraction on its part. It would also amount to unreasonable penalization of the Petitioner.

2.19. The Petitioner has placed reliance upon the following judgments:

(1) Hon'ble Supreme Court Judgement in *Naihati Jute Mills Ltd. Vs.*

Khyaliram Jagannath reported in AIR 1968.

(2) Hon'ble Supreme Court Judgement in Satyabrata Ghose Vs. Mugneeram Bangur & Co., reported in (1953) 2 SCC 437.

(3) Hon'ble Supreme Court in Boothalinga Agencies vs. V.T.C Poriaswanmi Nadar, reported in

3. The Respondent has filed its reply and contended as under:

3.1. The present Petitioner seeks directions in regard to the Stage-II Connectivity granted on 28.07.2023 in respect of Gondal Sub-station.

3.2. The Respondent, GETCO, is the State Transmission Utility under Section 39 of the Electricity Act, 2003 and a transmission licensee under the said Act. As the State Transmission Utility, Respondent discharges the functions under sub-section (2) of Section 39.

3.3. The Commission has framed the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011, wherein it is provided that a Detailed Procedure may be approved by the Commission to, inter alia, cover applications for connectivity and Open Access (Regulation 20).

3.4. The Detailed procedure was drafted in relation to the Grant of Connectivity to projects based on Renewable sources to Intra State Transmission System and in terms of the Open Access Regulations. The Commission approved the Detailed Procedure for Grant of Connectivity to Projects based on Renewable Sources to Intra-State Transmission

System on 07.01.2023.

- 3.5. If the Grantee does not construct the dedicated transmission line as per the timelines, the Stage-II Connectivity shall be revoked and the Bank Guarantee encashed. The Detailed Procedure read with the relevant tariff orders provide for submission of bank guarantees and provide for cancellation with encashment of bank guarantee in case the Grantee does not meet the requirements.
- 3.6. The issue in the present Petition relates to the request of the Petitioner to seek withdrawal of Stage-II Connectivity already granted to the Petitioner. The Petitioner had also *inter alia* submitted the Bank guarantees alongwith its application as required.
- 3.7. The Petitioner has raised the issue of its inability to set up the wind power project due to the alleged issue of declaration of “no WTG Zone” in the area of Village Jetpur where it intended to set up its WPP.
- 3.8. The Petitioner has not pointed out any provision under the Detailed Procedure which would allow for such situation.
- 3.9. The Detailed Procedure provides for cancellation of the Stage-II Connectivity with encashment of Bank Guarantee and there is no provision for return of Bank Guarantee.
- 3.10. The Respondent had vide Letter dated 25.01.2024 sought clarification from the Commission *inter alia* on the representations received from

Stage-II grantees requesting for revocation claiming force majeure reasons etc.

- 3.11. The Commission has taken a view in regard to transmission charges that the reasons for delay cannot release the open access holder from payment of transmission charges in OPGS Power Gujarat Pvt. Ltd. Vs. Gujarat Energy Transmission Corporation Limited in Petition No. 1301 of 2013 dated 21.10.2014.
- 3.12. The transmission charges are always payable irrespective of the actual use of the transmission system as recognised by the Hon'ble Tribunal in Appeal No. 6 of 2015 and upheld by the Hon'ble Supreme Court vide Order dated 23.02.2018 in Civil Appeal No. 14062 of 2015.
- 3.13. The Open Access Regulations also recognise that the payment of relinquishment charges in case of non-utilisation of Open Access under Regulation 42 of the Open Access Regulations 2011. Thus, in all such situations, the issues with power project cannot be a basis for denial of charges to GETCO.
- 3.14. In the present case, the issue is of connectivity and not transmission charges. However, there is an issue of when the applicants obtain connectivity, block the capacity and then subsequently withdraws the same.
- 3.15. The Petitioner wrote only on 17.01.2024 to repudiate or relinquish the

Connectivity granted. While GETCO had considered capacity as available in order not to waste the capacity at the sub-station, as of now, the capacity has not been granted to anyone else. The consequences of the actions of the Petitioner and appropriate action including the encashment of bank guarantee therefore, have to be considered.

- 3.16. The reasons cited by the Petitioner is that earmarking of certain areas as No WTG by the National Institute of Wind Energy in consultation with Ministry of Defence. The Petitioner has not provided any documentation of the same and while it refers to the Notification, there is no Notification attached. The burden of proof in this regard lies on the Petitioner and the Petitioner is required to substantiate its claim on the notification or that its area of project falls within the same and the Commission may verify the same.
- 3.17. It is the responsibility of the Applicants to identify the land and apply for connectivity at the sub-station and therefore, if the Petitioner was not diligent in its identification of land, the same cannot be a basis to claim return of bank guarantee.
- 3.18. The Petitioner also has to substantiate that there was no default or imprudency on its part. The Petitioner has applied on 17.06.2023 for Stage-II Connectivity whereas another developer had claimed in April and May 2023 itself certain issues in regard to the MOD and National

security. Therefore, it is necessary for the Petitioner to establish that the issue arose only after the grant of Connectivity. The Petitioner has conveniently not specified the date of alleged notification nor even made any specific pleading, let alone provide any evidence.

- 3.19. There was no issue with the connectivity at GETCO sub-station as such but the issue appears to be of the land over which WTG project is to set up.
- 3.20. The Petitioner has to demonstrate whether there was no possibility of continuation of the connectivity with different locations of the power project since the issue lies in location of project but not connectivity or substation.
- 3.21. Mere issue of financial considerations of the Petitioner – on the basis that the dedicated line from new location is more expensive than it had originally envisaged, this may not be an appropriate reason. As has been held by the Hon'ble Supreme Court, mere rise in prices is not a force majeure event.
- 3.22. The Petitioner had applied for Stage I in April 2023 and Stage II in June 2023. The same was entirely the choice of the Petitioner and it is upto the Petitioner to identify the land and choose the sub-station to apply to. The provision of Bank guarantee is as per the Detailed Procedure and the Petitioner was well aware of the provisions of the Detailed Procedure,

including consequences thereof.

3.23. The claim that Petitioner that it had made considerable headway in the project and that the Petitioner had garnered knowledge of the Notification subsequently is not admitted and the Petitioner has to substantiate its claim that the Notification, if any, was issued subsequently and further that the Notification included the Village Jetpur.

3.24. In regard to Letter dated 17.01.2024, there was no reference to any provision of law in the said Letter and even in the present Petition, no reference to any provision of Detailed Procedure or Open Access Regulation is made and therefore GETCO could not return the Bank Guarantee.

3.25. There is no applicability of Section 56 of the Contract Act, 1872 as the issue is under Detailed Procedure and not merely a contractual mandate. There is no doctrine of frustration. There is no impossibility of performance. The issue is not with the sub-station. The inability of the Petitioner to utilise the connectivity cannot be a reason to avoid the consequences.

3.26. It is not disputed that the Commission has jurisdiction under Section 86 to adjudicate on disputes between the Petitioner and GETCO, the adjudication has to be as per the law.

4. The Petitioner has filed rejoinder to the Reply filed by the Respondent,

GETCO and contended that –

- Under the procedure for Grant of Connectivity, there is no provision which allows for withdrawal of connectivity by grantee without any consequences,

And

- That transmission charges are payable always irrespective of the actual use of the transmission system as recognised by the Hon'ble APTEL and Hon'ble Supreme Court.

- 4.1. The Petitioner submitted that the present case attracts the doctrine of impossibility so far as the aspect of setting up of the subject Wind Power Project at location Village Jetpur in the State of Gujarat is concerned.
- 4.2. Due to the issue arising on account of MOD Notification, the directed prohibition contained thereunder, the Petitioner was compelled to surrender its Stage-II connectivity. Such notification imposed a prohibitive embargo on construction of WTGs, designating the project location of the Petitioner as a “NO WTG Zone”
- 4.3. The very construct of Section 56 of the Contract Act, 1872 captures a contract to do an act which after execution of such contract becomes impossible by the reason of some event or becomes unlawful or void when the act becomes impossible or unlawful.
- 4.4. The doctrine of frustration of contract is applied on subsequent

impossibility of the agreement when it is found that the material purpose or basis of such agreement was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances which was beyond what was contemplated by the parties at the time when they entered into the agreement. In the present case such intrusion or occurrence of an unexpected event or change of circumstance is the advent of prohibitive embargo of the MOD in the form of its notification which could not have been contemplated by either of the parties in the present case.

4.5. The Petitioner has relied upon following judgements:

- (1) *Naihati Jute Mills Ltd. Vs. Khyaliram Jagannath*, reported in AIR 1968 SC 522
- (2) *Satyabrata Ghose vs. Mugneeram bangur & Co.*, reported in (1953) 2 SCC 437
- (3) *Boothalinga Agencies Vs. V.T.C Poriaswanmi Nadar*, reported in (1969) 1 SCR 65

4.6. The Commission has already held that the advent of “NO WTG Zone” and its consequence amounts to qualify as an “unforeseen reason” in terms of its connectivity procedure dated 07.01.2023 warranting relief.

4.7. The Respondent ought not to garner undue advantage at the cost of the Petitioner by refusing to address the circumstances of “No WTG Zone” dictum of the MOD, taking shelter under the extant of invocation of Bank

Guarantee. The Petitioner has relied on the Hon'ble Supreme Court Judgement in Erusian Equipment & Chemicals Ltd. Vs. State of WB., reported in (1975) 1 SCC 70.

4.8. The incumbent case presents ideal stimulus for this Commission to invoke and exercise its inherent powers as enshrined under the GERC Conduct of Business Regulations, 2004 to remedy the innocuous situation arisen before it.

4.9. The Commission is possessed with wide regulatory powers under the framework of EA 2003, particularly Section 86 thereof. Such power, its exercise, extent, ambit is judicially described in various orders passed by courts which elucidate the aspect of the exercise of regulatory powers in appropriate cases with the vision to grant relief. The Petitioner relied on the below mentioned judgements of the Supreme Court:

- (1) Cellular Operators Assn. of India Vs. Union of India, reported in (2003) 3 SCC 186.
- (2) UP Power Corpn. Ltd. Vs. NTPC Ltd. reported in (2009) 6 SCC 235.
- (3) U.P Coop. Cane Unions Federations vs. West U.P Sugar Mills Assn. reported in (2004) 5 SCC 430.

4.10. The notification issued by the National Institute of Wind Energy in consultation with Ministry of defence earmarking certain areas as “NO WTG Zone” within the State of Gujarat. The extant guidelines of the

relevant authority so far as issuance of NOC is concerned in areas around the Indian Airforce installations, aerodromes etc. The said document is submitted by the Petitioner. The relevant extract of the foregoing guidelines provide that the position that area falling within the earmarked colour red zone in the map is a complete no construction zone.

- 4.11. The relevant map issued by the National Institute of Wind Energy showing areas within the State of Gujarat as “No WTG Zone” including Village Jetpur is submitted by the Petitioner. Certain areas in the map are marked in colour red within which the site of the Petitioner’s project is located which imply no construction areas. The Petitioner’s project falls under the “No WTG Zone” wherein there is a prohibition on construction as indicated in the map.
- 4.12. It is submitted that if the Respondent/GETCO was already aware of issues cropping due to the MOD notification, then being a nodal agency in terms of Section 39 of Electricity Act, 2003 and entrusted with the function of planning of an efficient, co-ordinated and economical system related to intra-state transmission system, it should have made the Developers aware of the advent of prohibitive embargo imposed by the MOD notification qua erection of WTGs at the subject location, amongst others.
- 4.13. The Commission in its Judgement dated 04.07.2025 (Supra) has specifically observed that the advent of “No WTG Zone” Notified by MOD

is an event falling within the ambit of “unforeseen reason” as envisaged under the connectivity procedure of the Commission. The consequent relief post mitigation has also been granted by the Commission suitably.

5. Ld. Adv. Mr. Mridul Chakravarty appearing on behalf of the Petitioner has reiterated the submissions and argued that the Petitioner garnered knowledge of the fact that the NIWE in consultation with the MoD has notified a map on its website, whereunder certain areas in the State of Gujarat were declared as “NO WTG” Zone. The Wind Power Plant of the Petitioner was to be setup in village Jetpur which was also covered under the ambit of the above notification thereby being declared as “NO WTG” Zone.

5.1. He argued that the Petitioner was constrained to inform about the same to the Respondent vide letter dated 17.01.2024, while requesting for return of the BG and refund of the supervision charges. An alternative option was also suggested that to allow the Petitioner to adjust the said amount i.e. BG and supervision charges in the new connectivity approvals, if possible, as the Petitioner expressed its willingness to develop other wind farm projects in the State of Gujarat.

5.2. He argued that such kind of situation where the project of the Petitioner cannot be set up due to a subsequent change and impossibility, Section 56 of the Contract Act, 1872 becomes applicable invoking the doctrine of

frustration to come to the rescue of a person who is at the threshold of facing unwarranted consequences for no fault of its own and performing an act becomes impossible.

5.3. He argued that the Notification issued by the National Institute of Wind Energy in consultation with Ministry of Defence earmarking certain areas as a “No WTG” Zone within the State of Gujarat. Further, the said notification provides Guidelines for issue of NOC for constructions around Indian Air Force aerodromes

5.4. He argued that Clause 9 of the said notification provides that, Colour Coded Zoning Maps (CCZMs) have been formulated for all IAF aerodromes and handed over to Local Municipal Authorities (LMAs). Depending upon the colour coding in the specific area/zone, a large number of cases will be processed by LMAs only (without any need to forward application to Air Force Station), thus easing the procedures for approvals/clearances to Real Estate Projects only. However, local Air Force Stations will ensure that effective coordination is to be maintained with LMAs for obtaining details of cleared proposals.

5.5. Clause 9 (a) provides that the Maps are formulated based on Geo-referenced Grid of one minute by one minute (Latitude/Longitude) and cover an area of about 75km x 75km.

- 5.6. Clause 10 states that No WTG shall be installed upto a distance of 10 Km in Line of Sight of the Radar Antenna of all Static Air Defence Radars and up to 8 km from VOR and Airport Surveillance Radar.
- 5.7. Clause 11 (a) provides for Red Zone, No WTG is permitted for sites falling in Red Zone.
- 5.8. He argued that the Commission in its earlier judgement has specifically observed that the advent of “NO WTG Zone” notified by MOD is an event falling within the ambit of “unforeseen reason” as envisaged under the connectivity procedure of the Commission. The consequent relief post mitigation has also been granted by this Commission suitably.
- 5.9. He argued that the relevant map issued by National Institute of Wind Energy showing areas within the State of Gujarat as “No WTG Zone” including village Jetpur. Certain areas in the map are marked in colour red within which the site of the Petitioner’s project is located which imply no construction areas. The Petitioner’s project falls under the “No WTG Zone” wherein there is a prohibition on construction as indicated in the above map.
- 5.10. He argued that the Commission is possessed with wide regulatory powers under the framework of Electricity Act, 2003, particularly Section 86. Such regulatory power being encapsulating in their ambit, warrant exercise within the four corners of law. Such power, its exercise, extent,

ambit is judicially described in various Orders passed by courts which elucidated the aspect of exercise of regulatory powers in appropriate cases with vision to grant relief.

6. Ld. Adv. Srishti Khindaria appearing on behalf of the Respondent argued that, Detailed procedure provides for certain timelines which the Stage-II Connectivity Grantees have to Comply.
 - 6.1. Clause 10.2 (A) of the detailed procedure provides that, Stage-II Connectivity grantees shall require to complete the dedicated transmission line(s) including require bays, bus-bar at transmission licensees substation and generator pooling sub-station(s) etc. within timeline specified by the State Commission in relevant Orders/ LOA/LOI/ PPA for projects, as applicable from time to time.
 - 6.2. Clause 10.2 (B) provides that, if a grantee fails to complete the dedicated transmission line(s), including require bays, bus-bar at transmission licensees sub-station and/or generator pooling station(s) within the timeline stipulated under sub-Para Clause (A) above, Stage-II Connectivity shall be revoked and BG shall be encashed.
 - 6.3. Clause 10.2 (C) provides that, the Stage-II grantee shall commission at least 10% of the allotted capacity within one month of charging of evacuation line, failing which; the Stage-II grantee shall be liable to pay long-term Transmission Charges for 10% of allotted capacity till such

10% of allotted capacity is commissioned. Balance 90% capacity shall be required to be commissioned within two years failing which STU shall cancel the capacity allotment to the extent of capacity not commissioned and the developer shall have no claim on such capacity. Further, STU shall include such cancelled capacity in the list of spare capacity for RE integration to be published on their website for prospective consumers or as per the State Commission's Order, if any.

- 6.4. If the Grantee does not construct the dedicated transmission line as per the timelines, the Stage-II Connectivity shall be revoked and the Bank Guarantee encashed
- 6.5. She argued that the issue in the present petition relates to the request of the Petitioner to seek withdrawal of Stage-II connectivity already granted to the Petitioner.
- 6.6. She argued that the Petitioner has raised the issue of its inability to set up the Wind power project due to the alleged issue of declaration of "NO WTG" Zone in the area of Village Jetpur where the Petitioner intended to set up its Wind Power Project
- 6.7. She argued that the Petitioner has not pointed out any provision under the Detailed Procedure which allow for such situation. Further, the Detailed procedure provides for cancellation of the Stage-II connectivity

with encashment of Bank Guarantee and there is no provision for return of Bank Guarantee.

- 6.8. She argued that with regard to the alleged issue of declaration of “NO WTG Zone”, no notification has been produced and the Petitioner has not even submitted what date the notification was published. She submitted that the Petitioner has to substantiate its claim that the notification, if any, was issued subsequently and further that the notification included the village Jetpur.
- 6.9. With regard to the earlier judgement, she submitted that the facts of both the Petition are different. In the cited judgement, the Petitioner has sought for extension of time period for commission the entire evacuation infrastructure, wherein the Petitioner has sought “NO WTG” Zone notified by MOD as an event falling within the ambit of “unforeseen reason”. While in the present Petition the Petitioner has abandoned the project/ raised the issue of its inability to set up the Wind power project.
- 6.10. She argued that the Commission in OPGS Power Gujarat Pvt. Ltd. Vs. Gujarat Energy Transmission Corporation limited in Petition No. 1301 of 2013 dated 21.10.2014, has taken a view in regard to transmission charges, that the reasons for delay cannot release the open access holder from payment of transmission charges. It has been held by the Commission that, “The Construction of power plant, commissioning of it

and achieving the commercial operation of the power plant is independent from the construction of transmission system. The delay in commissioning of the power plant itself has no role to play in the present dispute.”

- 6.11. She further argued that the transmission charges are always payable irrespective of the actual use of the transmission system as recognized by the Hon’ble Tribunal in Appeal No. 6 of 2015 and upheld by the Hon’ble Supreme Court vide Order dated 23.02.2018 in Civil Appeal No. 14062 of 2015. Further, the Open Access Regulations also recognise that the payment of relinquishment charges in case of non-utilisation of Open Access under Regulation 42 of the Open Access Regulations 2011. Thus in all such situations, the issue with power project cannot be a basis for denial of charges to GETCO.
- 6.12. She argued that in the present case, the issue is of connectivity and not transmission charges. However, there is an issue of when the applicants obtain connectivity, block the capacity and then subsequently withdraws the same. The Petitioner on 17.01.2024 wrote to repudiate or relinquish the connectivity granted. While Respondent, GETCO, had considered capacity as available in order not to waste the capacity at the sub-station. The capacity has not been granted to anyone else. The consequences of

the action of the Petitioner and appropriate action including the encashment of bank guarantee therefore have to be considered.

7. Heard the parties. Perused the pleadings and accompanying documents produced by the parties. The present Petition is filed before the Commission by the Petitioner under section 86 of the Electricity Act, 2003 beseeching it to (a) to issue requisite clarification(s) *qua* the Procedure for Grant of Connectivity to projects based on Renewable Energy Sources to the Intra-State Transmission System issued by GETCO in exercise of Regulation 20 of GERC (Terms and conditions of Intra State Open Access) Regulations, 2011, approved by the Commission on 07.01.2023 to the effect that where the Petitioner is faced with an unprecedented situation as elucidated *qua* construction and execution of its 50 MW Wind Power Project, it would be the necessary implication of law that the Petitioner would absolved of any liability, financial or otherwise, which may arise against it. (b) to direct the Respondent to return/refund the Bank Guarantee dated 16.06.2023 for an amount of Rs. 2.5 Crores and Supervision Charges of Rs. 5,84,382/- furnished by the Petitioner. (c) to grant protection to the Petitioner *qua* invocation and encashment of the Bank Guarantee dated 16.06.2023 for an amount of Rs. 2.5 crores during the pendency of the present Petition.

8. The undisputed facts between the parties are as under:
- 8.1. On 07.01.2023 the Commission approved the procedure for “Grant of Connectivity to projects based on Renewable sources to Intra – State Transmission system”.
- 8.2. The Petitioner issued a letter dated 04.04.2023 to GETCO for obtaining the requisite approval qua its proposal to set up 33/66 kV, 2 X 35 MVA Wind Farm sub-station near Village Jetpur Dist. Rajkot.
- 8.3. On 03.04.2023 the Petitioner applied for Stage-I connectivity for its project before the Respondent which application was approved on 29.05.2023 by the Respondent.
- 8.4. On 17.06.2023 the Petitioner made an application before the Respondent for Stage-II connectivity which was granted by the Respondent on 28.07.2023.
- 8.5. The Petitioner provided a Bank Guarantee dated 16.06.2023 for an amount of Rs. 2.5 Crores in favour of the Respondent / GETCO with an expiry date of 20.12.2024 and a claim expiry date up to 20.12.2025.
- 8.6. The Petitioner made payment of Rs. 5,84,382/- vide Demand Draft No. 322070 drawn on the State Bank of India on 05.09.2023 in favour of the Respondent.
- 8.7. The connectivity agreement was executed between the Petitioner and the Respondent on 13.09.2023.

8.8. On 17.01.2024 the Petitioner requested the respondent to repudiate or relinquish the connectivity granted to the Petitioner.

8.9. The Respondent, GETCO, had vide letter dated 25.01.2024 sought clarification from the Commission *inter alia* on the representations received from Stage-II grantees requesting for revocation claiming force majeure reasons etc.

9. The disputed issues between the parties are as under:

9.1. Whether the Petitioner is entitled to get back Bank guarantees dated 16.06.2023 for an amount of Rs. 2.5 Cr. bearing Nos. 230390IBGP00327 or not?

9.2. Whether the Petitioner is entitled to get refund of an amount of Rs.5,84,382/- paid by the Petitioner on 05.09.2023 for the provisional estimate of supervision charges or not?

Discussion:

10. The Petitioner submitted that the issue for consideration by the Commission in the present Petition is regarding the return of the subject BGs and refund of the provisional estimate of supervision charges in the facts and circumstances of the present case, where the application for connectivity was surrendered for bona fide reasons beyond the Petitioner's control, and when there is no provision permitting Respondent to either retain or encash the subject BGs.

- 10.1. The Petitioner being desirous of evacuating 50 MW of Wind Energy for captive use applied for Stage-I and Stage -II connectivity before the Respondent. The Respondent granted the stage-I Connectivity on 29.05.2023 and Stage-II connectivity on 28.07.2023.
- 10.2. The Petitioner provided a Bank Guarantee dated 16.06.2023 for an amount of Rs. 2.5 Crores in favour of the Respondent / GETCO with an expiry date of 20.12.2024 and a claim expiry date upto 20.12.2025.
- 10.3. On 05.09.2023 the Petitioner made payment of Rs.5,84,382/- vide Demand Draft No. 322070 drawn on the State Bank of India in favour of the Respondent. On 13.09.2023 the Petitioner and the Respondent executed a connectivity agreement.
- 10.4. The Petitioner garnered knowledge of the fact that the NIWE in consultation with the MoD has notified a map on its website, whereunder certain areas in the State of Gujarat were declared as “NO WTG” Zone. The Wind Power Plant of the Petitioner was to be setup in village Jetpur which was also covered under the ambit of the above notification thereby being declared as “NO WTG” Zone.
- 10.5. The Petitioner was constrained to inform about the same to the Respondent vide letter dated 17.01.2024, while requesting for return of the BG and refund of the supervision charges. An alternative option was also suggested that to allow the Petitioner to adjust the said amount i.e.

BG and supervision charges in the new connectivity approvals, if possible, as the Petitioner expressed its willingness to develop other wind farm projects in the State of Gujarat.

11. Per contra the Respondent submitted that the Detailed procedure provides for certain timelines which the Stage-II Connectivity Grantees have to Comply.

11.1. If the Grantee does not construct the dedicated transmission line as per the timelines, the Stage-II Connectivity shall be revoked and the Bank Guarantee encashed

11.2. The issue in the present petition relates to the request of the Petitioner to seek withdrawal of Stage-II connectivity already granted to the Petitioner.

11.3. The Petitioner has raised the issue of its inability to set up the Wind power project due to the alleged issue of declaration of "NO WTG" Zone in the area of Village Jetpur where the Petitioner intended to set up its Wind Power Project.

11.4. The Petitioner has not pointed out any provision under the Detailed Procedure which allow for such situation. Further, the Detailed procedure provides for cancellation of the Stage-II connectivity with encashment of Bank Guarantee and there is no provision for return of Bank Guarantee.

- 11.5. The alleged issue of declaration of “NO WTG Zone”, no notification has been produced and the Petitioner has not even submitted what date the notification was published.
- 11.6. The judgement dated 17.10.2025 in Petition No. 2394 of 2024, she submitted that the facts of both the Petitions are different. In the cited judgement, the Petitioner has sought for extension of time period for commissioning the entire evacuation infrastructure, wherein the Petitioner has sought “NO WTG” Zone notified by MOD as an event falling within the ambit of “unforeseen reason”. While in the present Petition the Petitioner has abandoned the project/ raised the issue of its inability to set up the Wind power project.
- 11.7. In the present case, the issue is of connectivity. There is an issue of when the applicants obtain connectivity, block the capacity and then subsequently withdraws the same. The Petitioner on 17.01.2024 wrote to repudiate or relinquish the connectivity granted.
- 11.8. The Respondent, GETCO, had considered capacity as available in order not to waste the capacity at the sub-station. The capacity has not been granted to anyone else. The consequences of the action of the Petitioner and appropriate action including the encashment of bank guarantee therefore, have to be considered.

12. Considering the rival submissions of the parties, we note that the Petitioner was in the process of setting up a Wind Power project in the State of Gujarat. The Petitioner on 04.04.2023 expressed its desire to the Respondent to obtain the requisite approvals *qua* proposal to set up 33/66 kV, 2 x 35 MVA Wind farm sub-station near village Jeput Dist. Rajkot, Gujarat.
- 12.1. We note that the Petitioner to evacuate 50 MW Wind energy for captive use the Petitioner applied to the Respondent for grant of Stage-I connectivity for its proposed Wind Power project on 03.04.2023 which was approved by the Respondent on 29.05.2023. The Petitioner on 17.06.2023 applied to the Respondent for grant of Stage-II Connectivity which was approved on 28.07.2023 at 220 kV/66 kV Gondal Sub-station.
- 12.2. We note that the Petitioner furnished the requisite Bank Guarantee dated 16.06.2023 for an amount of Rs. 2.5 Crores in favour of GETCO with validity till 20.12.2024 and claim expiry date up to 20.12.2025.
- 12.3. We also note that the Petitioner has made payment of Rs. 5,84,382 on 05.09.2023 vide demand draft to the Respondent towards provisional estimate of supervision charges for carrying out the requisite work of erecting the necessary transmission network for evacuating 50 MW of Wind energy at 220 kV/66 kV Gondal Sub-station substation of GETCO from the project for captive use under Option -III.

12.4. We note that National Institute of Wind Energy, an Organisation functioning under the aegis of Ministry of New and Renewable Energy, Government of India in consultation with Ministry of defence earmarking certain areas as “NO WTG Zone” within the state of Gujarat comprising of a list of certain locations where erection of Wind Turbine Generators were prohibited. The Wind Power project of the Petitioner befalling within the confines of the village Jetpur, Gujarat was included as a location in the list of MOD Notification.

12.5. We note that the Petitioner vide letter dated 17.01.2024 informed about the same to the Respondent, which is reproduced below:

“

*Suzlon Global Services Ltd.
C/o. The Co. Work Capital, 1008, 10th Floor, ‘Ocean’
Sarabhai Compound, Nr. Centre Square Mall,
Or. Vikram Sarabhai marg, Vadodara-3900023 Gujarat.*

Ref. No. SGSL/GETCO/BRF/23-24

17th January, 2024

*To,
The Chief Engineer (R&C)
Gujarat Energy Transmission Corporation Limited,
Vidyut Bhavan, Race Course,
Vadodara-390007.*

Sub: Surrender request Stage 2 connectivity approval of evacuation of wind farm generation of 50MW from Jetpur at 220kv/66kV Gondal GETCO S/S and refund of BG and supervision charges.

Ref: GETCO letter No. GETCO/R&C/STAGE2000056 dated 28.07.2023

Dear Sir,

With reference to GETCO letter no GETCO/R&C/STAGE2000056 dated 28.07.2023, we have been granted permission by GETCO to connect 50 MW of wind turbines on 66 KV Jetpur-Gondal line, to 220kV/66kV Gondal sub-station of GETCO,

This permission was granted to us on submission of (a) Land documents (b) Financial Comfort letter (c) Undertaking to develop said project under Captive option and (d) Bank Guarantee No 230390IBGP00327 dated 16.6.2023 of an amount of Rs. 2.5 Crores, with expiring date of 20.12.2024 with last date of lodgment of claim as 20.12.2025, confirming to construct a 12KM 66kV transmission line following Wind Power Policy. Copy of BG is enclosed herewith for your reference.

The route alignment was immediately undertaken and we received the estimate for construction of 66kV Bay at 220kV/66kV Gondal GETCO S/S vide letter no. GETCO estimate no. GETCO/R&C/RE/2456 dated 19/08/23. Accordingly, we have paid supervision charges of Rs.5,84,362/- dated 5.9.23. Copy is enclosed herewith for your kind information. Connectivity agreement has also been executed with GETCO dated 13.9.23.

Subsequent to the above permission from GETCO and our commitment to our customers to develop 50MW Jetpur wind farm project within one year from date of estimate issued to us, we had already finalized contractors to complete line, 66kv Bay & wind farm substation work. We have jointly visited 220kV/66kV Gondal GETCO S/S with GETCO field officers regarding construction of 66kV Bay. GETCO field office has suggested some augmentation work and we have submitted our proposal with 2 options for GETCO approval. Field officers again requested to visit jointly in this week. As a result, we have now completed line survey work, WFSS plot finalization. WTG locations considering 50MW also acquired. We have planned to submit application of Section-68 and Section-164 to Government of Gujarat for their approval.

While every effort is being put in by us to achieve the commissioning target of August-2024, we unexpectedly came to know that recently NIWE (National Institute of Wind Energy) after discussion with MOD (Ministry of Defence) has declared NO GO/NO WTG ZONE AREA of Gujarat on website of NIWE. We cannot able to develop wind farm project in said area. Our Jetpur 50MW site is falling under this NO WTG ZONE area. Copy of map uploaded on website of NIWE is enclosed herewith.

Sir, while every effort is being made to achieve target date, we apprehend that we may not be able to complete the said 50MW Jetpur wind farm project, mainly due to declaration of NO WTG ZONE area by NIWE/MOD.

Therefore, we request you to kindly return us the BG of Rs.2.5Cr and refund supervision charges. Sir, we are keen to develop wind farm projects in Gujarat and we are planning to submit Stage- I and Stage-II PE applications considering 50MW/70MW capacities shortly. We request GETCO to consider

and adjust above BGs and supervision charges in new connectivity approvals, if possible.

We request your good self to please arrange to grant us above approvals and oblige.

Thanking you,

Yours faithfully,

FOR SUZLON GLOBAL SERVICES LTD

S/d.

Authorized Signatory

Encl: As above

.....”

In the aforesaid letter, it has been stated that the Petitioner unexpectedly came to know that recently NIWE (National Institute of Wind Energy) after discussion with MOD (Ministry of Defence) has declared NO GO/NO WTG ZONE AREA of Gujarat on website of NIWE. The Petitioner is not able to develop wind farm project in the said area. The Jetpur 50MW site of the Petitioner’ project is falling under this NO WTG ZONE area. The Petitioner may not be able to complete the said 50MW Jetpur wind farm project, mainly due to declaration of NO WTG ZONE area by NIWE/MOD. The Petitioner requested Respondent to return the BG of Rs.2.5Cr and refund supervision charges. Further, the Petitioner is planning to submit Stage-I and Stage-II PE applications considering 50MW/70MW capacities shortly therefore, requested Respondent GETCO to consider and adjust

above BGs and supervision charges in new connectivity approvals, if possible.

12.6. From the aforesaid letter, it transpires that the Petitioner after garnered knowledge of the fact that the NIWE in consultation with the MoD has notified a map on its website, whereunder certain areas in the State of Gujarat were declared as “NO WTG” Zone. The Wind Power Plant of the Petitioner was to be setup in village Jetpur which was also covered under the ambit of the above notification thereby being declared as “NO WTG” Zone. The Petitioner was constrained to inform about the same to the Respondent vide letter dated 17.01.2024, while requesting for return of the BG and refund of the supervision charges. Furthermore, in the said letter, an alternative option was also suggested to allow the Petitioner to adjust the said amount i.e. BG and supervision charges in the new connectivity approvals, if possible, as the Petitioner expressed its willingness to develop other wind farm projects in the State of Gujarat.

12.7. We also note that the Petitioner undertook the exercise of route alignment for the construction of the 66 kV Bay at 220 kV/66 kV Gondal GETCO Sub-station and proceeded to finalise the contractors to complete the construction of the line.

12.8. We also note that the representative of the Petitioner undertook joint site visit with the field officers of the Respondent regarding the construction

of the 66 kV Bay, whereby, certain augmentation work (s) were suggested by the Respondent, for which, the Petitioner submitted two (2) proposals to the Respondent for their necessary approval.

12.9. We also note that the line survey work was completed and the WTG locations for setting up the 50 MW Wind Power Project was also acquired with a plan to submit necessary and requisite applications under Section 68 and 164 of the EA 2003 to the Government of Gujarat.

12.10. We note that the Respondent has contended that under the Procedure for Grant of Connectivity, there is no provision which allows for withdrawal of connectivity by grantee without any consequences. Further the transmission charges are payable always irrespective of the actual use of transmission system as recognized. Further, the Open Access Regulations also recognize the payment of relinquishment charges in case of non-utilization of Open Access.

12.11. We further note that the Respondent has alleged that the Petitioner has not provided any documentation to substantiate its claim towards surrender of Stage-II connectivity at 220 kV/66 kV Gondal Sub-station and that, the Respondent became aware of the issue of the said issue in May 2023 and April 2023, however, the same was highlighted by the Petitioner on 17.01.2024.

12.12. We note that if the Respondent/GETCO was aware of issues cropping due

to the MOD notification, then being a nodal agency in terms of Section 39 of Electricity Act, 2003 and entrusted with the function of planning of an efficient, co-ordinated and economical system related to intra-state transmission system, it should have made the Developers aware of the advent of prohibitive embargo imposed by the MOD notification qua erection of WTGs at the subject location, amongst others.

12.13. We note that it is an undisputed fact that the Commission has jurisdiction under Section 86 of the Electricity Act, 2003 to adjudicate on the disputes between the Petitioner and the Respondent.

12.14. We note that the present case attracts the doctrine of impossibility so far as the aspect of setting up of the subject Wind Power project at location Village Jetpur in the State of Gujarat is concerned.

12.15. We note that due to the issues arising on account of MOD notification, the directed prohibition contained thereunder, the Petitioner was compelled to surrender its Stage-II connectivity.

12.16. We further note that such notification impose a prohibitive embargo on construction of WTGs, designation the project location of the Petitioner as a “NO WTG Zone”.

12.17. We note that the Notification issued by the National Institute of Wind Energy in consultation with Ministry of Defence earmarking certain areas as a “No WTG” Zone within the State of Gujarat. Further, the said

notification provides Guidelines for issue of NOC for constructions around Indian Air Force aerodromes. The relevant portion of the said guidelines are as under:

“

9. *Colour Coded Zoning Maps (CCZMs) have been formulated for all IAF aerodromes and handed over to Local Municipal Authorities (LMAs). Depending upon the colour coding in the specific area/zone, a large number of cases will be processed by LMAs only (without any need to forward application to Air Force Station), thus easing the procedures for approvals/clearances to Real Estate Projects only. However, local Air Force Stations will ensure that effective coordination is to be maintained with LMAs for obtaining details of cleared proposals. CCZMs of all Indian Air Force (IAF) airfields have been uploaded for all Airfields on IAF website www.indianairforce.nic.in> Utilities and Useful Links>ATS Services> Colour Coded Zonal Maps. The salient aspects of CCZMs are elaborated as given below:-*

(a) The Maps are formulated based on Geo-referenced Grid of one minute by one minute (Latitude/Longitude) and cover an area of about 75km x 75km. Location of runway, Air Force boundary, Nav aids etc. have

not been marked intentionally in the CCZMs owing to prevailing security reasons.

.....

Wind Turbine Generators

10. *No WTG shall be installed upto a distance of 10 Km in Line of Sight of the Radar Antenna of all Static Air Defence Radars and up to 8 km from VOR and Airport Surveillance Radar.*

.....

Colour Coded 'Identified Wind Potential Sites' for installation of WTGs

11. *Wind Potential Sites identified by Ministry of New and Renewable Energy (MNRE) in the States of Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and Telangana have been published in website of National Institute of Wind Energy (NIWE) after carrying out colour coding of each block (akin to Colour Coded Zoning Maps published for real estate projects). The 'Identified Wind Potential Sites' have been marked as Red, Yellow and Green Zone, as per following methodology: -*

- (i) Red Zone- No WTG is permitted for sites falling in Red zone.*
- (ii) Yellow Zone- Applicants shall seek NOC from IAF for sites falling in Yellow zone.*

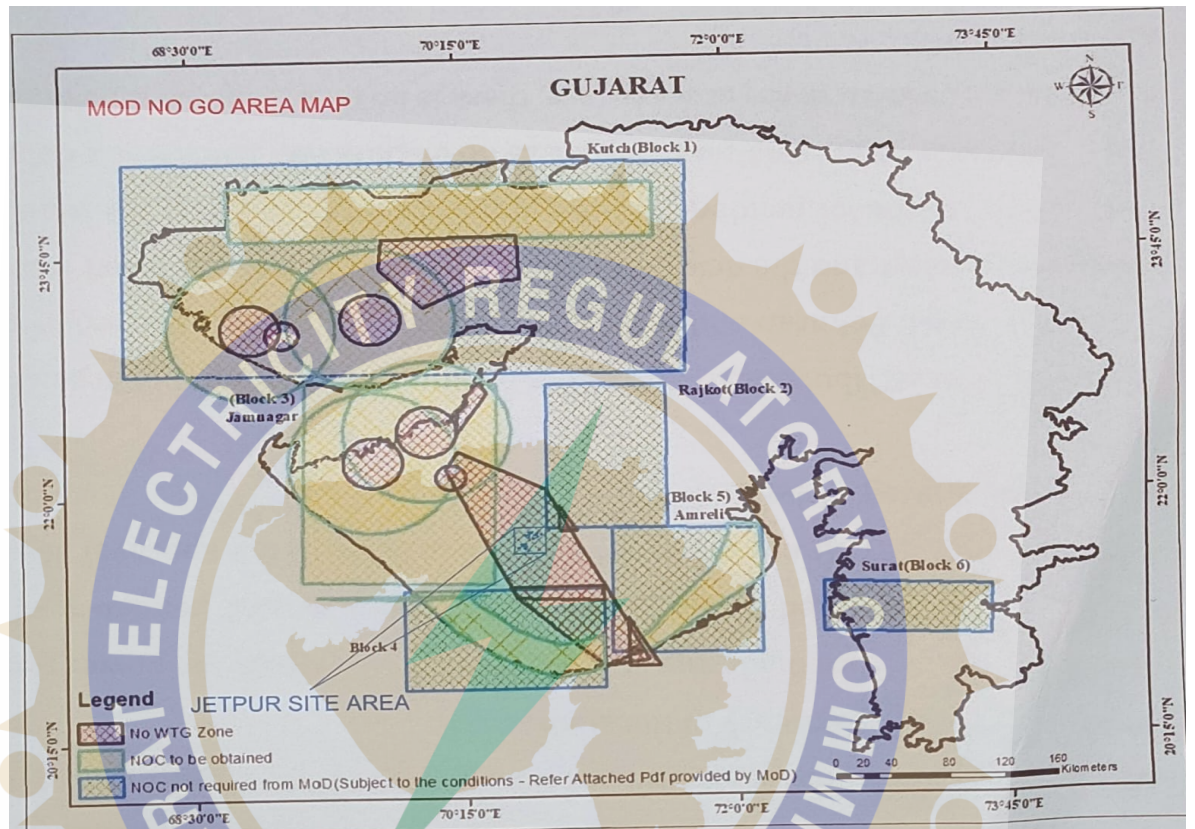
(iii) Green Zone- No restrictions by IAF. Applicants need not to seek NOC from IAF. However, details of WTGs along with site co-ordinates shall be notified to nearest Air Force Station prior to installation of WTGs within the Green Zone.

.....”

- a) Clause 9 of the said notification provides that, Colour Coded Zoning Maps (CCZMs) have been formulated for all IAF aerodromes and handed over to Local Municipal Authorities (LMAs). Depending upon the colour coding in the specific area/zone, a large number of cases will be processed by LMAs only (without any need to forward application to Air Force Station), thus easing the procedures for approvals/clearances to Real Estate Projects only. However, local Air Force Stations will ensure that effective coordination is to be maintained with LMAs for obtaining details of cleared proposals.
- b) Clause 9 (a) provides that the Maps are formulated based on Geo-referenced Grid of one minute by one minute (Latitude/Longitude) and cover an area of about 75km x 75km. Location of runway, Air Force boundary, Nav aids etc. have not been marked intentionally in the CCZMs owing to prevailing security reasons.

- c) Clause 10 states that No WTG shall be installed upto a distance of 10 Km in Line of Sight of the Radar Antenna of all Static Air Defence Radars and up to 8 km from VOR and Airport Surveillance Radar.
- d) Clause 11 states that wind Potential Sites identified by Ministry of New and Renewable Energy (MNRE) in the States of Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and Telangana have been published in website of National Institute of Wind Energy (NIWE) after carrying out colour coding of each block (akin to Colour Coded Zoning Maps published for real estate projects). The 'Identified Wind Potential Sites' have been marked as Red, Yellow and Green Zone, as per following methodology
- e) Clause 11 (i) provides for Red Zone, No WTG is permitted for sites falling in Red Zone.
- f) Clause 11 (ii) provides for Yellow Zone- Applicants shall seek NOC from IAF for sites falling in Yellow zone.
- g) Clause 11 (iii) provides for Green Zone- No restrictions by IAF. Applicants need not to seek NOC from IAF. However, details of WTGs along with site co-ordinates shall be notified to nearest Air Force Station prior to installation of WTGs within the Green Zone.

12.18. We note that the Petitioner has submitted a map issued by National Institute of Wind Energy showing areas within the State of Gujarat as “No WTG Zone. The said map is reproduced below:



12.19. We note that the map issued by National Institute of Wind Energy showing areas within the State of Gujarat as (i) No WTG Zone (ii) NOC to be obtained (iii) NOC not required from MoD (Subject to the conditions- refer attached PDF provided by MOD). In the said map certain areas are marked in Red colour, Yellow Colour, Green Colour. (i) The Red Colour is marked for the area for the NO WTG Zone, (ii) The yellow Colour is marked for the area where NOC to be obtained (iii) The Green Colour is marked for the area where NOC not required from MoD (Subject to the

conditions-refer attached PDF provided by MOD). The Petitioner project is situated in the village Jetpur which is demarcated with Red colour – Red zone which imply No WTG Zone.

12.20. We note that from the co-joint reading of the Clauses of the Guidelines for issue of NOC for constructions around Indian Air Force aerodromes along with the map issued by National Institute of Wind Energy it transpires that the Petitioner's project located in the village Jetpur falls under the Red Zone-“No WTG Zone” wherein there is a prohibition on construction.

12.21. We note that the Commission in its judgement dated 04.07.2025 in Petition No. 2462 of 2025 has observed that the advent of “NO WTG Zone” notified by MOD is an event falling within the ambit of “unforeseen reason” as envisaged under the connectivity procedure of the Commission.

12.22. We further note that the Petitioner has referred to Section 56 of the Contract Act, 1872, which is reproduced below:

56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not

prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.— Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

The aforesaid Section states that an agreement to do an act impossible in itself is void. It also states that a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Further it also states that where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

12.23. We note that change in circumstances consequently making the contract impossible to perform in any manner, absolve the parties to such contract from performing their contractual obligations.

12.24. We note that this situation has only arisen on account of lack of clarity with respect to the treatment of the subject BGs in cases where the application for connectivity is surrendered/withdrawn due to unprecedented situation. We also note that GETCO in its reply stated that it has itself sent a letter dated 25.01.2024 to the Commission seeking clarification inter alia on the representations received from the Stage-II grantees requesting for revocation claiming force majeure reasons etc., the said submission of the Respondent is reproduced below:

“In absence of any provision for allowing grantees to withdraw the connectivity without any consequences and return the bank guarantee, the Hon’ble Commission has to consider the aspect of whether the prayer of the Petitioner can be granted. The Issue would also have to be considered from the broader perspective as the situation may arise in future also. In this regard, the Commission inter alia on the representations received from Stage-II grantees requesting for revocation claiming force majeure reasons etc.”

12.25. We note that even GETCO has not contended that it has any right to retain or encash the subject BGs. GETCO has contended that there is no express provision for return of the subject BGs.

12.26. We note that there is no reason or ground for the retention of the subject BGs by Respondent GETCO. Further, there is no provision of law that

authorizes or permits the retention of the subject BGs and there is no benefit of GETCO in retaining the subject BGs.

12.27. We note that withholding of the subject BGs in the present case, where the petitioner was restrained due to “No-WTG” Zone declared by MOD in area where Power project was planned after grant of connectivity is unjust and against the principles of maintaining regulatory certainty, resulting in the imposition of an unnecessary burden upon a bona fide developer in an unforeseeable situation.

12.28. We note that the purpose of providing BGs is to indemnify the transmission utility against any loss it might incur on account of the developer not constructing the dedicated transmission line (s) in time or abandoning its project after having been granted connectivity thereby resulting in stranding of such capacity. But in the present case due to Notification issued on website of NIWE declaring “NO WTG Zone”, it has become impossible for the Petitioner to perform its obligation to execute its Wind Power project consisting of Wind Turbine Generators and to further construct a dedicated line from such generating station to the 220 kV / 66 kV Gondal Sub-station for evacuating 50 MW of wind power for captive use.

12.29. We note that considering the facts and circumstances of the present case, it can be fairly noted that the notification issued on website of NIWE by

the MOD declaring “NO WTG Zone” clearly bears the unwarranted effect of preventing the Petitioner from developing its project in village Jetpur, in the State of Gujarat. The said effect could neither be prevented by the Petitioner, nor be controlled by it or by the Respondent in any manner.

12.30. Considering the aforesaid facts and circumstances and also in the absence of any further right in respect of BG, the Respondent is supposed to return back the BG and Supervision Charges.

ORDER

13. Thus, in view of the aforesaid facts and circumstances therein, we held and direct that:

(a) the Respondent is directed to return the Petitioner's Bank Guarantee dated 16.06.2023 bearing BG No. 230390IBGP00327 for an amount of Rs. 2.5 Cr. as furnished by the Petitioner.

14. We order accordingly.

15. With this order, the petition stands disposed of.

Sd/-

[S.R.Pandey]
Member

Sd/-

[Mehul M.Gandhi]
Member

Place: Gandhinagar

Date: 12/11/2025.