

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2024 of 2021.

In the Matter of:

Petition under Section 86 (1)(f) of the Electricity Act, 2003 read with Article 10.4 of Power Purchase Agreement dated 02.03.2019 seeking extension of Scheduled Commercial Operation Date in view of Force Majeure events and consequential reliefs in respect of 14.9 MW Municipal Solid Waste based Power Project set up at Village Nakarawadi, District Rajkot, Gujarat.

And

IA No. 31 of 2021 in Petition No. 2024 of 2021.

In the Matter of:

Interlocutory Application in Petition seeking extension of Scheduled Commercial Operation Date (SCOD) on account of force majeure events and consequential reliefs under Section 86(1)(f) of the Electricity Act, 2003 read with Article 10.4 of the Power Purchase Agreement executed between the Parties and also to grant interim stay on any form of coercive action by GUVNL including but not limited to (i) no levy of LD (ii) restoration of BGs invoked by GUVNL on 01.10.2021 or (iii) no termination of PPA, (iv) continuation of tariff of Rs. 7.01/kwh and effectively no reduction in tariff.

Petitioner/Applicant : Goodwatts WTE Rajkot Private Limited
10th Floor, Sangeeta Complex, Near Parimal Crossing,
Ellisbridge, Ahmedabad - 380006.

Represented By : Ld. Sr. Adv. Mr. Rashesh Sanjanwala with Ld. Advocates
Mr. Saunak Kumar Rajguru, Ms. Gayatri Aryan and Mr.
Tarak Damani alongwith Mr. Ashish Mehta, Mr. Anup
Pillai, Mr. Vishal Patel, Mr. Krutarth Oza and Mr. Ankit
Bhargava.

V/s.

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

Represented By : Ld. Advocates Ms. Shrishti Khindaria & Ms. Harini S. alongwith Ms. Sailaja Vachhrajani and Ms. Girija Dave

Objector No. 1 : Utility Users Welfare Association.

Represented By : Nobody was present

Objector No. 2 : Laghu Udyog Bharati.

Represented By : Nobody was present

CORAM:

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

Date: 20/02/2023.

DAILY ORDER

1. Above matters were heard on 07.12.2022. When the matter was called out, despite notice, nobody was present on behalf of the Objectors and no communication regarding difficulty in appearing has been received.
2. Ld. Sr. Adv. Mr. Rashesh Sanjanwala, appearing on behalf of the Petitioner submitted that pursuant to previous hearing in the matter, the Commission passed Daily Order admitting the Petition and considering the request made by the Petitioner seeking time to file rejoinder-in-reply had granted time for same. However, in the interregnum, the Energy & Petrochemicals Department, Government of Gujarat (EPD-GoG) through G.R. No. WTE/11/2022/1361/B1 dated 02.11.2022 has framed the Gujarat Waste to Energy Policy, 2022 with operative period of 5 years and in order to place on record the latest development / additional documents, the Petitioner has filed additional affidavit in this regard.
 - 2.1. It is submitted that the Petitioner is setting up 14.9 MW Municipal Solid Waste (MSW) based Power Project at Village Nakarawadi, District Rajkot, Gujarat under

the Gujarat Waste to Energy Policy, 2016 for disposal of waste while generating electricity therefrom and in furtherance to several initiatives at National level as well as State level by way of various Policies including Swachh Bharat Abhiyan. The said WtE project will not only enable disposal of MSW but also generate electricity by utilizing MSW qualifying as renewable energy project. It is submitted that earlier the Gujarat WTE Policy, 2016 was notified vide GR dated 28.03.2016 with operative period of 5 years followed by an amendment in aforesaid WTE Policy vide G.R. dated 01.05.2018. Thereafter, the said Policy has been extended through G.R.'s dated 28.06.2021 and 13.04.2022 until 31.07.2022.

2.2. It is submitted that in furtherance of the aforesaid Policy, 2016, this Commission had issued Generic Tariff Order dated 10.11.2016 and determined the tariff and other terms and conditions for procurement of power by distribution licensee from MSW Projects in the State of Gujarat. The Petitioner has executed a PPA with the Respondent GUVNL on 02.03.2019, wherein; the Scheduled Commercial Operation Date (SCOD) specified is 31.03.2021 but during last few years, several issues were faced by the Petitioner apart from experiencing difficulty on account of COVID-19 and achieving financial closure took considerable time. It is submitted that MNRE has also granted blanket extension to scheduled commissioning date for all renewable energy projects by 5 months and took further initiatives in this regard. Subsequently, vide another notification by MNRE, project proponents were granted liberty to approach the State Implementing Agency for seeking additional extension of time in SCOD due to Covid-19 pandemic.

2.3. It is submitted that new Waste to Energy (WtE) Policy of 2022 has bearing on the present case because as per Clause 5.2 of the WTE Policy 2022, the previously notified WTE Policy of 2016 and its amendments stand extended till the notification date of the new Policy. Moreover, the aforesaid Policy has also recognized 'Projects in pipeline' under Clause 7.8 whereby the projects which are under construction / implementation but not commissioned are eligible for benefits under WTE Policy, 2016 and Amendment thereto, if such projects are commissioned by March-2024. Accordingly, it is submitted that recognizing the difficulties faced by WtE project

developers, the Government of Gujarat through above policy has brought about regulatory certainty for under-construction projects.

- 2.4. It is argued that broadly the aspects that have emerged through above WtE Policy of 2022 are (a) Operative period of 5 years starting from 02.11.2022 till 01.11.2027, (b) As per Clause 5.2, extension of WTE Policy 2016 till 01.11.2022 and (c) consideration of projects under construction or implementation but not able to achieve commissioning prior to 02.11.2022 and having PPA to be eligible for benefits under WTE Policy, 2016 and Amendment thereto, if commissioning is achieved prior to March-2024 termed as Pipeline Projects (d) Tariff modalities.
- 2.5. It is submitted that in case the Respondent GUVNL prefers to file its reply to aforesaid affidavit, the Petitioner may be granted liberty to file rejoinder-in-reply.
3. Ld. counsels appearing on behalf of the Respondent GUVNL, submitted that the Commission in its Daily Order had directed the parties to file their submissions on whether Rajkot Municipal Corporation (RMC) is a proper and necessary party to the present Petition or not and in compliance thereof, GUVNL has filed affidavit submitting that the presence of RMC may assist the Commission to clarify the issues raised by the Petitioner and assist in complete, effective and adequate adjudication. Accordingly, RMC may be considered as a proper party in this matter.
- 3.1. It is further submitted that the Commission may grant time to the Respondent to file its reply/submissions on the provisions of new Waste to Energy Policy, 2022 including its response to additional affidavit / submissions filed by the Petitioner and also argue the matter.
4. During the hearing, the representative appearing on behalf of the MPSEZ Utilities Limited (MUL) submitted that being a distribution licensee, request for impleadment as party Respondent in this matter alongwith other similar matters being Petition No. 1865/2020, 1998/2021 and 2044/2021 is made stating that MUL is an obligated entity under the GERC RPO Regulations and renewable attribute units and their cost is being apportioned by nominated agency to all Distribution Companies in proportion to their power consumption of previous year.

It is further stated that the Respondent GUVNL has raised invoices as a Nodal Agency for the period 01.11.2021 to 31.03.2022 and 01.04.2022 to 31.08.2022. Accordingly, MUL may be impleaded as one of the Respondent in this matter being pertaining to Municipal Solid Waste to Energy Projects in the State of Gujarat.

5. We have considered the submissions made by the parties. We note that an additional affidavit is filed by the Petitioner on 01.12.2022 and the Respondent GUVNL has sought time to file its reply/submissions regarding new Waste to Energy Policy, 2022 issued by the Government of Gujarat including its response to additional affidavit / submissions filed by the Petitioner. Moreover, the Petitioner is directed to serve the copy of additional affidavit to Objectors also, who are at liberty to file their reply, if any, with copy to other side. It is noted that the Petitioner is yet to file its submissions regarding necessity of RMC as party in this matter and hence, the Petitioner is at liberty to file the same. Accordingly, the matter is adjourned directing the Respondent GUVNL & the Objectors to file their response.
- 5.1. We note that request is made by Mr. Nitin Madam through affidavit dated 11.04.2022 for impleadment in the present matter being a consumer of distribution licensee PGVCL. It is stated that since the burden of electricity generation from the WtE project of the Petitioner is on the consumers, the Commission needs to hear them. It is alleged that the Petitioner has deliberately delayed the implementation of the project and it appears that the Petitioner has incurred less cost towards the project. It is submitted that the Commission may direct the Petitioner and other parties to provide copy of their filing in this matter so that Objector Mr. Nitin Madam may file its submissions. Since, we have decided to implead Utility Users' Welfare Association (UUWA) and other consumers group like Laghu Udyog Bharati - Gujarat (LUB) to represent the interest of the consumers in this matter which is not objected by the parties, hence, we are of the view that let Mr. Nitin Madam also be impleaded in this matter so as to enable filing submissions, if any and hear in interest of the consumers in this matter. Accordingly, we decide to implead Mr. Nitin Madam in this matter to be arrayed as 'Objectors' in memo of parties.
- 5.2. We note that during the hearing, the representative appearing on behalf of MPSEZ Utilities Limited (MUL) submitted that being a distribution licensee, MUL may be

impleaded as party Respondent in this matter alongwith other similar matters being Petition No. 1865/2020, 1998/2021 and 2044/2021 stating that it is an obligated entity under the GERC RPO Regulations and the Respondent GUVNL has raised invoices as a Nodal Agency for renewable attribute cost apportionment for the period 01.11.2021 to 31.03.2022 and 01.04.2022 to 31.08.2022. We note that pursuant to request for impleadment made by Mr. Nitin Madam, UUWA Utility Users' Welfare Association (UUWA) and other consumer group like Laghu Udyog Bharati - Gujarat (LUB) to represent the interest of the consumers in this matter, it has been decided to implead them in this matter so as to enable them to file their submissions, if any and hear them in interest of the consumers in this matter. Accordingly, we decide to implead MPSEZ Utilities Ltd. as party in this matter to be arrayed as 'Respondent' in memo of parties. Accordingly, the Petitioner is directed to provide copy of this Petition alongwith all submissions & documents therein to the Respondent MUL and Objector Mr. Nitin Madam. Upon receipt of the same, they are at liberty to file their submissions, if any, with copy to other parties. Also, the Respondent GUVNL and 'the Objectors UUWA & LUB' to provide copy of their reply/submissions, if any already filed in the present matter to other side & newly joined parties. Copy of this Daily Order to be provided by the staff of the Commission to MPSEZ Utilities Ltd. and Mr. Nitin Madam.

5.3. Next date of hearing will be intimated separately.

6. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 20/02/2023.