

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 2417 of 2024.**

**In the matter of:**

**In the matter of Petition under Section 86 of the Electricity Act, 2003 read with Order No. 05/2024 dated 31.08.2024 “Tariff Framework For Procurement of Power by Distribution Licensees And Others from Wind Power Projects for the State of Gujarat” passed by the Commission seeking extension of Scheduled Date of Commissioning (SCOD) of infrastructure being developed by the Petitioner for evacuation of power from its 200 MW wind farm located at Jamjodhpur to 220kV Kalawad sub-station of Respondent / GETCO, on account of occurrence of Force Majeure events.**

**And**

**IA No. 46 of 2024 in Petition No. 2417 of 2024.**

**In the matter of:**

**In the matter of Application under Rule 26 of the GERC(Conduct of Business ) Regulations, 2004 read with Section 94 (2) of the Electricity Act, 2003 seeking urgent listing and hearing of the Petition.**

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. Ankita Bafna

V/s.

Respondent No.1 : Gujarat Energy Transmission Corporation Ltd.  
Sardar Patel Vidyut Bhavan  
Race Course Circle, Vadodara – 390007.

Represented By : Ld. Adv. Ms. Ranjitha Ramachandran,  
Ld. Adv. Aneesh Bajaj alongwith Mr. S.K. Nair  
and Mr. Shobhraj Jayswal

Respondent No. 2 : Gujarat Energy Development Agency.  
4<sup>th</sup> Floor, Block No. 11 & 12, Udyog Bhavan  
Sector-1, Gandhinagar-382017, Gujarat.

Represented by : Mr. Anil Patel and Mr. Parthik Patel

**CORAM:**

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

**Date: 18/10/2025.**

**ORDER**

1. The present Petition has been filed by Petitioner seeking following reliefs:
  - a) To hold and declare that the events pleaded in the Petition are in the nature of Force Majeure or 'unforeseen reasons' beyond
  - b) the control of the Petitioner in terms of clause 3.8 of order No. 05/2024 'Tariff framework for procurement of power by Distribution licensees and others from Wind Power Projects for

State of Gujarat', affecting the development and Scheduled Commercial Operation Date (SCOD) of the infrastructure being developed by the Petitioner for evacuation of power from its 200 MW Wind farm located at Jamjodhpur to 220 KV / 400 KV Kalavad substation of the Respondent, GETCO.

- c) To extend the SCOD of evacuation infrastructure of the Petitioner as provided in the Gujarat Wind Policy, 2016 from 30.06.2025 to 30.06.2026 or till the date of actual Commissioning of the project whichever is earlier.
- d) To hold and declare that the Petitioner is exempted from any financial liabilities due to delay in achieving SCOD due to force Majeure events/unforeseen reasons including but not limited to forfeiture/encashment of bank Guarantee by Respondent

2. This Petition was heard on 18.12.2024, 05.02.2025, 29.05.2025, 10.07.2025 and finally on 17.07.2025.

3. The brief facts of the case are as under:

3.1. The Petitioner is in the process of setting up the infrastructure for evacuation of 200 MW Power from its wind power project located at Jamjodhpur to 220 kV / 400 kV Kalavad substation of the Respondent No. 1, GETCO, under captive use.

3.2. The Petitioner entered into a Memorandum of Understanding in the Month of February-2022 under the innovative program of Vibrant Gujarat for harnessing more than 500 MW of Wind energy.

3.3. On 15.11.2022, the Petitioner applied for Stage-I connectivity (registered as STAGE100000263) before the Respondent under the provision of GERC (Terms and Conditions of Intra -state Open Access) Regulations, 2011 (Regulations 4 &5) ("GERC OA Regulation") for availing connectivity to the intra state transmission system. For seeking Stage-I connectivity, the Petitioner proposed the following locations of GETCO's Substation where the connectivity can be granted for evacuating power from wind farms located at various sites for captive use.

- (i) 220 KV/400 KV Kalavad substation of GETCO for evacuating 200 MW power from wind farms site near Village Kalavad, District- Jamnagar.
- (ii) 220 KV/66 KV Dhokadva substation of GETCO for evacuating 70 MW power from wind farm site near village-Saiyad Rajpara, District-Gir Somnath.
- (iii) 66 KV Hansot substation of GETCO for evacuating 70 MW power from wind farm site near village katpar (I), District – Bharuch.

(iv) 66 KV Olpad substation of GETCO for evacuating 70 MW power from wind farm site near village Katpar (II) District, Bharuch.

3.4. On 07.01.2023, the Commission while exercising power conferred under Regulation 20 (Chapter -5) of GERC OA Regulations issue the procedure for grant of connectivity to projects based on Renewable energy sources to Intra State Transmission system.

3.5. The said procedure extensively laid down the steps to be followed both by the applicant and GETCO for availing/granting connectivity to the intra-state transmission system for evacuating power, from the generating stations.

3.6. On 20.01.2023 GETCO granted the Stage - I Connectivity to the Petitioner in terms of following:

Name of the Applicant Company	Suzlon Global Service Ltd.
Name of GETCO substation for Connectivity	220 KV/400 KV Kalavad s/s
Approved MW of stage-I	200 MW
Voltage class on which the connectivity sought	200 /400 KV
Type of project	Wind
Purpose	Captive/Third Party/ PPA

3.7. The Petitioner undertook to construct (i) 200 KV/33 KV wind farm S/s at Kalavad, (ii) 220 KV S/C or D/C transmission Line (12 Kms approx.)

from wind farm s/s to GETCO's 220/400 KV S/s at Kalavad and (iii) 1 220 KV GIS Bay at GETCO's S/s at Kalavad.

3.8. On 19.05.2023, the Petitioner gave an undertaking (attested) to GETCO stating that the project shall be developed under 'captive' option.

3.9. On 22.05.2023, on behalf of the Petitioner, IDBI Bank Ltd. issued a bank guarantee i.e. BG No. 230390IBGP00288 worth Rs. 10 Crore in favor of GETCO. The expiry date of the BG is 23.05.2025. The last date by which BG can be invoked by GETCO is 23.05.2026.

3.10. As per clause 6.4 of connectivity procedure, the stage-I connectivity grantee is required to apply for stage-II connectivity (i) within six months from the date of grant of Stage -I connectivity or (ii) till the date the particular sub-station gets booked by stage-II connectivity grantee, whichever is earlier. In compliance of clause 6.4 read with clause 8 of the connectivity procedure on 23.05.2023, the Petitioner applied for Stage-II connectivity from its wind project to GETCO's 220 KV/400 KV pooling S/s at Kalavad and submitted the following documents.

- i) Land related documents alongwith shareholding pattern of the Applicant company
- ii) Bank Guarantee of Rs. 5 Lakh per MW totaling to Rs. 10 Crore.
- iii) Financial Comfort Letter issued by the investors.

- iv) Undertaking dated 19.05.2023 to develop the approved site (near Kalavad sub-station) under captive option.
- v) Kalavad site map.
- vi) Format-3 of stage-II application.

3.11. The Petitioner sought for grid connectivity for evacuating power from wind project for captive use. For that, the Petitioner submitted the adequate undertaking to GETCO.

3.12. The Petitioner also informed GETCO regarding the following efforts undertaken by it towards development of 200 MW Kalavad site:

- i) Procurement of land in Kalavad Jamjodhpur rejoins in Jamnagar District for development of 200 MW wind projects. In this regard, requisite land documents (Orders of Collector) were submitted.
- ii) Installation of wind masts in the regions to analyze the wind data.
- iii) Survey was conducted for each WTG location, proposed 33 KV internal lines and EHV lines from WFSS to GETCO substation bearing in mind Right of Way issues, weather conditions etc.
- iv) Identification of Wind farm substation land.

3.13. The steps undertaken by the Petitioner during the pendency of the grant of Stage-II connectivity, duly demonstrated its commitment towards timely implementation/commissioning of 200 MW Wind project site at

Kalawad/Jamjodhpur regions in terms of the connectivity procedure prescribed by the Commission.

3.14. On 03.06.2023, the Petitioner issued the following undertakings

a) Regarding total land acquired for the project: The Petitioner undertook that it had acquired land admeasuring 120 hectares in Jamnagar District of Gujarat for the purpose of developing a 200 MW wind farm of Kalavad.

b) Regarding Financial confirmation: The Petitioner undertook that the total project construction cost for the wind farm will be Rs. 290 Cr (excluding GST) and that the source of funding would be from 'internal accruals' together with collection from customers.

3.15. The GETCO processed the said application in accordance with regulations (4), (5) & (6) of GERC connectivity Regulations and granted Stage-II connectivity to the Petitioner on 30.06.2023 for evacuation of 200 MW power from its wind power project located at Jamjodhur through 220 KV/400 KV Kalawad substation under captive mode.

3.16. The details of stage -II connectivity granted to the Petitioner summarized as following:

Name of the Applicant Company	Suzlon Global Service Ltd.
Name of GETCO substation for Connectivity	220 KV/400 KV Kalawad s/s
Approved MW of stage-I	200 MW

Voltage class on which the connectivity sought	200 /400 KV
Type of project	Wind
Purpose	Captive

- 3.17. Under the grant of Stage-II connectivity, the Petitioner was inter-alia required to (i) execute upfront a connectivity Agreement with GETCO, (ii) Open a letter of credit for 10% of capacity charges equivalent to two (2) months billing cycle (iii) obtain approvals under section 68 and 164 of the Electricity Act, post which only works could commence and submit bank guarantee for timely completion of bay work.
- 3.18. On 26.07.2023, GETCO wrote a letter to the Petitioner providing the “provisional estimate of supervision charges” for erection of GIS feeder Bay at GETCO’s 220 KV/400 KV pooling S/s at Kalavad.
- 3.19. On 08.08.2023, the Petitioner wrote a letter to Shree Sai Calnates India Pvt. Ltd., a Potential WTG owner, inviting the latter to invest in Petitioner’s 200 MW wind farm at Jamjodhpur.
- 3.20. As per clause 9.7 of the Connectivity procedure issued by the Commission, the stage-II connectivity grantee was required to execute the agreement with GETCO for connecting the wind project to Intra State Transmission system.

- 3.21. On 24.08.2023, the Petitioner executed a connectivity Agreement with GETCO for connecting its 200 MW wind Power project Facility (at Jamjodhpur/Kalawad region) to the STU's transmission system at the interconnection point at 220 KV level of 220/400 KV Kalavad substation.
- 3.22. The Petitioner was granted Stage-II Connectivity (30.06.2023) in accordance with connectivity procedure dated 07.01.2023 issued by the Commission during subsistence of Gujarat Wind Power Policy, 2016 (issued on 02.08.2016 and operative till 30.09.2023).
- 3.23. In accordance with Clause 22 of the said Wind Policy, 2016 the wind project having capacity of 101 MW to 200 MW, was required to commission the entire allotted pooling substation capacity within 2 years from the date of allotment of transmission capacity. Accordingly, the Petitioner having 200 MW capacity of wind project was mandated to commission the evacuation infrastructure within two years from the date of grant of Stage-II connectivity (30.06.2023) i.e. 30.06.2025.
- 3.24. Between 01.07.2023 and 31.08.2024, the Petitioner approached Potential WTG owners inviting them to establish WTGs in Petitioner's proposed 200 MW wind farm at Jamjodhpur, Gujarat.

- 3.25. The investors showed disinterest due to regulatory uncertainty prevailing in the sector. The Petitioner has submitted the response of the investors such as BN Paper and Bajrang Processors Pvt. Ltd.
- 3.26. On 18.09.2023, Shree Sai Calnates India Pvt. Ltd responded to Petitioner's letter dated 08.08.2023 and thereby denied investing in Petitioner's wind farm owing to regulatory uncertainty and potential risk to its investment.
- 3.27. The regulatory uncertainty was created due to absence of operative wind tariff order which continued until 31.08.2024 when the tariff framework for wind project came to be issued by this Commission, which adversely impacted the confidence of the investors in the project of the Petitioner.
- 3.28. In the absence of an effective wind tariff order and due to consequent regulatory uncertainty, the Petitioner was unable to garner interest from any customer.
- 3.29. Even the investors who offered letter of financial comfort to the Petitioner for setting up of 200 MW wind farm and evacuation infrastructure, displayed their loss of confidence in moving forward with the project.

- 3.30. On 04.10.2023, the Government of Gujarat issued a new Renewable Energy Policy in the nature of a consolidated policy applicable to all type of RE projects in the State including rooftop solar, mounted solar, wind, wind-solar hybrid etc. with respect to the wind projects, this new policy was a replacement of the earlier Wind Policy, 2016 issued by the Govt. of Gujarat.
- 3.31. The new policy of 2023 inter alia introduced new modalities w.r.t registration of RE projects as per the procedure to be framed by Gujarat Energy Development Agency. The Gujarat RE Policy 2023 which inter alia for the first time mandated RE projects to register with GEDA (i) through an online portal to be devised by Gujarat Energy Development Agency (development permission) and (ii) as per the modalities/procedure / terms & conditions to be formulated by GEDA (Clause 25.2 - 25.3).
- 3.32. The Petitioner was constrained to comply with such requirement (even though its project fell under the operative period of Wind Policy 2016) especially in view of its ensuing discussion with GEDA wherein the latter insisted for such compliance by the Petitioner.
- 3.33. GEDA formulated the Executive Procedure (dealing with modalities and terms & conditions for registration of RE projects), belatedly i.e. only in

December 2023. During the entire period of October -December 2023, the Petitioner was unable to proceed with project related activities without registration of its Project due to inordinate delay on the part of GEDA in issuing the Executive Procedure.

3.34. The Executive Procedure issued in December 2023 mandated RE developers, for the first time, to obtain a Development Permission (DP) from GEDA through an online portal to be developed by GEDA. Obtaining DP became indispensable for the Petitioner as it is through such DP only that GEDA would approve the final land coordinates for installation of WTGs.

3.35. On 23.04.2024, 26.06.2024 and 30.07.2024, the Petitioner applied to GEDA for grant of Development Permissions w.r.t 71.40 MW, 46.20 MW and 21 MW respectively, out of the total wind farm capacity of 200 MW.

3.36. As per the Executive Procedure, all the applications should be submitted through online portal which GEDA will develop. Even after three months, the online portal so developed by GEDA, was only able to issue pre-development permission which was not in nature of final DP which could have enabled the Petitioner to undertake the construction activities. It was only in March 2024 that GEDA communicated to the Petitioner to continue with the hard copy submission for DP. This

indifference *qua* the procedure on the part of Government authority led to delay in application/ grant of DP to the Petitioner.

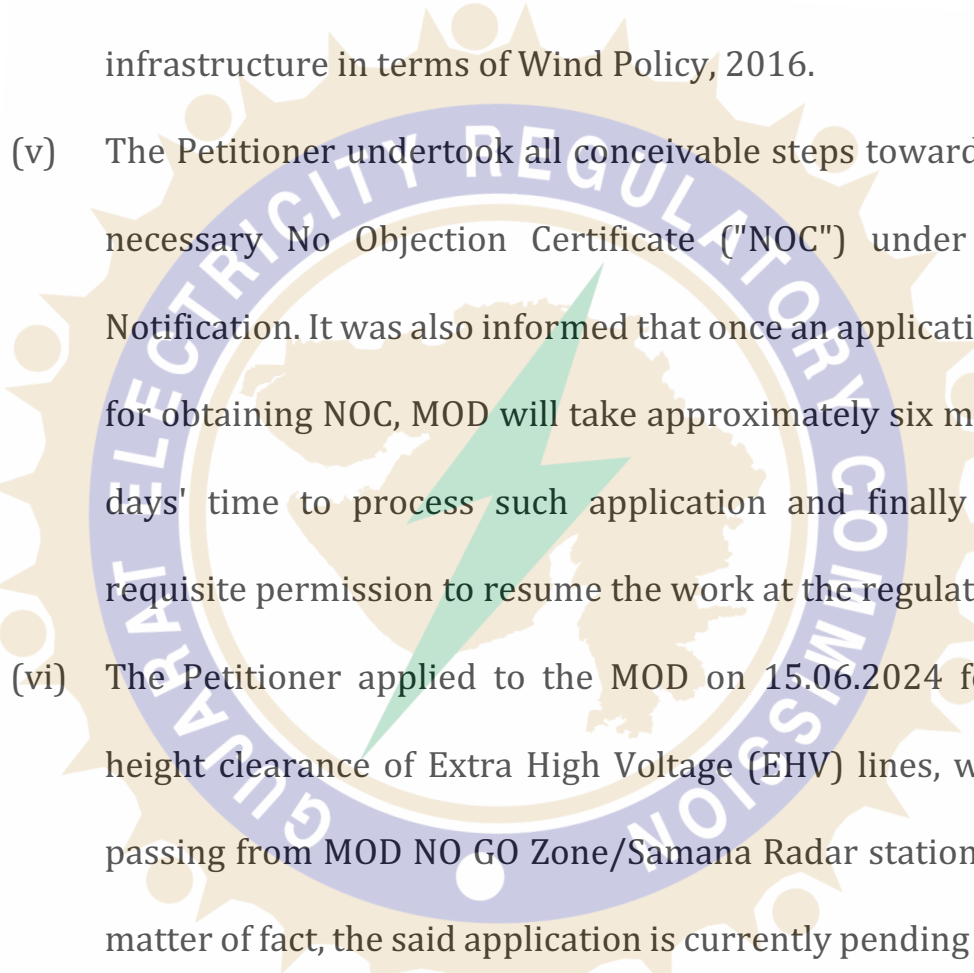
- 3.37. On 15.06.2024, the Petitioner applied to Command Air Traffic Controller Officer (Headquarters Southwestern Air Command), Gandhinagar requesting to issue NOC for construction of 220 kV S/C transmission line from tower location 42/0 at Bodi village, Kalavad Taluk to tower location 57/0 at Sogthi village, Jam Jodhpur Taluk, Jamnagar, of length 12.80 KMs and the nearest tower being 41.90 KMs from Jamnagar IAF station.
- 3.38. On 17.05.2024, 29.07.2024 and 12.08.2024, GEDA granted Development Permissions to the Petitioner w.r.t its applications dated 23.04.2024, 26.06.2024 and 30.07.2024 respectively.
- 3.39. On 01.08.2024, the Petitioner executed an Agreement to Sale with one Mr. Jamnadas Virjibhai Manavadariya for acquiring land for Pooling S/s of Petitioner's wind farm at Jamjodhpur, Jamnagar, Gujarat.
- 3.40. The Petitioner regularly submitted the Progress Report of the project to GETCO including the quarterly reports submitted on 09.11.2023, 27.12.2023.
- 3.41. The progress of the Petitioner's project is continued to be substantially and adversely impacted due to occurrence of the following

uncontrollable and unforeseeable events which were akin to Force Majeure events:

3.42. In December 2023, the Ministry of Defence ("MoD") issued a notification thereby declaring certain areas as NO GO/NO WTG Zone in the State of Gujarat ("MOD Notification").

3.43. The said notification substantially impacted the progress of the evacuation infrastructure being developed by the Petitioner. As such, the impact of declaration of certain areas as *NO GO/NO WTG Zone*, on the project of the Petitioner, is being summarized herein below:

- (i) During the period of January-May 2024, Survey Report and Layout Plan were prepared for Petitioner's Project (including the 220 kV EHV line).
- (ii) Upon conducting the survey of the 220 kV EHV line, considering the designated NO GO Zone area and the radar station located in the Samana area of Jamnagar District, it was discovered by the Petitioner that a significant portion (50%-70%) of Petitioner's proposed 220 kV EHV line from the prospective wind farm to the 220kV/400kV Kalavad GETCO substation fell within this prohibited/ regulated region.

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- (iii) The Petitioner was forced to postpone the finalization of contractors for executing the line works and other commissioning activities.
- (iv) Such declaration by MoD obstructed the Petitioner's bona-fide efforts towards achieving timely commissioning of the evacuation infrastructure in terms of Wind Policy, 2016.
- (v) The Petitioner undertook all conceivable steps towards securing necessary No Objection Certificate ("NOC") under the MOD Notification. It was also informed that once an application is made for obtaining NOC, MOD will take approximately six months/180 days' time to process such application and finally grant the requisite permission to resume the work at the regulated sites.
- (vi) The Petitioner applied to the MOD on 15.06.2024 for seeking height clearance of Extra High Voltage (EHV) lines, which were passing from MOD NO GO Zone/Samana Radar station area. As a matter of fact, the said application is currently pending with MOD. This has resulted in halting the execution work in the areas of Bodi, Mota Panch Devda, Nana Panch Devda, Del Devaliya, Namrana and Sogthi village of Jamnagar District

- 3.44. On account of issuance of MOD Notification and consequent delay in assessment of the No Go area and in grant of NOC for implementation of the wind project in notified areas, the implementation of evacuation infrastructure of the Petitioner got significantly delayed. Such delay caused due to additional requirement imposed by the government authority, is unforeseeable and beyond the reasonable control of any project developer including the Petitioner.
- 3.45. Being aggrieved by the unforeseen circumstances, the Petitioner vide letter dated 24.06.2024 duly Intimated GETCO regarding the delayed progress of the project due to occurrence of force majeure events i.e. non-grant of NOC by MOD till date. Consequently, the Petitioner sought extension of SCOD of the evacuation infrastructure from 20.06.2025 to 30.06.2026 or till actual commissioning of the Project whichever is earlier without incurring any financial liabilities.
- 3.46. That in a joint meeting held on 12.09.2023 in the presence of stakeholders and GETCO officials, it was unanimously agreed that the developers shall install Siemens make 220 kV GIS bays at GETCO's 220 kV/400 kV sub-station at Kalavad.
- 3.47. However, during the subsequent meeting convened on 22.02.2024, it was decided in view of the constraints faced by the developers, to revise

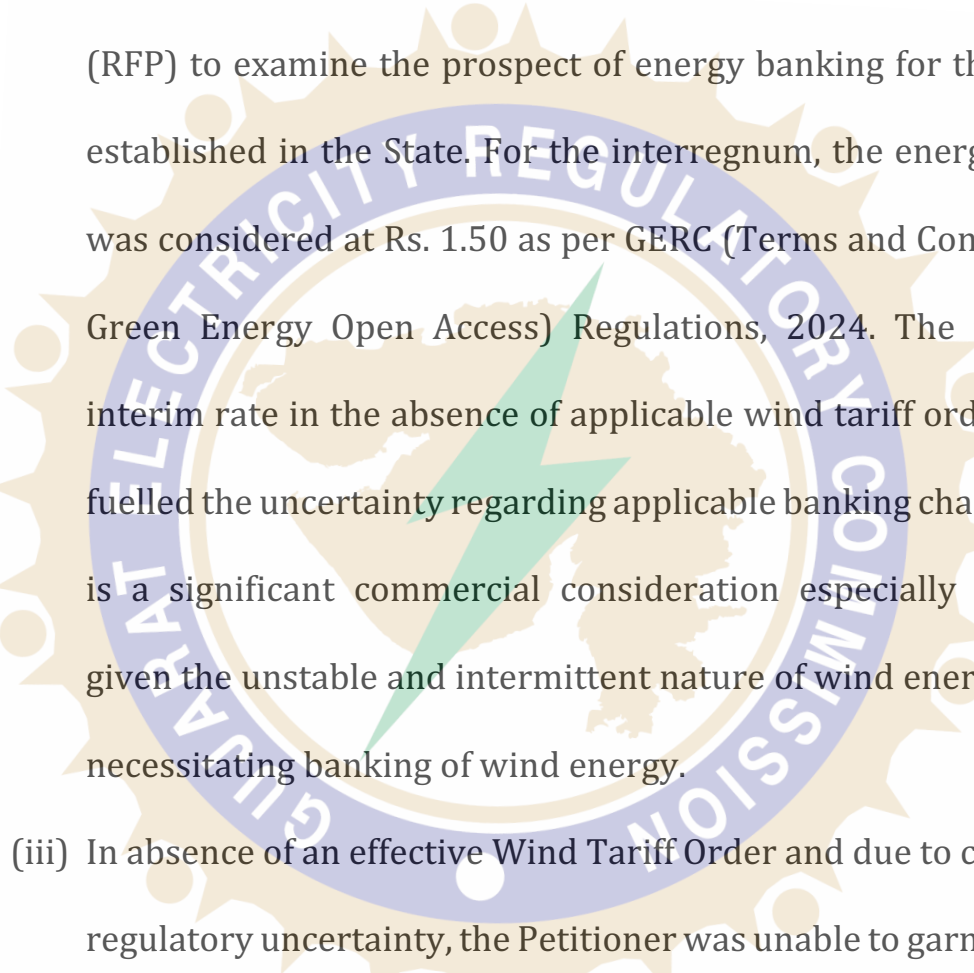
the GIS bay sequence which was to be mandatorily followed by the Petitioner alongwith other project developers.

3.48. Based on the said decision, the Petitioner continued to carry out the construction activities however, on 09.08.2024, another meeting was called upon in the presence of developers and GETCO and the GIS bay sequence were again revised.

3.49. The decision of frequently changing the applicable make and model of 220 GIS Bays to be used for evacuation of power, was uncontrollable on the part of the Petitioner.

3.50. As a matter of fact, a significant period of 9 months was lost in the process of finalization of make and model of GIS Bays. This considerably delayed the progress in implementation of evacuation infrastructure by the Petitioner.

3.51. On 30.04.2020, the Commission issued Wind Tariff Order which expired on 31.03.2022. Since then, there had been no operative Wind Tariff Order applicable within the State. This vacuum created by absence of applicable Tariff Order, hindered the Petitioner's efforts in garnering/ inviting potential customers, in absence of which, Petitioner's recovery of tariff, and thus, viability of Project was at risk. With respect to this issue, following facts may be considered:

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- (i) That the absence of an operative Wind Tariff Order inter-alia led to uncertainty qua the applicable transmission and wheeling charges on the wind projects including the captive wind project of the Petitioner.
- (ii) In February 2024, this Commission issued a Request for Proposal (RFP) to examine the prospect of energy banking for the projects established in the State. For the interregnum, the energy banking was considered at Rs. 1.50 as per GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024. The fixation of interim rate in the absence of applicable wind tariff order, further fuelled the uncertainty regarding applicable banking charges which is a significant commercial consideration especially for WTGs, given the unstable and intermittent nature of wind energy sources necessitating banking of wind energy.
- (iii) In absence of an effective Wind Tariff Order and due to consequent regulatory uncertainty, the Petitioner was unable to garner interest from any customer. Even the investors who offered Letter of Financial Comfort to the Petitioner for setting up of 200MW wind farm and evacuation infrastructure, displayed their loss of confidence in moving forward with the project.

(iv) The unforeseen/uncontrollable circumstances in the form of absence of operative wind tariff order until 31.08.2024 when the Tariff Framework for wind projects came to be issued by this Commission, severely hindered the efforts of the Petitioner towards achieving the SCOD of the wind project.

3.52. Significant delay has been caused at the instance of GETCO and other RE developers who have frequently sought changes in the 220 kV GIS bay sequences and associated technical arrangements at GETCO's 220 kV /400 kV substation at Kalavad. Following facts are noteworthy in this regard:

- (i) A meeting was held between GETCO and Multiple RE project developers including the Petitioner on 12.09.2023 concerning installation of 220 kV GIS bays at GETCO's sub-station. All RE developers viz. M/s. Morjar, OP Wind and M/s Suzlon agreed to a specific bay sequence.
- (ii) On 22.02.2024, the GIS bay sequence was changed in the following form viz. (i) M/s Morjar, (ii) M/s OP wind (iii) M/s Suzlon and (iv) M/s Clean Max.
- (iii) On 09.08.2024, the bay sequence was further changed at the instance of other RE developers.

3.53. The Petitioner had no control on determining the GIS bay sequence and the same was being subjected to change only at the instance of the GETCO and other RE developers. The Petitioner was constrained to give way to the joint resolution of other RE project developers in the meetings dated 12.09.2023, 22.02.2024 and 09.08.2024. Such repeated unforeseen changes in bay sequence and associated technical arrangements at GETCO's 220 kV Kalavad S/s has cascading effect on the delay being caused in commissioning of the evacuation infrastructure between Petitioner's proposed wind farm and GETCO s/s which ought to be taken into account for extension of SCOD.

3.54. The Petitioner proposed EHV line route from its wind farm at Jamjodhpur to GETCO's 220 kV /400 S/s at Kalavad is susceptible to serious Right of Way issues that the likely to arise upon commencement of the construction work as such line encounters 12 power line crossing and 1 NH crossing. This region is prone to ROW issue being faced by project developers as also evident from the fact that GETCO's 220 kV Bhatiya Kalavad Kangasiyali transmission line suffered inordinate delay on account of ROW issues which is evident as under:

- (a) The 220 kV Bhatiya-Kalavad-Kangasiyali Line spans about a total length of 118 km with 373 towers.

(b) The construction work commenced way back in 2011. However, till date GETCO has only been able to complete foundations of only 176 towers out of 373 in total and has fully erected only 127 towers thereof. Further, stringing has only been done upto 11 kms out of 118 kms of the transmission line.

3.55. The failure to achieve SCOD may lead to invocation of Bank guarantee by GETCO. A party cannot be penalized for a delay in achieving SCOD which is not attributable to it. Courts have consistently held that imposition of a 'mandatory penalty' despite there being no fault of the party is arbitrary and cannot stand the test of law.

3.56. As per Clause 3.8 of tariff framework for procurement of power by distribution licensees and other from wind power projects for State of Gujarat, this Commission is vested with the power to extend SCOD of the wind project in the event the said project could not be commissioned by SCOD on account of occurrence of 'unforeseen reasons'.

3.57. While adjudicating upon the present relief seeking extension of SCOD of the wind project of the Petitioner, this Commission ought to be guided by the mandate contained in Section 86 (1) (e) of the Act, which categorically obligate the Commission to ensure promotion of the renewable energy.

The National Electricity Policy and National Tariff Policy also seek to promote generation of the renewable energy.

- 3.58. The aforementioned events such as (i) non-grant of NOC by MOD for implementing WIG in notified areas; (ii) frequent change in decision of applicable make and model of 220 kV GIS Bays, (iii) regulatory uncertainty due to absence of operative wind tariff order are not only unforeseeable but also uncontrollable on the part of the Petitioner being a project developer, hence the same tantamount to force majeure events.
- 3.59. As on the date of filing of the Petition, these events continue to obstruct the progress in construction activities and thereby causing extensive delay in implementation of the infrastructure developed by the Petitioner for evacuation of power from 200MW wind farm through Kalwad sub-station of GETCO.
- 3.60. In response to the request of Petitioner qua extension of SCOD of evacuation infrastructure, GETCO vide its letter dated 09.07.2024 stated as following:

*“In this regard, it is to state as per clause 10.2 (A) of GERC approved Procedure dated 07.01.2023, Stage-II Connectivity grantee shall 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 order/LOA/LOI/PPA for projects as applicable from time to time.*

*Further, in the Discussion Paper notified by Hon'ble GERC in March, 2024 for "Tariff framework for procurement of power by the Distribution Licensees and other from wind power projects for the State of Gujarat" it is stated that if the Wind Project Developer (as Generator/Consumer/ Licensee) fails to Commission the entire allocated evacuation system along with bays and metering system within stipulated time period due to unforeseen reasons they may approach to the Commission seeking for extension of time period. In view of the above, Suzlon May approach Hon'ble GERC for extension of time limit failing which, GETCO shall take appropriate action as per FERC directives"*

3.61. The Discussion Paper of March, 2024 as mentioned in the response dated 09.07.2024, this Commission has passed Order No. 05/2024 dated 31.08.2024 thereby notifying the Tariff Framework for procurement of power by the Distribution Licensees and other from wind power projects for the State of Gujarat ("Tariff Framework").

- 3.62. As per clause 3.8 of the said Tariff Framework, if a Wind Project Developer fails to commission the entire allocated evacuation system within the stipulated time period due to unforeseen reasons, the developer may approach this Commission for seeking extension of time period for completion of the project.
- 3.63. Clause 16 'Dispute Resolution Mechanism of the Tariff Framework also allows the parties to approach this Commission if they fail to resolve any dispute/controversy/ claim amongst themselves.
- 3.64. The Petitioner vide the present Petition has invoked the jurisdiction of this Commission seeking extension of SCOD of the infrastructure being developed by the Petitioner for evacuation of power from 200MW wind project through 220kV/ 400kV Kalawad sub-station of GETCO, on account of occurrence of aforementioned force majeure events/ unforeseen reasons.
- 3.65. The Petitioner is committed to develop the 200 MW Jamjodhpur wind farm project, a venture for which it has diligently pursued connectivity at Kalawad sub-station of GETCO.
- 3.66. The Petitioner has made substantial progress towards commissioning of the evacuation infrastructure [Jam Jodhpur Project - 200 MW (220/33 KV

WFSS + GIS TB + EHV Line- 42 KM)], as on date. The Petitioner has completed the following works:

- (i) 220 KV EHV Line from Suzlon WFSS to GETCO 220/66 KV Kalavad SS - Contractor Finalized, PO issued to M/S Winsol.
- (ii) EHV line Groundwork will start from 1st week of Oct 24, currently manpower mobilization/store-yard set up is under process
- (iii) Chief Electrical Inspector, Government of Gujarat (CEIG) Plan approval application has been submitted to GOG
- (iv) Partial material order has been placed by M/S Winsol (GI Stub and Structure Material).
- (v) Applications under Section 68 & 164 have been submitted.
- (vi) Ministry of Defence approval of EHV Line is expected by end of Sep 24.
- (vii) 220 KV GETCO TB Contractor has been finalized. LOI has been issued to M/S Simms Engineering and Purchase Order will be Issued by end of Sep 24.
- (viii) M/S Simms have started communication with GETCO for Vendor/Contractor approval for GIS Bay execution work.
- (ix) 220/33 KV Suzlon WFSS Contractor is under finalization and Purchase Order will be issued by 1st week of Oct 24.

## **Reply of the Respondent dated 28.01.2025**

4. Respondent submitted its reply on 28.01.2025 and contended as under:
  - 4.1. The Commission has framed GERC (Terms and Conditions of Inter-State Open Access) Regulations,2011 where under it is provided that the detailed procedure may be approved by the Commission which would inter alia, include aspects on application for connectivity and open access and other issues (Regulation 20).
  - 4.2. A 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 Open Access Regulations, the draft had been placed on the website of the Respondent to invite comments and suggestions and thereafter the same was placed before the Commission.
  - 4.3. 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.
  - 4.4. 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.
  - 4.5. 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.

- 4.6. The Petitioner has sought for extension of the timelines which has to be considered as per the Commission in terms of the detailed procedure read with tariff orders. While there is no specific provision of force majeure, the tariff order only recognize failure to commission on case to case basis due to unforeseen reasons. While the tariff order recognizes the extension in certain cases, there is no inherent power in terms of Conduct of Business Regulations for substantive rights of the parties. The power under conduct of Business Regulations are procedural.
- 4.7. It is the responsibility of the Petitioner to demonstrate the same. The burden of proof in this regard lies on the Petitioner and the Petitioner is required to substantiate its claim and the Commission may verify the same. If there was any default or imprudence on part of the Petitioner, the Petitioner cannot be allowed extension.
- 4.8. The Petitioner was granted Stage-II Connectivity vide letter dated 30.06.2023 for 200 MW wind power project at 220 kV Kalavad substation of GETCO and in terms of the prevailing timelines on the date of Stage-II connectivity being 24 months, the Petitioner is required to

complete by 30.06.2025. The Petitioner has undertaken the project under captive mode.

- 4.9. The responsibility of the Petitioner to ensure that the evacuation facilities/project is developed within time. It was the Petitioner which chose to apply for connectivity being well aware of the timelines and consequences thereof. It was the Petitioner's choice to obtain the connectivity and thereafter invite investments or seek registration.
- 4.10. There cannot be any general consideration of promotion of renewable energy. The detailed procedure as well as Tariff Order has been framed specifically for renewable projects and therefore there is no further consideration while complying with the requirements/provision of the same. It cannot be that merely because the Petitioner is a renewable project, it can claim any delay or extension. Any issue has to be considered as per the same only.
- 4.11. The Respondent referred to the judgement relied on by the Petitioner, however it is submitted that none of the said judgements provide that the law/order have to be ignored merely because of promotion of renewable projects particularly when the law/orders relate specifically to renewable projects. The Hon'ble Court has repeatedly upheld sanctity of contracts and timelines and liquidated damages etc even in case of the

renewable projects. The status of Must run also is not relevant. The requirement and procedure of connectivity are not overridden by the must run status.

4.12. The Petitioner is seeking extension from 30.06.2025 to 30.06.2026 or completion of project whichever is earlier, based on below alleged aspects.

Sr. No.	Event claimed	Delay Claimed	Extension sought
1	Delay in project registration/grant of permission by GEDA	July 2023 - August 2024	13 months
2	Delay on account of MOD No Go/ No WTG Zone in Gujarat pendency of NOC	December 2023 - till date	9 months and continuing
3	Delay due to tariff vacuum for wind power projects in Gujarat	July 2023- August 2024	13 months
4	Delay due to frequent changes in GIS bay sequence at the behest of GETCO and other RE developers.	September 2023-August 2024	11 months

4.13. The Petitioner has claimed the extension from 30.06.2025 to 30.06.2026 or actual date whichever is earlier. Therefore, the maximum time sought even as per the Petitioner is until 30.06.2026.

4.14. The Petitioner has submitted the bank guarantee dated 22.05.2023 of amount of Rs. 10 crores which is expiring on 23.05.2025 with claim

period until 23.05.2026. The Petitioner is required to ensure that the bank guarantee is valid for the period and GETCO reserves its right to encash the same. The bank guarantee is an unconditional bank guarantee.

- 4.15. The Petitioner had chosen to obtain connectivity allegedly before it has obtained investors and before it had registered the project with GEDA. This is entirely a commercial decision of the Petitioner. The project registration activity is for the development of the renewable project and it is the responsibility of the Petitioner to obtain all necessary approvals.
- 4.16. In the quarterly report vide letter dated 09.11.2023 and 27.12.2023, no mention was made of any of the alleged issues of GEDA permission and only issue was not being able to find investors allegedly due to uncertainty. While this aspect is dealt with hereinbelow in details, there was no issue at this time raised on GEDA permission despite the notification of the RE policy 2023.
- 4.17. The Petitioner is claiming that its project falls under operative period of Wind Policy 2016, but it is not clear how, since clearly the Petitioner had neither commissioned nor even intended to commission the project within the period of the 2016 policy.

- 4.18. The registration with GEDA was provided even under Wind Power Policy 2016 and it was not a new requirement. The Renewable Energy Policy, 2023 was to provide a single window web system for RE projects which eases the process. The online portal only eased the process. Further the RE Policy 2023 was notified on 04.10.2023 but the Petitioner had already applied for Stage-I connectivity in 2022 and in fact had applied Stage-II connectivity on 23.05.2023. Despite obtaining the Stage-II connectivity by 30.06.2023, the Petitioner had not taken any steps for registration until October 2023.
- 4.19. Manual application was allowed for GEDA permission even prior to December 2023 wherein developer permission was not required for registration. The Petitioner could have applied prior to December 2023.
- 4.20. The Petitioner had applied for GEDA for the Developer permission only on 23.04.2024, 26.06.2024, and 30.07.2024 for 71.40, 46.20 and 21 MW i.e. nearly a year from its Stage-II connectivity.
- 4.21. The alleged communication in March 2024 is not substantiated. Further even then, the application was filed only on 23.04.2024, 26.06.2024 and 30.07.2024. The GEDA has provided approvals in a reasonable time i.e. 17.05.2024, 29.07.2024 and 12.08.2024.

- 4.22. There were other wind power project who were provided the Stage-II connectivity as per the detailed procedure in 2023 who have not raised the issue of GEDA permission.
- 4.23. The GETCO has granted approval for connectivity with the grid and as per the provision of GERC order(s), the entire evacuation system is to be developed by 30.06.2025. The delay in registration of the project, if any, may not impede the establishing of the evacuation system as per the scope of estimate. The registration is for the renewable project not for evacuation system.
- 4.24. The Petitioner is seeking more than 13 months for such alleged delays which cannot be accepted. There is no basis for considering from July 2023 when the new policy came only in October 2023 and modalities were issued in December 2023. When the Petitioner itself took time to apply, the same cannot be claimed as delay. GEDA had responded to the applications in a reasonable time and the same cannot be claimed as delay. The Petitioner cannot expect that GEDA would not take any time for registration and permission.
- 4.25. The Petitioner has claimed to have carried out project related works in ground which has nothing to do with GEDA. The Petitioner was still conducting Wind resource assessment after obtaining Stage-II

connectivity for which it had already acquired 50% land for the power project. This was entirely the business decision of the Petitioner and cannot excuse not having taken appropriate steps for registration with GEDA.

4.26. The Petitioner claims that it was awaiting for the online portal to be developed before proceeding with survey work but apparently the survey work was done in January 2024 to May 2024 and the NOC applied on 15.06.2024, even though the GEDA permission was applied in April 2024, June 2024 and July 2024. However, in Ground M (e) (i), the Petitioner has claimed that the survey was done mid May to June 2024.

4.27. The reliance on the decisions of the Hon'ble Tribunal in the case of alleged delays in Government Authorities has to be seen in context of the present facts. The Petitioner has to demonstrate and substantiate the delay. If there was laches on part of the developer, it cannot then claim any extension.

4.28. The Petitioner has claimed that the MOD had declared a "NO GO zone" in December 2023 (through in Letter dated 24.06.2024 the reference is November -December 2023). While it is not the claim of the Petitioner that it cannot set up the wind farm, it appears that the Petitioner's claim is that the proposed evacuation line was affected as allegedly significant

portion (50 to 70%) of the proposed 220 KV EHV line fell within the prohibited/regulated region.

- 4.29. It is the Petitioner's burden of proof to demonstrate the above and further clarify whether it is prohibited zone or regulated zone. Further the Petitioner may substantiate the declaration in December-2023 as in case of another developer, solarcraft had claimed in April and May 2023 itself certain issues in regard to the MOD and National security. If the issue had already arisen in April and May 2023, the Petitioner who had applied in May 2023 for Stage-II connectivity cannot claim any relief.
- 4.30. No other generator/developer (M/s Morjar, M/s Cleanmax vayu, M/s OP wind) who have also obtained connectivity at Kalawad sub-station has raised any issue of MOD NOC for the evacuation line.
- 4.31. The Petitioner has only contended regarding "No WTG zone" and NOC to be obtained. There is no "NO GO Zone". It is also not clear from the said Map whether this attaches the requirement to NOC for evacuations line. The reference appears only for Wind Power projects- WTGs.
- 4.32. The requirement of NOC from MOD may not have been a new requirement. The Petitioner has claimed that the MOD would take approximately six months/180 days to process the application but

apparently the Petitioner had not even applied for the same until 15.06.2024.

4.33. The Stage-II connectivity was obtained on 30.06.2023 and the Petitioner had apparently not taken any steps until December 2023 in terms of the evacuation line and even thereafter, the Petitioner has claimed to have applied only on 15.06.2024. The survey report has itself been claimed to be only January to May 2024 even though the Stage-II connectivity was obtained on 30.06.2023. In fact when the survey report was undertaken, the alleged notification of December 2023 was already there.

4.34. The Petitioner has referred to its application to Command Air Traffic Controller Officer but there is no annexure and its blank paper. It is not clear if this is intended to be the same annexure. It is also not clear if there are further communications from the authorities or if the application is otherwise or if the application is otherwise complete. It is normal for time to taken by authorities. Even as per the Petitioner, six months would be taken.

4.35. The Respondent referred the following decisions:

a) NTPC Vidyut Vyapar Nigam Ltd. Vs. Precision Technik Pvt. Ltd. 2018  
SCC Online De 13102

b) Pasithe Infrastructure Ltd. Vs. Solar Energy Corporation of India & Anr. 2017 SCC online Del 12562 (Delhi High Court)

4.36. The reliance on *Naihati Jute Mills Ltd. Vs Khyaliram Jagannath* AIR 1969 SC 522 is not correct. The Petitioner claims that the Judgement “impliedly” held that if party made best efforts but failed to obtain, the same would-be force majeure. There is no such implied decision. In the said case, it was noted that the application was refused due to a personal disqualification. The reference thereafter to an assumption and other judgment cannot be used as a basis in the present case.

4.37. Further to hold that there is a delay in approvals as referred in decision in *GUVNL v. M/s Cargo Solar Power Gujarat Pvt Ltd* 2014 SCC Online ARTEL 23 and other cases, the same was based on specific contractual clause and it has to be shown that there was delay. This would mean unreasonable time taken as recognized by the Hon'ble High Court of Delhi.

4.38. The reliance on decision in *Taxus Infrastructure and Power Projects Pvt Ltd v. GERC* in Appeal No. 114 of 2015 and 131 of 2015 is misplaced and the Petitioner has misconstrued the decision. The said decision did not deal with the two aspects (delay in government approval for SPV and delay in registration of sale deed) referred in the Petition and it was

precisely in this ground that the review Petition was allowed, and the Appeal was reopened and heard. On the other hand, the appeal was allowed in favour of the GUVNL in case of third issue delay in granting statutory approval under Section 89A and it was held not to be force majeure as per PPA.

4.39. That if there is any consideration, the same cannot be from December 2023, this is particularly when the Survey report itself was not completed till May 2024 even as per the Petitioner. Therefore, clearly the Petitioner was not ready. Further it applied only on 15.06.2024.

4.40. The Petitioner has sought to claim that the Wind Tariff Order dated 30.04.2020 expired on 31.03.2022 and since then there was no operative Wind Tariff Order and in this regard the Petitioner is claiming delay from July 2023 to August 2024 which cannot be accepted. This was not an unforeseen reason.

4.41. The Tariff Order dated 30.04.2020 read with Order dated 26.05.2020 for wind power projects was applicable for the control period upto 31.03.2022. Therefore, at the time that the Petitioner applied for Connectivity and obtained Stage-I Connectivity and applied and obtained Stage-II Connectivity was all after the expiry of the earlier Tariff Order. The Petitioner was well aware of the situation and circumstances

when it applied for connectivity. Such circumstances cannot by any measure be considered as unforeseen.

4.42. The Petitioner has claimed that it had approached investors/potential WTG owners between 01.07.2023 to 31.08.2024. Therefore, for more than a year after obtaining connectivity, the Petitioner had not even received investors and therefore clearly it did not make any progress in the project. It was the Petitioner's choice to obtain connectivity and it cannot then claim inability to set up the project due to alleged lack of investors. The issues of financing etc. cannot be claimed to be unforeseen or reasons beyond the control of the Petitioner. Such contentions of the Petitioner cannot be a basis of claiming extension in time. Further the alleged uncertainty claimed is the absence of tariff order which as already submitted was not unforeseen since the period was always known to the Petitioner even when it applied for Connectivity.

4.43. There was no reason why the Petitioner applied for connectivity and blocked the capacity when it could have chosen to wait for the Tariff Order to be issued. All entities were aware of the control period of the earlier Order and there is no basis for the Petitioner to now claim any alleged adverse impact on the confidence of investors or otherwise of any alleged regulatory uncertainty or claim that the Project viability was

at risk when the Project was conceived when the tariff order had already expired. It was choice of the Petitioner to apply for connectivity without getting investors on board and being aware of the alleged regulatory uncertainty.

4.44. The Petitioner was well aware of the alleged uncertainty of applicable transmission and wheeling charges for wind power projects when it applied for connectivity, and it cannot now claim any issue on this account. In fact, the Tariff Order had expired for more than a year when the Petitioner applied for Stage-II Connectivity.

4.45. Further the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 had already been notified. Therefore, it is not clear even otherwise, whether there was any uncertainty. Further the Green Open Access Regulations 2024 provided for banking charges as per the Regulations. It is not clear why this would create uncertainty.

4.46. It is not clear when the investors allegedly offered letters of financial comfort or even if the letters were given or the terms of said alleged letter or agreement between the Petitioner and such investors. But the fact remains that the Petitioner had applied for Connectivity and blocked the capacity and is liable to meet the timelines. It cannot be that the

Petitioner blocks the capacity and then is unable to find the investors or procurers or otherwise does not find the project viable etc.

4.47. The contention made on the investors is contrary to the Petitioner's undertaking dated 03.06.2023 submitted along with the Stage-II application as required under the Procedure dated 07.01.2023. It was the stand of the Petitioner, that the source of funding was "internal accruals"

"We hereby confirm that the source of our fund for our aforesaid wind project is from "Internal Accruals".

4.48. Even at the time of this undertaking, the Petitioner was well aware that the earlier Tariff Order had already expired.

4.49. The inability of the Petitioner to find customers/investors etc. is not a reason to justify the delay in development of evacuation facility/power project nor claim it to be unforeseen or equivalent to force majeure. Allowing the Petitioner to claim such delays would lead to a wrong precedent where such developers are allowed to block capacity and then take their own time, finding customers/investors etc. The entire purpose of providing timelines to ensure timely utilization would be rendered redundant.

- 4.50. The Petitioner has referred to other generators and in fact it appears from another developer M/s Cleanmax Vayu that the Petitioner was in fact not willing to share the dedicated transmission line presumably as they could not conclude the commercial arrangement for sharing.
- 4.51. The Petitioner has sought to rely on Order dated 17.03.2023 in Petition No. 2128 of 2022 in Distributed Solar Power Association and Another v. Gujarat Urja Vikas Nigam Limited and Others which is related to the control period of the Order dated 03.04.2021 and cannot be applied to the present case at all.
- 4.52. The issue is not the applicability of the tariff order but the timelines for completion of work to ensure optimum utilization of the network. It cannot be that the connectivity taken by developer for prolonged time without the project being developed since the capacity is getting blocked. Further the issues therein were completely different, and the uncertainty therein was different. Here the Petitioner was well aware of the time period even before applying for connectivity and it was its own choice to apply and obtain Stage-II Connectivity. GUVNL in that case was not affected in any manner. However, in the present case, it has to be seen that the connectivity has been blocked by the Petitioner without utilizing it and this has resulted in delay in recovery of transmission

charges and further affects other potential renewable energy developers who may have sought connectivity at the Kalawad sub-station.

4.53. The Petitioner has not placed the complete facts. There is no issue from September 2023. The meeting in September 2023 was in regard to the make and all parties agreed to SIEMENS. It is not clear how this caused any delay. There are four generators at Kalawad Sub-station and the meeting was made to ensure the consistency.

4.54. The meeting on 22.02.2024 was to coordinate and the bay sequence was *inter alia* decided. The bay sequence decided on 22.02.2024 was the same as understood in September 2023. Therefore, there was no change at this stage.

4.55. The revision was necessitated at behest of M/s Cleanmax who citing lack of inputs from Petitioner, Suzlon, vide letter dated 29.07.2024 requesting for bay swapping with Suzlon to proceed with the evacuation as planned. Therefore, GETCO convened a meeting on 09.08.2024 with the M/s Cleanmax and Petitioner for discussion bay swapping as requested by M/s Cleanmax and pursuant to deliberation, the request for bay swapping was allowed. Thus, was agreed to by the Petitioner and no objection was raised at the time of meeting nor did the Petitioner raise any issue of extension of time at this stage.

4.56. It is not clear how the Petitioner had been affected. The bay sequence does not affect the transmission line to be laid down, particularly when Petitioner has not commenced any work. In fact, the change itself was necessitated due to the lack of progress by the Petitioner. Had Petitioner proceeded well in time, this swapping could have been avoided

4.57. The Petitioner has claimed that it continued construction activities but has neither claimed that there was any activity between September 2023 to February 2024 nor substantiated the claim that there was work between February 2024 to August 2024. There are no details let alone any supporting document or evidence. Even as per the alleged list of activities, it seems that no activity may have been carried out during the period between 22.02.2024 and 09.08.2024, let alone before September 2023. The Petitioner has cleverly omitted to provide the details of the alleged work but it is clear that the Petitioner was otherwise delayed.

4.58. The Commission may also have to consider if the Petitioner was otherwise delayed. The Petitioner had not obtained any vendor approval. Further the Petitioner did not submit the drawing for approval, common drawing to be submitted. This was not only stated in meeting on 12.09.2023 but also in meeting on 22.02.2024 but this was not submitted and GETCO had sent reminders on 22.05.2024 and

05.06.2024. In fact, as is clear from the representation by another developer, M/s Cleanmax Vayu, it was the Petitioner which was causing the delay in common drawing approvals. M/s Clean Max wrote to GETCO on 03:07.2024 requesting for approval of common drawing for Petitioner and other two generators except Suzlon and GETCO vide Letter dated 22.07.2024 reiterated that the drawings are not submitted and stated that in case of non-readiness of any developer, the common drawing alongwith other ready developers may be submitted

4.59. The Part Layout Plan, Section and SLD in respect of M/s Cleanmax, Morjar and OPWind was submitted for approval in August 2024 which was duly granted on 11.09.2024. However, drawing for the Petitioner has not been submitted.

4.60. In fact, even in regard to the vendor approvals, the same was obtained only as under:

a. The Petitioner requested for approval of electrical and civil contractor vide letter dated 04.09.2024 received on 10.09.2024 GETCO had sought vide letter dated 17.09.2024 for certain aspects which was compiled only on 14.10.2024. GETCO has issued contractor approval vide letter dated 16.10.2024.

- b. The Petitioner requested for approval of equipment vendors vide letter dated 29.11.2024 received date 30.11.2024 and GETCO has issued vendor approval letter dated 06.12.2024.
- 4.61. The Respondent denied that there was any frequent change of make and model of 220 GIS Bays. The developers had all agreed to SIEMENS on 12.09.2023 and there has been no change in the same. The Petitioner is connecting two different aspects and seeking to claim delay.
- 4.62. The Petitioner cannot claim delay from September 2023 to August 2024. The Petitioner had not undertaken any work which had to be revised. It is clear that the Petitioner had not even completely done survey work which was only done by May 2024 even as per the Petitioner. The Petitioner had not applied for vendor approval or drawing approval. Further the Petitioner apparently did not even have investors or customers, and this is the reason for Petitioner to delay the project
- 4.63. The reference to the alleged ROW issues in Grounds is not relevant admittedly the work has not even begun yet. It is the Petitioner's responsibility to resolve ROW issues.
- 4.64. The Petitioner has to establish that the delay was not due to its own delays/defaults, and it had acted diligently. The Petitioner has only in

Para 48 provided the alleged progress and status but has not provided the details and dates.

- 4.65. The Petitioner has only claimed that the purchase order would be issued in September 2024 or October 2024. The Petitioner had not even obtained the Section 68 and Section 164 approvals on date of filing of the Petition even though the Petition itself has been filed more than a year after the Stage-II Connectivity Approvals. The Petitioner has not obtained the approval of the Plan from CEIG. The Vendor approval from GETCO was obtained only on 06.12.2024. The drawing approval has not been obtained yet.
- 4.66. The Petitioner has claimed it has acquired land and executed agreement to sell only on 01.08.2024 and further allegedly completed engineering activities but it is not clear which activities were completed.
- 4.67. In fact, the work on the line has not even begun as on date of filing of the Petition as is clear from Ground where the Petitioner is anticipating the ROW issues once the construction work commenced when the agreement with the Contractor is executed. This means the contract has not been entered into yet nor has work commenced.
- 4.68. There is no specific provision for force majeure in the Detailed Procedure, and the only reference is the Tariff Orders and the Tariff

Orders only recognize failure to commission on case-to-case basis due to unforeseen reasons.

- 4.69. The present issue is not a contractual issue, but the timelines are as provided in the Detailed Procedure and Tariff Orders. The law of contract would not apply. The connection agreement is only as per the detailed procedure and the timelines and consequences are provided in the detailed procedure.
- 4.70. The issue is not of coordination and planning by GETCO/STU when the Petitioner has already taken connectivity and blocked such capacity. In such cases, delays by the Petitioner in completing its obligations means that the capacity is blocked for longer period of time without any utilization which is not in interest of the optimum utilization of the transmission system and not in interest of consumers at large. Therefore, any consideration of extension of time by the Commission has to be cautious and not merely for the asking by the developer.
- 4.71. The Petitioner has sought to reply on PowerGrid southern Interconnector Transmission System V. CERC and other in Appeal No. 194 of 2022 which is related to force majeure in a contract.
- 4.72. In the present the timelines are as per Detailed Procedure and there is no provision of force majeure. Further in the case of PSITSL there is a

drastic or fundamental change in the substance of the contract. It is not clear what even can be considered such a drastic or fundamental change. Even otherwise, there has to be mitigation, and the Petitioner has to demonstrate how it mitigated the impact or that it was diligent.

4.73. The reference to *Dhanrajamal Gobindram v. Shamji Kalidas & Co* AIR 1961 SC 1285 as claiming to provide wide connotation for force majeure is not correct. The issue considered was totally different. Firstly, it refers to force majeure in a contract and even therein not as interpretation of contractual clauses. The Hon'ble Supreme Court had been interpreting the clause which said usual force majeure clause will apply. The decision was mainly on issue as to whether the clause is vague and uncertain. It is not the case here. The force majeure clause has to be narrowly constructed has been recognized by the Hon'ble High Court of Delhi by referring to *Energy Watchdog Case*.

a) *Halliburton Offshore Services Inc. Vs. Vedanta Limited and ors.*

b) *NTPC Vidyut Vyapar Nigam Ltd. Vs. Precision Technik Pvt. Ltd.* 2018 SCC Online Del 13102.

4.74. The reference to *Energy Watchdog case* 2017 14 SCC 80 and *National Agricultural Cooperative Marketing Federation of India vs. Alimental SA* 2020 SCC online SC 381 on the contract impracticable or useless does

not apply here. It is not the case of the Petitioner that it no longer wants connectivity. Further the reference to energy watchdog interpretation of Article 12 of the PPA therein cannot be imported herein.

4.75. The reliance on *GUVNL v. Tarini Infrastructure Ltd. and other* (2016) 8 SCC 743 was in reference to the Tariff Regulations which is not the case herein.

5. The Petitioner submitted Rejoinder on 08.07.2023 and contended as under:

5.1. It is contended by GETCO that the relief sought by the Petitioner as to the extension on account of occurrence of unforeseen reasons/ force majeure events, is not sustainable as there is no specific provision for force majeure under the Executive Procedure issued by GEDA in December 2023. The right of the Petitioner to seek appropriate remedy against the delay not attributable to Project Developer, emanates out of clause 3.8 of Tariff Framework whereby the Commission has allowed the Wind Project Developer to approach the Commission seeking extension of SCOD in the event such developer fails to commission the entire allocated evacuation system due to "unforeseen reasons" which is equitable/ analogous/ akin to Force Majeure and the same is not

attributable to the Petitioner since it was not within the control of the Petitioner.

5.2. The lack of specific provision under the Executive Procedure dealing with the eventuality such as force majeure, shall not disentitle the Petitioner from claiming condonation of delay in achieving SCOD due to such uncontrollable and unforeseeable events. It is a settled principle of law that a party affected by the unforeseen reasons/ uncontrollable force majeure event(s) cannot be left remediless, instead, recourse may be found in the established principles of law emanating out of Law of Contract and the judgments passed by the courts of law.

5.3. It is trite law that even in the absence of a formal contract, parties may still be bound by the principles enshrined under the Indian Contract Act, 1872. The legislative intent behind the Contract Act is not merely to regulate contracts expressly entered, but also to govern relationships where contractual elements exist by implication, preventing unjust enrichment and ensuring fairness in commercial dealings. Furthermore, the doctrine of Force-majeure must be interpreted in light of the specific circumstances, contractual obligations, and the underlying principles of equity and good faith.

5.4. GETCO has contended that there is no inherent power bestowed upon the Commission under the Conduct of Business Regulations to adjudicate the present dispute involving the right of the Petitioner to seek relief of extension of SCOD on the ground of occurrence/ subsistence of unforeseen reasons/ force majeure events and the parties per-se do not have any substantive rights to claim such remedy. The said contention of GETCO is outrightly denied and disputed. While preferring such contention, GETCO failed to consider that the Hon'ble Commission inherently possesses Regulatory Power under Section 86(1)(e) of the Electricity Act 2003 ("EA 2003") read with Clause 3.8 of Tariff Framework to grant appropriate relief to the Petitioner who is aggrieved due to existence of unforeseen reasons or force majeure events. Thus, the Petitioner has approached this Hon'ble Commission seeking relief(s) qua extension of the SCOD for the evacuation infrastructure.

5.5. It is submitted that Commission being a sector regulator and in terms of its Regulatory Powers while appreciating the events which lead to the delay in commissioning of the evacuation infrastructure, is legally empowered to provide appropriate relief to the Petitioner with regard to extension of the SCOD.

5.6. The contentions/ allegations made by GETCO in its Reply have no basis whatsoever. This is because the delay in commissioning of the Extra High Voltage ("EHV") line during the period July 2023 to August 2024 is solely attributable to GEDA's lapses, including the delay in issuance of the registration procedures for the RE Projects and the failure to develop the required online portal as per the Gujarat RE Policy 2023. Further, it is submitted that the said RE Policy for the first time mandated the Development Permission (DP) to be obtained by the Project Developer and the same was issued in January 2024. Thereafter, the Project was provisionally registered on 30.01.2024. It is submitted that without securing the DP, the Petitioner could not have identified the site/coordinates of the land for construction of the Project and consequentially the Petitioner was hindered from continuing with its project related activities. Since such factors were beyond the reasonable control of the Petitioner, the same amount to unforeseen/ Force Majeure events.

5.7. Further, GETCO has contended that the Petitioner's Project does not fall under the Wind Policy 2016, since the Petitioner had neither commissioned nor intended to commission the Project within the period of the Wind Policy 2016. In the said regard, it is submitted that

Petitioner's Project was conceived under the Wind Policy 2016, and the Project has to be governed as per the terms and conditions prescribed therein since it cannot be viewed in isolation from the policy framework that was prevailing at the time of its conceptualization. The intent and investment decisions of the Petitioner were based on the incentives, conditions, and regulatory clarity offered under the said Policy.

- 5.8. GEDA formulated the Executive Procedure (dealing with modalities and terms & conditions for registration of RE projects), belatedly ie. only in December 2023. Therefore, during this period, the Petitioner was unable to proceed with project related activities without registration of its Project due to inordinate delay on part of GEDA.
- 5.9. Further, GETCO has contended that delay in registration of the Project by GEDA cannot impede the implementation of the Project since the Petitioner could have started execution of the Project post grant of Stage-II Connectivity and the Petitioner was not required to await the completion of registration process and grant of Development Permission (DP) by GEDA. This contention of GETCO is completely unfounded in view of the fact that obtaining DP became indispensable for the Petitioner as it is through such DP only that GEDA would approve the final land coordinates (as identified and submitted by the Petitioner

in its applications dated 23.04.2024, 26.06.2024 & 30.07.2024) for installation of WTGs (based on which EHV line route could be finalized).

- 5.10. It is submitted that after receiving the Stage-II connectivity on 30.06.2023, the Petitioner diligently initiated Project related works, obtained supervision charges estimate on 26.07.2023 and executed the Connectivity Agreement dated 24.08.2023 and conducted project assessments. The Wind Policy 2016 was extended till 30.09.2023 by the Government of Gujarat vide its Circular dated 31.03.2023 and if the Petitioner would have taken the developer permission it would have been valid only till 30.09.2023. It is pertinent to mention that the Government of Gujarat in the said Circular also mentioned that the new Policy might be issued before 30.09.2023. Consequently, the RE Policy 2023 was issued by the Government of Gujarat on 04.10.2023.
- 5.11. The Gujarat RE Policy 2023 was introduced on 04.10.2023 which for the first time mandated the online registration of the RE Projects and to obtain a DP through an online portal to be developed by GEDA. Pursuant thereto, GEDA issued the Executive Procedure in December 2023 thereby defining the modalities to seek registration of the Project and DP as mandated under RE Policy, 2023 Since December 2023 (when GEDA issued the Executive Procedure), four months passed by i.e. from

January to April 2024, GEDA did not take any step towards developing the online portal. Without obtaining the DP it is not possible for the Petitioner to identify the site for construction and accordingly the Project timelines were hindered. Since, such factors were beyond the reasonable control of the Petitioner, the same amounts to Force majeure events. As such, the Petitioner hereby seeks to bring on record the belated DPs issued by GEDA which obstructed the progress of the Project.

5.12. During the period of October 2023 to April 2024, the Petitioner was unable to commence work related to the Project as the process of undergoing registration was mandated or a mandatory requirement as per the statute book of the State under the formulated Executive Procedure. Therefore, this requirement could not have simply been ignored or disregarded and therefore, the failure on the part of GEDA to implement cause delay in implementation of procedure, constitutes an unforeseen event which affected the performance of obligations of the Petitioner.

5.13. Being aggrieved by the delay in formulation of the online procedure by GEDA, the Petitioner approached GEDA and insisted to issue DPs in physical format, as an alternative. Accordingly, the Petitioner started

applying to GEDA for grant of DP (for different parcels of land) in physical forms, the first application being dated 23.04.2024 followed by later applications dated 26.06.2024 and 30.07.2024.

5.14. The Petitioner, being desirous of completing the project in a time bound manner, sought the DPs in physical form due to delay in creation of online portal and started submitting its Applications from April 2024 onwards.

5.15. The reliance placed by GETCO on the cases of other Developers, is completely baseless as this Commission is empowered under Clause 3.8 of Tariff Framework to adjudicate upon the claim of the Developer affected by the uncontrollable and unforeseeable events being force majeure events, on case-to-case basis. The Petitioner derives its independent right to approach this Commission for seeking appropriate remedy against the delay caused due to force majeure events which is not attributable to the Project Developer, under clause 3.8 of Tariff Framework. The case of other Developers shall not disentitle the Petitioner from claiming its substantive and vested right under law.

5.16. It has come to the notice of the Petitioner that similarly placed generators such as the Petitioner who are developing their Project(s) nearby the present Project have also approached the Commission

wherein such a developer is also seeking extension of the SCOD to construct the evacuation structure owing to unforeseen reasons/ force majeure events.

5.17. GEDA's prolonged inaction significantly impeded the commissioning of the Project of the Petitioner, making the delay unforeseeable and beyond the Petitioner's reasonable control, thereby qualifying as a Force Majeure event warranting an extension of SCOD.

5.18. That GETCO has alleged that the Petitioner had belatedly applied on 15.06.2024 since the issuance of MoD Notification in December, 2023, for grant of NoC to carry out the construction activities in 'No Go/ No-WTG Zone'. Therefore, the delay on this account is attributable to the Petitioner only. In the above context, the following timeline is relevant to justify that there was no delay on the part of the Petitioner while applying for NoC:

(1) That in December 2023, the MoD declared certain areas in Gujarat as 'No Go/ No-WTG Zone' wherein it restricted the execution of wind energy projects in those locations.

(2) The Petitioner awaited the creation of online portal by GEDA for obtaining the Development Permission (DP) which was indispensable as it was through such DP only that GEDA would

approve the final land coordinates (as identified and submitted by the Petitioner in its applications dated 23.04.2024, 26.06.2024 & 30.07.2024) for installation of WTGs (based on which EHV line route could be finalized) which the Petitioner could have proceeded with the project surveys and layout planning. Therefore, only after receiving the DP, the Petitioner could assess whether its project area, including the proposed EHV line route, fell within the MoD's 'No-Go/No-WTG Zone of not.

- (3) However, as GEDA failed to take any step towards developing the online portal and such delay continued for more than four months since issuance of Executive Procedure in December 2023, the Petitioner was constrained to adopt mitigation measures and thus sought for grant of DPs in physical format.
- (4) The Petitioner submitted its first application dated 23.04.2024 to GEDA for seeking DP. GEDA on 17.05.2024 granted DP to the Petitioner for part capacity i.e. 71.40 MW. Since WTG locations for 70.40 MW capacity stood approved, this was indicative enough for the Petitioner to assess whether the entire Project area (including potential EHV line route) would fall within MoD's no-go/no-WTG zone.

- (5) Thus, it was only after the grant of DP and during the period starting from mid-May to June 2024 that the Petitioner was able to conduct project wise detailed survey and layout planning to determine whether any part of the project fell within the MoD's restricted zone. The said survey revealed that 12.8 km of the proposed 42 km EHV line route, extending from the wind farm to the 220kV/400kV Kalavad GETCO substation, fell within the MoD's 'No-Go/No-WTG Zone'.
- (6) The Petitioner on 15.06.2024, applied to the Commander Air Traffic Control Officer, seeking NOC for the EHV lines passing through the MOD's restricted zone near the Samana Radar station. The NOC was, however, granted to the Petitioner on 06.03.2025 i.e. almost after 9 months.
- (7) There is no delay attributable to the Petitioner in applying for NOC on 15.06.2024 (since the issuance of MoD Notification in December 2023) for seeking approval to implement the EHV lines in MOD declared restricted areas. The Petitioner has been consistently pursuing the issue of obtaining the NoC from MoD.
- (8) On 04.12.2024, the Petitioner issued a letter to the Command Air Traffic Control Officer, Gandhinagar and again requested to

approve the pending NoC for the 220 kV SC Line Construction and informed the said delay is impacting the Project's timeline and that there would be adverse implications on the Petitioner if the Project is not completed within the schedule.

(9) On 20.12.2024, the Command Air Traffic Control Officer, Gandhinagar issued a letter to the Petitioner and stated that the NoC application is under scrutiny and is being reviewed and vetted by all the concerned agencies and once all necessary clearances are obtained the approved NoC shall be promptly forwarded to the Petitioner. Further, the said Office assured that all efforts are being made to expedite the process for the issuance of NoC.

(10) Again on 17.02.2025, the Petitioner issued a letter to the command Air traffic Control Officer, and reiterated its earlier stand and again requested to approve the pending NOC for the 220 kV SC line construction and informed the said delay is impacting the project's timeline and that there would be adverse implications on the Petitioner if the project is not completed within the schedule.

5.19. On 06.03.2025, the Command Air Traffic control Office, Gujarat, vide its letter granted NOC for construction of 220 KV EHV SC line of the Petitioner from tower location 42/0 at Bodi Village Kalavad Taluka to

Tower location 57/0 at Sogthi village, Jamjodhpur Taluka, Jamnagar District.

- 5.20. MOD's declaration of restricted Zones and the delays in grant of statutory approval/ NOC, qualify as force majeure events/ unforeseeable events. Hence, the Petitioner is entitled to a corresponding extension due to circumstances beyond its reasonable control.
- 5.21. GETCO has contended that the delay due to tariff vacuum for wind power projects in the State of Gujarat was not an unforeseen reason and the Petitioner was well aware of the situation and circumstances when it applied for and granted Stage-II Connectivity.
- 5.22. The Wind Tariff Order 2020 (Order No. 02 of 2020 i.e., the previous Tariff Order) expired on 31.03.2022, and no new tariff framework was in force until 31.08.2024, when this Commission issued Order No. 05 of 2024. Though the 2024 Tariff Order was retrospectively applied from 06.06.2022, the period from 01.04.2022 to 31.08.2024 witnessed a regulatory vacuum, causing significant uncertainty for wind power developers with regard to unclear transmission and wheeling charges, the ambiguity in banking charges and the uncertainty in Policy incentives (discouraging WTG owners from investing in new projects).

It is most respectfully submitted that the above said tariff vacuum hindered the progress of the Petitioner's Project.

5.23. The Petitioner started making efforts to secure investors for the Project from July 2023 onwards. Most investors declined due to regulatory uncertainty, fearing financial risks and some investors provided formal responses expressing their reluctance.

5.24. GETCO vide its letter dated 26.07.2023 specified that subsequent WTG owners must share the cost of the dedicated transmission line with the Petitioner. Thereafter, on 03.06.2023, the Petitioner confirmed via a 'comfort letter to GETCO that the project was funded through internal accruals and customer collections (i.e., WTG owners). However, due to the absence of an active tariff framework, WTG owners refused to commit funds, affecting the financing and construction of the project's common evacuation system.

5.25. In multiple meetings, potential WTG owners cited the tariff vacuum as the primary reason for their disinclination to invest. Until the issuance of the Wind Tariff Order 2024, most investors had either rejected the Petitioner's offer or not responded at all. A similar issue arose before the Commission in the matter of Distributed Solar Power Association & Anr. v. GUVNL & Ors. (Case No. 2128 of 2022), where project developers

were left stranded due to uncertainty under the Wind-Solar Hybrid Policy, 2018.

- 5.26. Commission vide its Order dated 30.04.2020 (Order No. 02 of 2020) decided the Wind Tariff for the Wind Generators in the State of Gujarat, in the matter of 'Determination of tariff for procurement of Power by the Distribution Licensee from Wind Turbine Generators and other Commercial issues for the State of Gujarat ("Wind Tariff Order 2020") (i.e., after a period of 13 months post expiry of the Wind Tariff Order 2016) for the prospective period. The Wind Tariff Order 2020 was said to be effective from the date of passing of the Order i.e., 30.04.2020 till 31.03.2022.
- 5.27. The Commission in the said Order noted that it is not appropriate to make any dispensation effective retrospectively and was of the view that the Projects set up in the intervening period cannot be subjected to a dispensation that has been decided after a public process at a later date. The Commission has passed the Tariff Orders with a prospective effect in the past as well and Petitioner had a bona fide belief that the Tariff Order dated 31.08.2024 will be applied prospectively and not retrospectively (i.e., from 06.06.2022).

5.28. That GETCO has contended that the Petitioner has not placed complete facts as there was no issue from September 2023 and the meeting was in regard to the make and all party agreed to the Siemens make Bays and further it denied that there was any frequent change of make and model of 220 GIS bays and the Petitioner has not undertaken any work which had to be revised.

5.29. It is submitted that significant delays have been caused at the instance of GETCO and other RE developers who have frequently sought changes in the 220 kV GIS Bay sequence and associated technical arrangements at GETCO's 220kV/400 kV S/s at Kalavad. In this regard, the following facts are noteworthy:

- (a) On 12.09.2023, a meeting was held between GETCO and multiple RE project developers including the Petitioner concerning installation of 220kV GIS Bays at GETCO's S/s (s). All RE developers viz. M/s. Morjar, M/s. Opwind and M/s. Suzion agreed to a specific bay sequence.
- (b) Subsequently, on 22.02.2024, it was decided in view of the constraints faced by the developers, to revise the GIS bay sequence which was to be mandatorily followed by the Petitioner alongwith

other project developers. Based on the said decision, the Petitioner continued to carry out the construction activities.

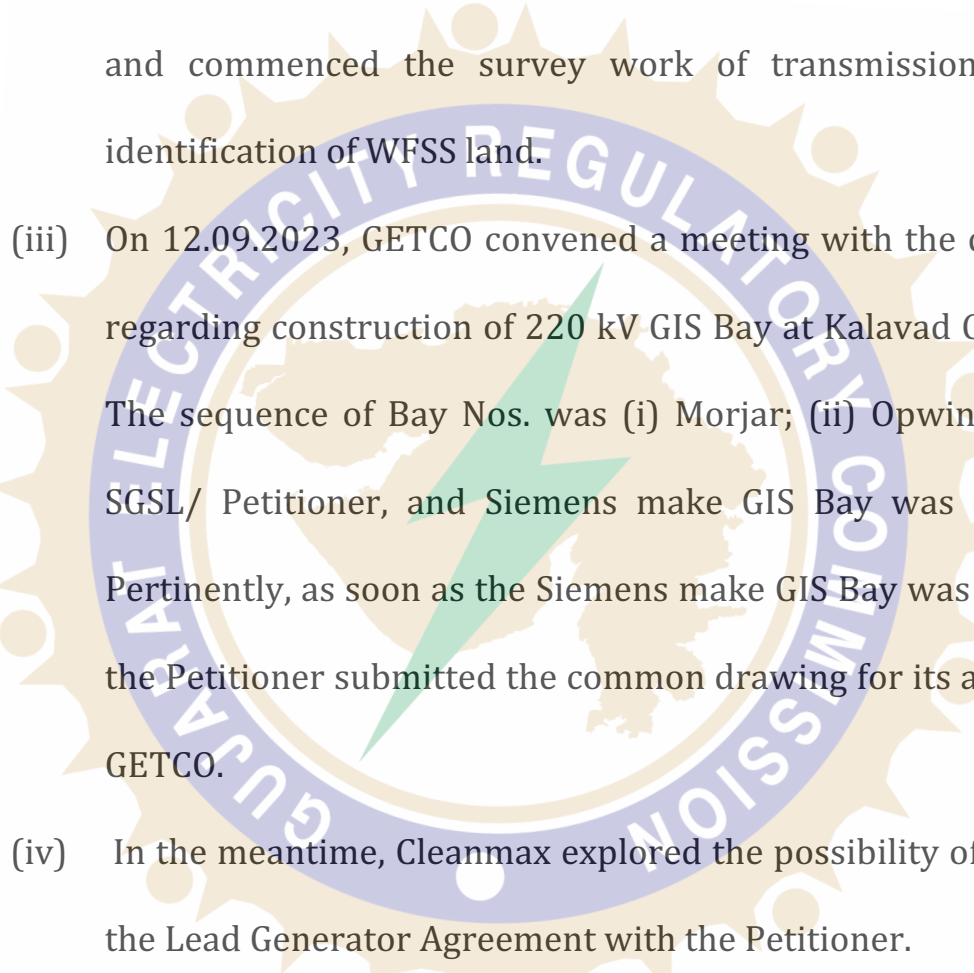
(c) On 09.08.2024, the Bay sequence was further changed at the instance of the other RE developers.

5.30. The Petitioner had no control over the said changes which disrupted the project timelines, affecting EHV line commissioning and warranting an SCOD extension.

5.31. The Petitioner's proposed EHV Line route from its Wind farm at Jamjodhpur to GETCO's 220 kV/ 400 kV S/s at Kalavad is susceptible to serious Right of Way ("ROW") issues that are likely to arise upon commencement of the construction work. The RoW issues are common in the said region which is also evident from the fact that the GETCO's 220 kV Bhatiya-kalavad-Kangasiyali transmission line (in the same area) suffered inordinate delay on account of RoW issues.

5.32. With regard to the letter dated 29.07.2024, issued by M/s. Cleanmax to Suzlon, it is submitted that Cleanmax was willing to execute a lead generator agreement with Suzlon. However, the arrangement could not be materialized because GETCO had allocated the 4th Bay to Cleanmax.

5.33. The detailed work-related activities undertaken by Petitioner from date of grant the Stage-II Connectivity (i.e. 30.06.2023) to February 2024:

- 
- (i) Upon the grant of connectivity, on 26.07.2023 GETCO provided estimate of supervision charges for construction of 220 kV GIS Bay.
- (ii) On 23.08.2023, the Petitioner paid the supervision charges and executed the connectivity agreement with GETCO on 13.09.2023 and commenced the survey work of transmission line and identification of WFSS land.
- (iii) On 12.09.2023, GETCO convened a meeting with the developers regarding construction of 220 kV GIS Bay at Kalavad GETCO S/s. The sequence of Bay Nos. was (i) Morjar; (ii) Opwind and (iii) SGSL/ Petitioner, and Siemens make GIS Bay was confirmed. Pertinently, as soon as the Siemens make GIS Bay was confirmed the Petitioner submitted the common drawing for its approval to GETCO.
- (iv) In the meantime, Cleanmax explored the possibility of executing the Lead Generator Agreement with the Petitioner.
- (v) The Application submitted by M/s. Morjar was rejected by GETCO in the month of September 2023 and on 21.11.2023, GETCO convened another meeting with the developers regarding construction of 220 kV GIS Bay at Kalavad GETCO S/s and again

changed the sequence of Bays as (i) Opwind; (ii) SGSL/Petitioner; and (iii) M/s. Morjar.

(vi) Owing to the above rejection of Application by GETCO, M/S. Morjar approached the Commission and the Commission granted the approval to M/s. Morjar as their infrastructure was ready.

(vii) Again on 22.02.2024 GETCO convened a meeting with the developers and the bay sequence was again changed to be as (i) M/s. Morjar; (ii) Opera, (iii) SGSL/ Petitioner and (iv) M/s. Cleanmax.

(viii) Initially, three bays of substation were allocated to four generators to whom connectivity was granted (i.e., M/s. Morjar, Opera, SGSL/ Petitioner and M/s. Cleanmax) but later on GETCO considered adding 4th Bay for reallocating the connectivity to M/s. Morjar on reapplication made by it.

(ix) M/s. Cleanmax was working aggressively and requested GETCO for allotment of 3rd No. Bay instead of 4th and the Petitioner agreed to the same vide its email dated 18.12.2023. However, owing to the technical issues the bay swapping was not possible and the same was recorded in the Minutes of the Kick-off meeting dated 09.08.2024.

(x) Therefore, GETCO is wrong in making averment that the Petitioner did not undertake any work-related activities from September 2023 to February 2024,

5.34. As of March 2025, no developer has constructed the 220 kV GIS Bay at Kalavad GETCO S/s till date and 3 Nos, of GIS Bays of M/s. Morjar, M/s. Opera and Cleanmax have been tested and the said developers have given the contract work to Siemens Limited, Aurangabad. The Petitioner's Bay is ready and was tested/inspected from 03.03.2025 to 06.03.2025, in the presence of GETCO and the Petitioner's officials.

5.35. No developer has completed the evacuation infrastructure till March 2025 in view of the RE Policy 2023 and the Order passed by the Commission dated 31.08.2024.

5.36. Delay due to frequent changes in GIS Bay sequence at the behest of GETCO and other RE Developers, delay has been caused in setting up the evacuation infrastructure by the Petitioner and hardship faced by the Petitioner ought to be appreciated by this Commission while providing the relief of extension of the SCOD of the evacuation infrastructure.

6. Learned Advocate on behalf of the Petitioner, reiterated the submissions made in forgoing para and further argued as under:

- 6.1. He argued that the Petitioner is in the process of setting up the infrastructure for evacuation of 200 MW Power from its Wind Power Project located at Jamjodhpur to 220 kV / 400 kV Kalavad substation of the Respondent No. 1, GETCO, under captive use.
- 6.2. He argued that the Respondent No. 1, GETCO, on 30.06.2023 granted Stage-II connectivity to the Petitioner for evacuation of 200 MW power from its Wind Power Project located at Jamjodhpur through 220kV / 400 kV Kalavad sub-station under captive mode.
- 6.3. He argued that on 24.08.2023, the Petitioner executed a connection Agreement with the Respondent No.1, GETCO, for connecting its 200 MW wind power project facility to the STU's transmission system at the interconnection point at 220 kV level of 220/ 400 kV Kalavad substation.
- 6.4. He argued that following uncontrollable and unforeseeable events tantamount to force majeure events which continue to delay the completion of the construction work and achieving the SCOD of the project, viz.: (i) Delay in the project registration/ grant of Development permission to the Petitioner by the GEDA (ii) Delay on account of Ministry of Defence (MOD) declaring "No-WTG Zone" in Gujarat *inter alia* covering substantial part of the evacuation infrastructure (iii) Delay due to frequent changes in GIS Bay sequence at the behest of GETCO and

other RE developers (iv) Delay due to tariff vacuum for wind power projects in Gujarat, adversely affecting/hindering Petitioner's efforts in development of Petitioner's Proposed wind farm and the common evacuation infrastructure.

- 6.5. He argued that the new RE policy of 2023 *Inter alia* introduced new modalities w.r.t. registration of RE projects as per the procedure to be framed by Gujarat Energy Development Agency (GEDA).
- 6.6. He argued that Clause 25.2 – 25.3 of the Gujarat RE Policy 2023 *Inter alia* for the first time mandated RE projects to register with GEDA (i) through an online portal to be devised by Respondent No. 2, GEDA (Development Permission) and (ii) as per the modalities / procedure / terms & conditions to be formulated by GEDA. Thus, the Petitioner was constrained to comply with such requirement, especially in view of its ensuing discussion with GEDA wherein the latter insisted for such compliance by the Petitioner. He further submitted that GEDA formulated the Executive procedure belatedly i.e. only in December 2023. Therefore, during the entire period of October – December 2023, the Petitioner was unable to proceed with project related activities without registration of its project due to inordinate delay on the part of GEDA in issuing the Executive procedure.

- 6.7. He argued that Clause-5 of the Executive procedure issued in December 2023 mandated RE developers, for the first time, to obtain a Development Permission from GEDA through an online portal to be developed by GEDA. He further submitted that obtaining Development Permission became indispensable for the Petitioner as it is through such Development permission only GEDA would approve the final land coordinates for installation of WTGs.
- 6.8. He argued that it was only in March 2024, GEDA communicated to the Petitioner to continue with the hard copy submission for Development Permission. He further submitted that on 17.05.2024, 29.07.2024 and 12.08.2024, GEDA granted Development permission to the Petitioner w.r.t. its application dated 23.04.2024, 26.06.2024 and 30.07.2024. Thus, delay of more than 13 months (July 2023- August 2024) in the project registration / grant of development permission to the Petitioner by the GEDA was uncontrollable and unforeseeable event tantamount to force majeure which hampered the completion of the construction work and achieving the SCOD of the project.
- 6.9. He argued that the Petitioner on 15.06.2024 applied to Command Air Traffic Controller Officer, Gandhinagar requesting to issue NOC for construction of 220 KV S/C transmission line from tower location 42/0

at Bodi Village, Kalavad Taluka to Tower location 57 at Sogthi village, Jam Jodhpur Taluka, Jamnagar of length of 12.80 KMs and the nearest tower being 41.90 KM from Jamnagar IAF Station.

6.10. He further submitted that after a passage of almost 9 months the Command Air Traffic Control, Gandhinagar vide its letter on 06.03.2025 granted NOC, subject to some conditions, for construction of 220 kV EHV SC line of the Petitioner from tower location 42/0 at Bodi Village Kalavad Taluka to tower location 57/0 at Sogthi village, Jamjodhpur Taluka, Jamnagar District.

6.11. He further referred to the Order passed by the Commission in case No. 2462 of 2025 wherein similar issue of notification by MOD declaring certain areas as “No Go/No WTG Zone” was raised. The Commission has considered the said issue as unforeseen reason and granted extension in connectivity sought by the Petitioner.

6.12. He submitted that significant delay has been caused at the instance of GETCO and other RE developers who have frequently sought changes in the 220 kV GIS bay sequences and associated technical arrangements at GETCO's 220 kV /400 kV substation at Kalavad.

6.13. He submitted that a meeting was held between the Respondent No. 1 GETCO and Multiple RE project developers including the Petitioner on

12.09.2023 concerning installation of 220 kV GIS bays at GETCO's substation. All RE developers viz. M/s Morjar, M/s Opwind and M/s Suzlon agreed to a specific bay sequence. He further submitted that a review meeting for 220 kV Kalavad GIS-Extension GIS Bay for RE developers was held on 21.11.2023. In the said meeting, the revised GIS bay sequence was decided as (i) OP wind (ii) Suzlon & (3) Morjar. Further, on 22.02.2024, the GIS bay sequence was changed in the following form viz; (i) M/s Morjar, (ii) M/s OP wind (iii) M/s Suzlon and (iv) M/s Clean Max. Further, M/s Cleanmax vide letter dated 29.07.2024 requested for bay swapping with Suzlon to proceed with the evacuation as planned. Further, minutes of meeting dated 09.08.2024, it was recorded that due to technical issues the bay swapping was not possible as requested.

- 6.14. He further submitted that such repeated and unforeseen changes in Bay sequence and associated technical arrangements at GETCO's 220 kV Kalavad substation has a cascading effect on the delay being caused in commissioning of the evacuation infrastructure between Petitioner's Proposed wind farm and GETCO substation which ought to be taken into account for extension of SCOD.

6.15. He submitted that as regards tariff vacuum for wind power project in Gujarat, inter alia resulting in regulatory uncertainty is concerned, the Commission issued Order No. 02 of 2020 in the matter of *'Tariff framework for procurement of power by distribution licensee and other from wind Turbine Generators and other commercial issues for the State of Gujarat'* which expired on 31.03.2022. Since then, i.e. from 01.04.2022, there was no operative wind tariff order in force in Gujarat until 31.08.2024 i.e. when this Commission passed Order No. 05 of 2024 in the matter of *'Tariff framework for procurement of Power by Distribution licensees and others from Wind Power projects for State of Gujarat'*. Although the Wind Tariff Order 2024 was made retrospectively applicable from 06.06.2022, however it is a matter of fact that wind tariff vacuum persisted during the intervening period of 01.04.2022 to 31.08.2024. This resulted in regulatory uncertainty for potential WTG owners especially *qua* applicable transmission and wheeling charges, and wheeling losses including for captive generators and concessions thereof.

6.16. He further submitted that such tariff vacuum resulted in regulatory uncertainty and adversely affected / hindered Petitioner's efforts in garnering / attracting potential WTG owners to participate in

development of Petitioner's Proposed wind farm and the common evacuation infrastructure.

- 6.17. The Petitioner has approached the potential WTG owners between 01.07.2023 to 31.08.2024 for inviting them to establish WTGs in Petitioner's proposed 200 MW wind farm at Jamjodhpur, Gujarat, however the investors showed disinterest due to regulatory uncertainty prevailing in the sector.

### **Respondent's Arguments**

7. Ld. Advocate for the Respondent during the hearing argued as under:
- 7.1. He argued that the issue involved in the present Petition is pertaining to extension of SCOD for infrastructure being developed by the Petitioner.
- 7.2. He further contended that the Petitioner is seeking extension on the basis of four alleged aspects i.e. (i) Delay in the project registration/ grant of Development permission to the Petitioner by the GEDA (ii) Delay on account of Ministry of Defence (MOD) declaring 'No-GO/ No-WTG Zone' in Gujarat inter alia covering substantial part of the evacuation infrastructure (iii) Delay due to frequent changes in GIS Bay sequence at the behest of GETCO and other RE developers (iv) Delay due to tariff vacuum for wind power projects in Gujarat, adversely

affecting/hindering Petitioner's efforts in development of Petitioner's Proposed wind farm and the common evacuation infrastructure.

- 7.3. He contended that the Petitioner had chosen to obtain connectivity allegedly before it had obtained investors and before it had registered the project with GEDA. This is entirely a commercial decision of the Petitioner. He further submitted that quarterly report vide letter dated 09.11.2023 and 27.12.2023, had no mention about the alleged issues of GEDA permission and the only issue was not being able to find investors allegedly due to uncertainty.
- 7.4. He argued that the registration with GEDA was provided even under Wind Power policy 2016 and it was not a new requirement. The Renewable Energy Policy 2023 was to provide a single window web system for RE projects which eases the process. The RE policy 2023 was notified on 04.10.2023 but the Petitioner had already applied for Stage-I connectivity in 2022 and Stage-II connectivity on 30.06.2023, the Petitioner had not taken any steps for registration until October 2023.
- 7.5. He further argued that Manual application was allowed for GEDA permission even prior to December 2023 wherein Developer Permission was not required for registration. The Petitioner could have applied prior to December 2023.

- 7.6. He further argued that the Petitioner applied to GEDA for the Developer Permission only on 23.04.2024, 26.06.2024 and 30.07.2024 for 71.40 MW, 46.20 MW and 21 MW i.e. nearly a year from its Stage-II connectivity. He further submitted that the GEDA provided the approvals in a reasonable time i.e. on 17.05.2024, 29.07.2024 and 12.08.2024.
- 7.7. He further argued that there were other wind power projects who were provided the Stage-II connectivity as per the Detailed Procedure in 2023 who have not raised the issue of GEDA permission.
- 7.8. He further argued that there is no basis for consideration of period from July 2023 when the new policy came only in October 2023 and modalities were issued in December 2023.
- 7.9. He further argued that GEDA had responded to the application in a reasonable time and the same cannot be claimed as delay and the Petitioner cannot expect that GEDA would not take any time for registration and permission.
- 7.10. He submitted that the Petitioner has claimed that MOD had declared 'No GO/ No WTG Zone' in December 2023, though in letter dated 24.06.2024 wherein the reference is November- December 2023. The Petitioner may substantiate the declaration in December 2023 as in case of another

developer, Solarcraft, had claimed in April and May 2023 itself certain issues in regard to the MOD and National security. If the issue had already arisen in April and May 2023 for Stage-II connectivity cannot claim any relief. The Petitioner has claimed that the MOD would take approximately six months / 180 days to process the application but apparently the Petitioner had not even applied for the same until 15.06.2024. The Stage-II connectivity was obtained on 30.06.2023 and the Petitioner had apparently not taken any steps until December 2023 in terms of the evacuation line and even thereafter the Petitioner has claimed to have applied only on 15.06.2024.

7.11. He submitted that in the letter dated 04.12.2024 it has been written that “The revised application, along with the corrections, was resubmitted and delivered to your office on 06.08.2024”. Therefore, the revised application by the Petitioner was sent to the Headquarters Southwestern Air Command only on 06.08.2024. He further submitted that there is no delay on the part of Air Command, the Petitioner has made delay in making application.

7.12. The reliance placed by the Petitioner on the Order of the Commission in case No. 2462 of 2025 is not correct, in that case the Petitioner has made application within 2 months from the issuance of the Notification of

MOD “No GO/ No WTG Zone”. In the present case, the Petitioner has made delay in making application for NOC to Air Command.

7.13. He submitted that there is no issue from September 2023. The meeting in September 2023 was in relation to the make of equipment and all the parties agreed to SIEMENS. The meeting on 22.02.2024 was to coordinate and the bay sequence was inter alia decided. The bay sequence decided on 22.02.2024 was the same as understood in September 2023.

7.14. The revision was necessitated at the behest of M/s Cleanmax, who cited lack of inputs from the Petitioner, Suzlon, vide letter dated 29.07.2024 and requested for bay swapping with Suzlon to proceed with the evacuation as planned. Therefore, the Respondent No. 1, GETCO, convened a meeting on 09.08.2024 with M/s Cleanmax and the Petitioner for discussion of bay swapping, as requested by M/s Cleanmax and pursuant to deliberations, the request for bay swapping was allowed and the same was agreed by the Petitioner.

7.15. He further submitted that the representation by another developer, M/s Cleanmax Vayu, it was the Petitioner who was causing the delay in common drawing approval. M/s Cleanmax on 03.07.2024 wrote to GETCO requesting for approval of common drawing for Petitioner and

other two generators except Suzlon and GETCO vide letter dated 22.07.2024 and reiterated that drawing is not submitted. The part layout plan, section and SLD in respect of M/s Cleanmax, M/s. Morjar and M/s. OP Wind was submitted for approval in August-2024 which was duly granted on 11.09.2024. However, drawing for the Petitioner has not been submitted.

- 7.16. He submitted that the Tariff Order dated 30.04.2020 read with Order dated 26.05.2020 for Wind Power projects was applicable for the control period upto 31.03.2020. Therefore, at the time the Petitioner applied for connectivity and obtained Stage-I and Stage-II connectivity was all after the expiry of the earlier Tariff Order.
- 7.17. It was Petitioner's choice to obtain connectivity, and it cannot then claim inability to set up the project due to alleged lack of investors. The issues of financing etc. cannot be claimed to be unforeseen or reasons beyond the control of the Petitioner. He submitted that the alleged uncertainty claimed is the absence of Tariff Order which was already submitted was not unforeseen since the Period was always known to the Petitioner even when it applied for connectivity.
- 7.18. He submitted that Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 had already been notified

therefore it is not clear whether there was any uncertainty. Further the Green Open Access Regulations,2024 provided for banking charges as per the Regulations.

7.19. He further contended that the contention now made on the investors is contrary to the Petitioner's undertaking dated 03.06.2023, submitted along with the Stage-II application, as required under the procedure dated 07.01.2023, wherein it was stated that the source of funding was "Internal accruals"

7.20. He further submitted that the inability of the Petitioner to find customers/investors etc. is not a reason to justify the delay in development of evacuation facility / power project nor it to be unforeseen or equivalent to force majeure.

8. Heard finally. The present Petition filed by the Petitioner seeking extension of SCOD of evacuation infrastructure being developed by it from the period 30.06.2025 to 30.06.2026 or the actual commissioning of the project whichever is earlier on account of occurrence of unforeseen reason/ force majeure event without imposing any financial liability.

- 8.1. The Petitioner has submitted that the Petition referred by it in terms of order No. 5 of 2025 dated 31.08.2024 i.e. tariff framework order read with section 86 of the Electricity Act, 2003 issued by the Commission.
- 8.2. The undisputed facts between the parties are as under:
- (a) The Petitioner desires of evacuation of 200 MW wind power from its wind farm applied to the Respondent GETCO for grant of Stage-I connectivity on 15.11.2022 and Stage-II connectivity on 23.05.2023 under the provisions of GERC (Terms and Conditions of Intra-state Open Access) Regulations 2011 and procedures for connectivity of RE project notified by the Respondent with approval of the Commission dated 07.01.2023.
  - (b) The Respondent granted Stage-I connectivity to the Petitioner on 20.01.2023 and Stage-II connectivity on 30.05.2023 for carrying out construction and commissioning activity related to dedicated transmission line, transformer, bus-bar, bays, and other equipments at Respondent 220 KV/ 400 KV Kalavad substation.
  - (c) The Petitioner is mandated to commission the necessary evacuation infrastructure of 200 MW wind power project at 220 KV level with 220/400 KV Kalavad substation of the Respondent.

(d) The Petitioner has submitted Bank guarantee of Rs.10 crores through ICICI Bank which is valid till 23.11.2025.

8.3. The Petitioner contended that it has undertaken development of its evacuation infrastructure which were obstructed by various following unforeseen reasons/events which were completely beyond the reasonable control of the Petitioner and hampered development of the project and also affected achieving the SCOD of the plant.

- (a) The relief sought by the Petitioner on force majeure/unforeseen event in terms of provision of connectivity as well as order of the Commission
- (b) Delay in project registration and grant of development permission (DP) by Gujarat Energy Development Agency (GEDA).
- (c) Delay on account of Ministry of Defense declaration of No-go /No-WTG zone in Gujarat is qualified as unforeseen reason.
- (d) Delay due to tariff vacuum for wind power project in Gujarat.
- (e) Delay due to submission of common drawing and its approval from the Respondent GETCO.
- (f) Delay in selection of approved vendor of Respondent for the GIS bay work at Respondent substation and its approval.

- (g) Delay due to frequent changes in GIS bay sequences at the behest of the Respondent and other RE developers.

8.4. The Respondent has disputed the grounds on which the Petitioner seek extension in completion of transmission evacuation system on following reasons stating as under:

- (a) The relief sought by the Petitioner on ground of force majeure/ unforeseen reason are unfounded in law and not applicable in the present case.
- (b) The delay in project registration/ grant of development permission by GEDA is commercial decision of the Petitioner and it does not qualify as unforeseen reason.
- (c) The Petitioner is claiming that the project is registered under operative period of Wind Power Policy 2016 and accordingly, it is eligible to get the benefit envisaged in the said Policy is not correct and valid.
- (d) The claim of the Petitioner that the delay occurred on account of MOD No-go/No-WTG zone is not valid because MOD had declared No-go zone in December,2023 when the Petitioner has not initiated process for setting up 200 MW WTG plant.

- (e) There are other RE generators who have been granted connectivity at 220/400 KV Kalavad SS at 220 KV bus by the Respondent and have not raised any issue of MOD notification of no-go/No-WTG zone.
- (f) The claim of the Petitioner that delay occurred due to tariff clarity /vacuum in the State of Gujarat for wind power project is concerned, the Tariff Order dated 30.04.2022 read with Order dated 26.05.2020 for wind power project with control period was upto 31.03.2022. Hence, at the time of connectivity for Stage-I and Stage-II applied by the Petitioner, there was no Tariff Order of the Commission for wind generation was available. Thus, the Petitioner was well aware of the circumstances when it had applied for connectivity. It cannot be considered as unforeseen reason.
- (g) The delay on account of frequent changes in GIS bay sequence claimed by the Petitioner at the behest of the Respondent and other RE developers is not correct and valid.

9. Now, we deal with the issue for consideration and decision of the Commission one by one.

10. The contention of the Respondent that the relief sought by the Petitioner on force majeure event/unforeseen reason are unfounded in law is concerned, the Petitioner has made following submissions:
- 10.1. The Petitioner submitted that event such as (i) non-grant of NOC by Government authority (MOD) for implementing evacuation infrastructure in notified areas; (ii) frequent change in decision of applicable make and model of 220 kV GIS bays; (iii) regulatory uncertainty due to absence of operative wind tariff order, (iv) Delay in registration of project and grant of Development Permission (DP) by Gujarat Energy Development Agency, (v) Delay in Common drawing and selection of vendor for GIS system, are unforeseeable and uncontrollable on the part of Petitioner.
- 10.2. These uncontrollable events which are not attributable to the Petitioner, continue to obstruct the progress in construction activities and causing considerable delay in implementation of the project by the Petitioner till SCOD being 30.06.2025. The project will be delayed beyond the SCOD.
- 10.3. The aforesaid event being valid force majeure events as per the settled parameters of law, clearly fall under the realm of 'unforeseen reasons' as provided under the clause 3.8 of Tariff framework for procurement of power by Distribution Licensees and Others from Wind Power

Projects for State of Gujarat whereby a project developer can claim for extension of SCOD provided the project is delayed due to 'unforeseen reasons'

- 10.4. Consideration by the Respondent GETCO of force majeure situation / any change in ground realities is ingrained under section 39 of the Electricity Act, 2003, as GETCO is mandated to compulsorily coordinate/ plan its transmission system with, *inter-alia*, Central Government, State Government, generating companies etc. As such, not even a contractual arrangement is needed for pleading force majeure vis -a-vis dealing of generators with State Transmission utility are concerned.
- 10.5. As per section 39 of the Electricity Act, 2003 read with clause 3.8 of tariff framework, the Commission is vested with power to extend SCOD of the Wind project in the event the said project could not be commissioned by SCOD on account of occurrence of 'unforeseen reasons'.
- 10.6. Per contra the Respondent submitted that the Petitioner has sought for extension of the timelines which has to be considered by the Commission in terms of the Detailed Procedure read with Tariff Order. Further, there is no specific provision of force majeure, the tariff order only recognize failure to commission on case-to-case basis due to

unforeseen reasons. While the tariff order recognizes the extension in certain cases, there is no inherent power in terms of Conduct of Business Regulations for substantive rights of the parties. The power under conduct of Business Regulations is procedural.

10.7. It is the responsibility of the Petitioner to demonstrate the same. The burden of proof in this regard lies on the Petitioner and the Petitioner is required to substantiate its claim and the Commission may verify the same. If there was any default or imprudency on part of the Petitioner, the Petitioner cannot be allowed extension.

10.8. We note that the Respondent has contended that the Petitioner has claimed force majeure event /unforeseen reason are unfounded in law in the present case as far as extension of SCOD/ creation of necessary transmission infrastructure is not permissible. There is no specific provision for the force majeure/ unforeseen reason under the executive procedure issued by GEDA as well as tariff framework for procurement of power by distribution licensee and others from wind power projects for the State of Gujarat as there is no inherent power stipulated under the Conduct of Business Regulations notified by the Commission to invoke its power in the dispute involving the right of the Petitioner to

seek relief of extension of SCOD on the ground of unforeseen reasons/  
force majeure event.

10.9. We note that the Petitioner contended that the tariff order for wind power projects issued by the Commission specifically provides for approaching the Commission in case of unforeseen reasons due to which the project developer is not able to complete the project and may seek for extension of time period. It is also contended that a party/ person affected by unforeseen reason/ uncontrollable force majeure event cannot be left remediless instead/recourse found in the established principle of law emanating out of law of contract and the judgement passed by the Court of Law. The doctrine of force majeure must be interpreted in line with specific circumstances, contractual obligations and underline principle of equity and good faith.

10.10. We note that the Commission passed generic tariff order No. 05/2024 dated 31.08.2024 for determination of wind tariff wherein the Commission has recorded in para 3.8 as under:

*3.8 Security Deposit*

....

*'If the Wind Project Developer (as Generator/ Consumer/ Licensee) fails to commission the entire allocated evacuation system along with bays and*

*metering system within stipulated time period due to unforeseen reasons, they may approach to the Commission seeking for extension of time period”.*

10.11. In the aforesaid decision, the Commission has recognized rights of WTG owners to approach the Commission seeking extension of SCOD in the event such as the developer fails to commission the entire allocated evacuation system due to unforeseen reasons. The unforeseen reason is equitable to force majeure and the same is not attributable to the project developer such as Petitioner since it was not within the control of the Petitioner. Thus, the contention of the Respondent that there is no provision that the Petitioner is eligible to approach the Commission seeking extension in time period of creation of transmission infrastructure is not correct and valid.

10.12. We also note that even though lack of specific provision under the executive procedure dealing with the eventuality such as force majeure shall not disentitle the project developer to approach the Commission for condonation of delay /extension in time period in achieving the completion of transmission network due to such uncontrollable and unforceable events.

10.13. It is settled law of principle that a party affected by unforeseen reasons/ uncontrollable force majeure events cannot be remediless. We also note the contract Act provision provides for entitlement of the aggrieved party to seek for condonation of delay and suspension of performance of contractual obligations so long as the force majeure events which is analogous to unforeseen reasons are their events in the event of contractual provisions with the force majeure events.

10.14. We also note even in absence of formal contract parties may still be bound by the principle enshrined under the Indian Contract Act,1872. The Legislative intent behind the Contract Act is not merely to regulatory contracts expressly entered into but also to govern relationship where contractual elements exist by implication preventing unjust enrichment and ensuring fairness in commercial dealing.

10.15. The Commission possesses regulatory power under the provisions of Electricity Act,2003 specifically under section 86(1)(e) and the Clause 3.8 of the Tariff Order No. 05/2024 dated 31.08.2024 wherein it is provided that the WTG project developer is eligible to approach the commission for seeking extension in time period of completion of the transmission network whenever there is existence of unforeseen reasons.

10.16. Considering the above, we are of the view that the contention of the Respondent that the Petitioner has no right to approach the Commission for seeking extension in time period of completion of transmission network is contrary to the decision of the Commission in Tariff Orders No. 05/2024 dated 31.08.2024 and therefore, the same is rejected.

11. Now we deal with the issue raised by the Petitioner that the delay in project registration and grant of Development Permission (DP) issued by GEDA led to delay in completion of transmission network.

11.1. The Project of the Petitioner was conceived under the Wind Policy 2016 which was issued on 02.08.2016 and was officially extended by the Government of Gujarat up to 30.09.2023 through its Circular dated 31.03.2023.

11.2. On 04.10.2023, the Govt. of Gujarat issued Gujarat Renewable Energy Policy, 2023 replacing erstwhile Wind Policy, 2016 and introduced new modalities w.r.t registration of RE projects as per the procedure to be framed by the Nodal Agency i.e., Respondent No.2. As such, RE Policy, 2023 is operative till 30.09.2018.

11.3. The said Policy of 2023 under Clause 25.2 & 25.3, for the first time mandated RE projects to be registered with GEDA through Single

Window Web System which was not envisaged under the Wind Policy 2016.

- 11.4. In December 2023, GEDA formulated the Executive Procedure dealing with modalities and terms & conditions for registration of RE projects) under RE Policy, 2023, which under Clause 5, mandated wind project developers to obtain a Development Permission ("DP") from GEDA through a Single Window Web System/ online RE portal to be developed by it.
- 11.5. During the period from October 2023 to December 2023 the Petitioner was unable to commence project related works for want of fulfilling the mandate of obtaining DP for its project. Obtaining DP or registration of Project under the statutory policy, Executive Procedure is mandatory as per the language of the said procedure and RE Policy 2023. The Petitioner was not at liberty to discount such requirement of registration as per convenience.
- 11.6. GEDA, which is Nodal Agency for registration of RE project, failed to develop/ implement the aforementioned online RE portal. The Petitioner continued to pursue GEDA, who is Nodal agency constituted under State Policy, regarding the modalities/platform for submission of application for obtaining DP.

- 11.7. The DP which involves GEDA's approval of final land coordinates, was critical for identifying the locations for installation of WTGs and for finalizing the EHV transmission line route. If locations are not frozen/finalized, then the evacuation infrastructure so planned by the RE Developer cannot commence, as there is no clarity vis-à-vis WTG locations in relation to the PSS and GSS.
- 11.8. The Petitioner bereft of any options, requested GEDA that in absence of online portal for filing an application for RE project Development Permission, to accept DP applications in physical format and accordingly submitted its first application on 23.04.2024 followed by subsequent ones on 26.06.2024, 30.07.2024, 15.10.2024, 18.02.2025 and 30.04.2025 for different land parcels.
- 11.9. The GEDA granted DP to the Petitioner on 17.05.2024 ( 71.4 MW) 29.07.2024 (for 46.2 MW), 12.08.2024 (for 21 MW), 28.11.2024 (for 10.50 MW) 16.04.2025 (for 12.60 MW) and 19.05.2025 (for 12.60 MW).
- 11.10. The delay on the part of GEDA cannot be diluted or justified by GETCO as otherwise sought to be done.
- 11.11. GETCO's allegation qua deliberate delay on the part of the Petitioner in submission of DP application until April 2024, despite the issuance of the Executive Procedure in December 2023, is misconceived. The

Petitioner was constrained by the non-functional online portal for submission of its applications to avoid further delays.

11.12. The Petitioner Placed reliance on (1) PowerGrid Southern Interconnector Transmission System Limited Vs. CERC and Ors in Appeal No. 194 of 2022, wherein the Hon'ble Supreme Court discussed the term Force majeure vis-à-vis obligation of parties under a contract; (ii) Energy Watchdog CERC and ors, reported as (2017) 14 SCC 80 wherein the Hon'ble Supreme Court held that the performance of an act may not be literally impossible, but it may be impracticable and useless from the point of view of the object and purpose of the parties; and (iii) Naihati Jute Mills Ltd. v. Khyaliram Jagannath reported as AIR 1968 SC 522 wherein the Hon'ble Supreme Court held that if any party made their best efforts to obtain the approvals/ permits but failed on account of reasons beyond their control, the same shall constitute a Force Majeure.

11.13. Per contra the Respondent submitted that the Petitioner had chosen to obtain connectivity allegedly before it has obtained investors and before it had registered the project with GEDA. This is entirely a commercial decision of the Petitioner.

- 11.14. The project registration activity is for the development of the renewable project and it is the responsibility of the Petitioner to obtain all necessary approvals. In the quarterly report vide letter dated 09.11.2023 and 27.12.2023, no mention was made of any of the alleged issues of GEDA permission and only issue was not being able to find investors allegedly due to uncertainty. There was no issue at this time raised on GEDA permission despite the notification of the RE policy 2023.
- 11.15. The Petitioner is claiming that its project falls under operative period of Wind Policy 2016, but it is not clear how, since clearly the Petitioner had neither commissioned nor even intended to commission the project within the period of the 2016 Policy.
- 11.16. The registration with GEDA was provided even under Wind Power Policy 2016 and it was not a new requirement. The Renewable Energy Policy, 2023 was to provide a single window web system for RE projects which eases the process.
- 11.17. The online portal only eased the process. Further, the RE Policy 2023 was notified on 04.10.2023 but the Petitioner had already applied for Stage-I connectivity in 2022 and in fact had applied Stage-II connectivity on 23.05.2023. Despite obtaining the Stage-II connectivity by

30.06.2023, the Petitioner had not taken any steps for registration until October 2023.

11.18. Manual application was allowed for GEDA permission even prior to December 2023 wherein developer permission was not required for registration. The Petitioner could have applied prior to December 2023.

11.19. The Petitioner had applied for GEDA for the Developer permission only on 23.04.2024, 26.06.2024, and 30.07.2024 for 71.40, 46.20 and 21 MW i.e. nearly a year from its Stage-II connectivity.

11.20. The Petitioner has sought to refer to various aspects but the only supporting document demonstrates that the Petitioner had applied only in 2024 to GEDA even though the executive Procedure claimed to be in December 2023.

11.21. The alleged communication in March 2024 is not substantiated. Further even then, the application was filed only on 23.04.2024, 26.06.2024 and 30.07.2024. The GEDA has provided approvals in a reasonable time i.e. 17.05.2024, 29.07.2024 and 12.08.2024.

11.22. There was other wind power project who were provided the Stage-II connectivity as per the detailed procedure in 2023, who have not raised the issue of GEDA permission.

11.23. The GETCO has granted approval for connectivity with the grid and as per the provision of GERC order(s), the entire evacuation system is to be developed by 30.06.2025. The delay in registration of the project, if any, may not impede the establishing of the evacuation system as per the scope of estimate. The registration is for the renewable project not for evacuation system.

11.24. The Petitioner is seeking more than 13 months for such alleged delays which cannot be accepted. There is no basis for considering from July 2023 when the new policy came only in October 2023 and modalities were issued in December 2023.

11.25. When the Petitioner itself took time to apply, the same cannot be claimed as delay. GEDA had responded to the applications in a reasonable time and the same cannot be claimed as delay. The Petitioner cannot expect that GEDA would not take any time for registration and permission.

11.26. The Petitioner was still conducting Wind resource assessment after obtaining Stage-II connectivity for which it had already acquired 50% land for the power project. This was entirely the business decision of the Petitioner and cannot excuse not having taken appropriate steps for registration with GEDA.

11.27. The Petitioner claims that it was waiting for the online portal to be developed before proceeding with survey work but apparently the survey work was done in January 2024 to May 2024 and the NOC applied on 15.06.2024, even though the GEDA permission was applied in April 2024, June 2024 and July 2024. However, in Ground M (e) (i), the Petitioner has claimed that the survey was done mid-May to June 2024.

11.28. We note that the Respondent has alleged that it was the responsibility of the Petitioner to obtain all necessary approvals from the GEDA. It is also contended that no delay can be attributable to GEDA with respect to the project and grant of Development Permission.

11.29. We note that the project envisaged by the Petitioner falls under Gujarat RE Policy 2016. It is also fact that the implementation of the project continues under Gujarat RE Policy 2023. The project of the Petitioner conceived under Wind Policy 2016. Thus, the intent and investment decision of the Petitioner were based on incentive condition and regulatory provisions available under the said Policy read with provisions, Regulations and Orders of the Commission at the relevant time.

11.30. We also note that the commissioning of the EHV line initiation taken by the Petitioner under the provisions of the Gujarat RE Policy 2023 which is made effective by the Govt of Gujarat after completion of Gujarat RE Policy 2016.

11.31. We also note the said RE Policy 2023 of the GoG mandated that Development Permission (DP) to be obtained by the project developer from the GEDA. The relevant portion of the said policy is reproduced below:

*25.2 GEDA shall act as the State Nodal Agency (SNA) for the following functions:*

- a. Registration of Projects*
- b. Accreditation and recommending Renewable Energy Projects for registering with the Central Agency under REC mechanism*
- c. Certifying the commissioning of Renewable Energy Projects*
- d. Submit a monthly progress report of the activities mentioned above to the G UVNL/EPD.*
- e. Any other functions assigned.*

25.3 *The modalities, procedures, terms, and conditions, etc. for the registration of projects shall be formulated by the SNA. The SNA shall facilitate the RE Developers by developing a 'Single Window Web- System' for RE project. The RE Developers shall be required to upload the requisite documents on this web-portal. The registration completion and approval thereof shall be issued automatically through online- mode and made available on the web-portal itself. To enable a faster registration process, smooth functioning and adequate assistance to the RE Developers, the SNA shall prescribe Standard Operating Procedure (SOP) or guidelines and web-portal service helpdesk, etc. The single window web-system shall be integrated with all the functionalities such as registration, approval, allocation of the renewable energy projects etc.*

The aforesaid provision mandated that GEDA which is Nodal agency for registration of RE Project, formulate procedure for Registration of RE projects.

11.32. The Petitioner has registered its project provisionally on 30.8.2024. We also note that without securing the Development Permission, the

Petitioner could not identify the right, ordinance of the land for construction of the project and consequently the Petitioner was hindered from continuing with its project related activities because in absence of land, its coordinates, it is not possible for the project developer, like Petitioner to initiate project related activities. The aforesaid factors are beyond the reasonable control of the project developer/ Petitioner and the same is qualified as unforeseen/ force majeure event.

11.33. The Petitioner's project was conceived under the Wind Policy 2016, and the project has to be governed as per the terms and conditions prescribed therein since it cannot be viewed in isolation from the policy framework that was prevailing at the time of its conceptualization. The intent and investment decisions of the Petitioner were based on the incentives, conditions, and regulatory clarity offered under the said Policy.

11.34. We note that GEDA formulated the Executive Procedure (dealing with modalities and terms & conditions for registration of RE projects), belatedly i.e. only in December 2023. Therefore, during this period, the Petitioner was unable to proceed with project related activities without registration of its project due to inordinate delay on part of GEDA.

11.35. The delay in registration of the project by GEDA cannot impede the implementation of the project since the Petitioner could have started execution of the project plot grant of Stage-II connectivity and the Petitioner was not required to await the completion of registration process and grant of development permission (DP) by GEDA. This contention of GETCO is completely unfounded in view of the fact that obtaining DP became indispensable for the Petitioner as it is through such DP only that GEDA would approve the final land coordinates (as identified and submitted by the Petitioner in its applications dated 23.04.2023, 26.06.2024 & 30.07.2024) for installation of WTGs (based on which EHV line route could be finalized).

11.36. We also note that the Respondent has contended that the Petitioner has not taken any action/stay for seeking development permission for the project until October,2023. We note that the Wind Power Policy 2016 extended by the Govt of Gujarat till 30 September,2023 vide circular dated 31.3.2022. Consequently, the RE Policy 2023 was issued by the Govt of Gujarat on 04.10.2023.

11.37. As regards above, Gujarat RE Policy 2023 which was introduced on 04.10.2023 mandated the online registration of RE Projects and to obtain DP through online portal to be developed by GEDA.

11.38. The GEDA has issued the executive procedure in December 2023 thereby defined modalities to seek registration of the project and DP as mandated under RE Policy 2023 which is not disputed between the parties. Clause 5 of the Executive Procedure of GEDA is reproduced below:

*“5. Development Permission (for Wind & Hybrid):*

*i. Application Form*

*Having, Stage 1 and Stage 2 connectivity approved by GETCO or Technical Feasibility Report (TFR) issued by DISCOM as the case may be and legal possession of the land by way of Register Agreement to Lease with possession (ATL)/ Register Agreement to Sale with possession (ATS)/Register Sale Deed/Register Lease Deed for the proposed project, RE Project Developer shall apply for Development Permission in the prescribed Development Application form (Annexure-2). Upon development of RE Portal, the same may be processed online. The Development Application form (Annexure-2) shall be filled in all respect on GEDA RE portal. All relevant evidences/documents, shall be uploaded with the application form and options applicable shall be selected. All requisite fee/processing charges plus GST as per prevailing rate, shall be paid online. At present, along with the Development Application, the fees /processing charges shall be paid along with the application in the form of Demand Draft drawn on a nationalized/scheduled bank in favor of Gujarat Energy Development Agency payable at Gandhinagar. Incomplete application shall be processed after furnishing of the residual information*

*in stipulated time. The date of application shall be reckoned from the date of the submission of the residual information/document.*

*Upon submission of application for Development permission on RE Portal, RE Project Developer shall submit the physically printed copy of Development Application (Annexure-2) along with the following requisite documents to GEDA, Gandhinagar office after duly signed and sealed by an authorized signatory of the applicant Company/organization firm etc. The authorized signatory means the person authorized appropriately under the applicable law/rules/regulations for signing all the documents, legal deeds, declarations / undertakings and correspondence, pertaining to the proposed Wind/Wind-Solar Hybrid project.*

- 1. Printed Developer Application Form duly sealed and signed on each page.*
- 2. Copy of Board Resolution authorizing the signatory.*
- 3. Undertaking on Rs. 300/- stamp paper regarding newness of the project machinery.*
- 4. Any other legal documents/documents required to be submitted as per the requirement of GEDA.*

*All correspondence regarding the Wind / Hybrid Project with GEDA shall be done, on the letterhead of the applicant company in the name and designation of the above-referred authorized signatory. All communications from GEDA will be addressed to the Company at the address/email ID given of the Authorized signatory of the applicant*

*company in the application, and such communication sent by GEDA shall deemed to have been delivered to the applicant/company.*

*Development Permission granted to the RE Project Developer for setting up of Wind and Wind-Solar Hybrid Project shall be governed by the provisions of Gujarat Renewable Energy Policy 2023 vide G.R. No. REN/e-file/20/2023/0476/B1 dated 04/10/2023 relevant GERC order and any subsequent amendments regarding the same from time to time, shall be abided to RE Project Developer.*

*In case of Wind-Solar Hybrid Projects, the capacity of one resource (Solar or Wind) in the hybrid projects shall be as per guidelines notified for Wind-Solar Hybrid Projects by MNRE and its amendment from time to time.*

*Development Permission granted to the RE Project Developer for setting up of Wind and Wind-Solar Hybrid Projects connected to Inter State Transmission System (ISTS) shall be governed by the provisions of applicable regulations, orders and guidelines as notified by the Central Government and/or CERC from time to time.”*

11.39. We also note that the Petitioner contended that since December 2023, four months period taken by GEDA i.e. January to April, 2024 and though not developed online portal. In absence of online portal, it is not possible for the Petitioner or similar situated developers to apply for development permission. In absence of development permission issued

by GEDA i.e. without obtaining DP, it is not possible for the WTG owner like Petitioner to identify the site for construction and accordingly, the project timeline was affected. In absence of registration of project by GEDA, by issuing executive procedures, development of portal for online applications, etc. it is beyond the control of the Petitioner and similar developers to apply to GEDA and obtain Development permission from them which is mandatory as per the GOG RE Policy 2023 came into force from 04.10.2023.

11.40. We note that during the period from October 2023 to April 2024 the Petitioner was unable to commence work related to the project as the process of undergoing registration was a mandatory requirement as per the Government Policy formulated executive process by the State. Therefore, the requirement could not have simply be ignored or disregarded and therefore, the delay in formulation of procedure and development of online portal of GEDA for implementation of Government policy for registration and issuance of development permission constitutes as an unforeseen event which affected the performance of obligation of the Petitioner.

11.41. We also note that the Petitioner has approached to GEDA for grant of development permission and issuance of the application in physical

form which was submitted on 23.4.2024 followed by later application dated 26.6.2024 and 30.7.2024. Thus, in absence of creation of mandatory online portal by GEDA, the Petitioner made physical application for obtaining DP until 2024 despite issuance of executive procedure by GEDA in December 2023 is beyond the control of the Petitioner and the Petitioner is not liable for such delay.

11.42. The contention of the Respondent that the other developers have not approached to the Commission on a ground of delay in grant of development permission by GEDA is not acceptable because the Petitioner who is project developer is having its independent rights to approach the commission for seeking appropriate remedy against delay caused which is beyond control of the Petitioner or unforeseen reason which is not attributable to the project developer as per clause 3.8 of generic tariff order No. 05/2024 dated 31.08.2024 of the Commission for determination of wind tariff. Non-approach of other developer for extension of time period on a ground of non-availability of DP permission or other reason is not disentitled to the Petitioner from claiming its substantive and vested rights under the Law.

11.43. Considering the above, we are of the view that the delay fall in framing of executive procedures for registration of RE project under GoG RE

Policy 2023 and development of online portal by the GEDA and delay in grant of DP permission to the RE Project by GEDA to the Petitioner is qualified as unforeseen reason and the same is qualified for extension of time period sought by the Petitioner. Delay in mandatory project registration from 4<sup>th</sup> October 2023 to 15<sup>th</sup> April 2024 by statutory authority i.e. GEDA under the provisions of the GoG RE Policy 2023 i.e. for 201 days. Delay due to grant of development permission on different dates by GEDA from (i) 16.04.2025 (for 12.60 MW), (ii) 23.4.2024 to 17.05.2024 (for 71.4 MW), (iii) 19.05.2025 (for 12.60 MW), (iv) 29.07.2024 (for 46.2 MW), (v) 12.08.2024 (for 21 MW), (vi) 28.11.2024 (for 10.50 MW), consisting of 219 days. Accordingly, we decide to grant an extension of 424 days for completion of transmission network by the Petitioner.

12. Now we deal with the issue on delay on account of Ministry of Defense declaration of No-go /no-WTG zone in Gujarat and based on it, the extension of completion of time period of transmission system sought by the Petitioner.

12.1. In December 2023, MoD declared certain areas in Gujarat as "No Go/No-WTG Zone wherein it restricted the execution of wind energy projects in those locations.

- 12.2. The advent of certain delays was overlapping in nature, connected intricately with each other. The Petitioner awaited the creation of online portal by GEDA for obtaining DP, which was indispensable as it was only through such DP that GEDA would approve the final land coordinates for installation of WTGs. Therefore, only after receiving DP, the Petitioner could assess whether its project area, including the proposed EHV line route, fell within the MoD's 'No-Go/No-WTG Zone' or not.
- 12.3. As GEDA failed to take any step towards developing the online portal and such delay continued for more than four months since issuance of Executive Procedure in December 2023, the Petitioner was constrained to adopt mitigation measures and thus sought for grant of DPs in physical format.
- 12.4. As detailed above, the Petitioner submitted its first application dated 23.04.2024 to GEDA for seeking DP. Thereafter, on 17.05.2024, DP was granted to the Petitioner for part capacity i.e. 71.40 MW. Since WTG locations for 70.40 MW capacity stood approved, this was indicative enough for the Petitioner to assess whether the Project area (Including potential EV line route) would fall within MoD's no-go/no-WTG zone.
- 12.5. The NOC was, however, granted to the Petitioner belatedly on 06.03.2025 i.e., almost after the delay of 9 months, for construction of

220 KV EHV SC Line from tower location 42/0 at Bodi Village Kalavad Taluk to tower location 57/0 at Sogthi village, Jamjodhpur Taluka, Jamnagar District.

- 12.6. It is submitted that MoD declaration of restricted zones in December 2023 and the delays in grant of statutory approval/ NOC until March, 2025, qualify an Force Majeure events unforeseen reasons in terms of clause 3.8 of Tariff framework. Hence, the Petitioner is entitled to relief due to circumstances beyond its reasonable control.
- 12.7. This Commission vide Order dated 04.07.2025 passed in Petition No. 2462/2025 titled as Imandra Solar Private Limited Vs. GETCO while recognizing the delay caused by MOD in granting NOC pursuant to declaration of "No Go/ No-WTG Zone", an "unforeseen reason" in terms of clause 3.8 of Tariff Framework, duly extended the SCOD of the Project. This is important also for the fact that the Respondent No. 1 i.e., GETCO in its pleadings questioned the existence of circumstance of MoD declaring No-WTG Zone(s) within the State of Gujarat as adumbrated in the present case and if at all the same would fall within the ambit of being unforeseen reason.

12.8. The Commission ought to allow the extension of SCOD from 30.06.2025 to 30.12.2026 by taking into account the unforeseeable hardship faced by the Petitioner.

12.9. The Petitioner placed Reliance on the following judgments:

- (i) M.P. Power Management Company Ltd. v. Renew Clean Energy Pvt. Ltd. reported as (2018) 6 SCC 15 ;
- (ii) GUVNL & Ant. v. GERC and Ors, reported as 2014 SCC Online APTEL. 23
- (iii) Taxus Infrastructures & Power Projects Pvt. Ltd. v. GERC reported as SCC Online APTEL. 86.

12.10. Per contra the Respondent submitted that the Petitioner has claimed that the MOD had declared a “NO GO zone” in December 2023 (through Letter dated 24.06.2024 the reference is November -December 2023). While it is not the claim of the Petitioner that it cannot set up the wind farm, it appears that the Petitioner’s claim is that the proposed evacuation line was affected as allegedly significant portion (50 to 70%) of the proposed 220 KV EHV line fell within the prohibited/regulated region.

12.11. It is the Petitioner’s burden of proof to demonstrate the above and further clarify whether it is prohibited zone or regulated zone. Further

the Petitioner may substantiate the declaration in December-2023 as in case of another developer, solarcraft had claimed in April and May 2023 itself certain issues in regard to the MOD and National security. If the issue had already arisen in April and May 2023, the Petitioner who had applied in May 2023 for Stage-II connectivity cannot claim any relief.

12.12. No other generator/developer (M/s Morjar, M/s Cleanmax vayu, M/s OP wind) who have also obtained connectivity at Kalawad sub-station has raised any issue of MOD NOC for the evacuation line.

12.13. The document submitted only refers to “No WTG zone” and NOC to be obtained. There is no “NO GO Zone”. It is also not clear from the said Map whether this attaches the requirement to NOC for evacuations line. The reference appears only for Wind Power projects- WTGs.

12.14. The requirement of NOC from MOD may not have been a new requirement. The Petitioner has claimed that the MOD would take approximately six months/180 days to process the application but apparently the Petitioner had not even applied for the same until 15.06.2024.

12.15. The Stage-II connectivity was obtained on 30.06.2023 and the Petitioner had apparently not taken any steps until December 2023 in terms of the evacuation line and even thereafter, the Petitioner has claimed to have

applied only on 15.06.2024. The survey report has itself been claimed to be only January to May 2024 even though the Stage-II connectivity was obtained on 30.06.2023. In fact, when the survey report was undertaken, the alleged notification of December 2023 was already there.

12.16. The Petitioner has referred to its application to Command Air Traffic Controller Office but there is no annexure and its blank paper. It is not clear if this is intended to be the same annexure. It is also not clear if there are further communications from the authorities or if the application is otherwise complete. It is normal time taken by authorities and even as per the Petitioner, six months would be taken.

12.17. The Respondent referred the following decisions:

- a) NTPC Vidyut Vyapar Nigam Ltd. Vs. Precision Technik Pvt. Ltd. 2018 SCC Online De 13102.
- b) Pasithea Infrastructure Ltd. Vs. Solar Energy Corporation of India & Anr. 2017 SCC online Del 12562 (Delhi High Court).

12.18. The Petitioner claims that the Judgement “impliedly” held that if party made best efforts but failed to obtain, the same would-be force majeure. There is no such implied decision. In the said case, it was noted that the application was refused due to a personal disqualification.

12.19. The reference thereafter to an assumption and other judgment cannot be used as a basis in the present case. Further to hold that there is a delay in approvals as referred in decision in GUVNL vs. M/s Cargo Solar Power Gujarat Pvt. Ltd. 2014 SCC Online APTEL 23 and other cases, the same was based on specific contractual Clause and it has to be shown that there was delay. This would mean unreasonable time taken as recognized by the Hon'ble High Court of Delhi.

12.20. Further to hold that there is a delay in approvals as referred in decision in GUVNL v. M/s Cargo Solar Power Gujarat Pvt Ltd 2014 SCC Online ARTEL 23 and other cases, the same was based on specific contractual clause and it has to be shown that there was delay. This would mean unreasonable time taken as recognized by the Hon'ble High Court of Delhi.

12.21. The reliance on decision in Taxus infrastructure and Power Projects Pvt Ltd v. GERC in Appeal No. 114 of 2015 and 131 of 2015 is misplaced and the Petitioner has misconstrued the decision. The said decision did not deal with the two aspects (delay in Government approval for SPV and delay in Registration of sale deed) referred in the Petition and it was precisely on this ground that the review Petition was allowed, and the Appeal was reopened and heard. On the other hand, the appeal was

allowed in favour of the GUVNL in case of third issue delay in granting statutory approval under Section 89A and it was held not to be force majeure as per PPA.

12.22. That if there is any consideration, the same cannot be from December 2023, this is particularly when the Survey report itself was not completed till May 2024 even as per the Petitioner. Therefore, clearly the Petitioner was not ready. Further it applied only on 15.06.2024.

12.23. Considering the aforesaid submissions, we observed that the Ministry of Defense has declared certain areas in the State of Gujarat as no-go/No-WRG zone wherein it has restricted the execution of wind energy project in that area. The said declaration made by the MOD in December 2023.

12.24. We also note that the Petitioner has claimed delay in declaration of procedure for registration by GEDA and also developed portal for online application for development permission by the RE generator as specified under GOG 2023 RE policy. The Petitioner has claimed that due to aforesaid delay on account of GEDA, the Petitioner was unable to obtain development permission and therefore, the necessary approval of GEDA of the final land coordination for installation of WTG also delayed which seems to be valid and legal. We are therefore, of the view that only after receipt of development permission by the Petitioner it could be

ascertained as to whether the project area including the proposed EHV line route fell within MOD no-go/no-WTG zone or not.

12.25. We note that GEDA failed to take any step towards developing the online portal and such delay continued for more than four months since issuance of Executive Procedure in December,2023, the Petitioner was constrained to adopt mitigation measures and thus sought for grant of DPs in physical format.

12.26. We note that the Petitioner submitted its first application dated 23.04.2024 to GEDA for seeking DP. Thereafter, on 17.05.2024, DP was granted to the Petitioner for part capacity i.e. 71.40 MW. Since WTG locations for 70.40 MW capacity stood approved, this was indicative enough for the Petitioner to assess whether the project area (including potential EHV line route) would fall within MoD's no-go/no-WTG zone.

12.27. We note that only after the grant of DP and during the period starting from mid-May to June 2024 that the Petitioner was able to conduct project-wise detailed survey and layout planning to determine whether any part of the project fell within the MoD's restricted zone. The said survey revealed that 12.8 km of the proposed 42 km EHV line route, extending from the wind farm to the 220 kV/400 kV Kalavad GETCO substation, fell within the MoD's No-Go/No-WTG Zone.

12.28. We also note that post undertaking the detailed survey, the Petitioner on 15.06.2024 applied to the Command Air Traffic Control Officer, seeking NoC for the EHV lines passing through MoD's restricted zone near the Samana Radar station. It is invariably evident that after obtaining DPs and completing the necessary surveys, there is no delay attributable to the Petitioner in applying for NoC on 15.06.2024 for seeking approval to implement the EHV lines in MOD declared restricted areas. The said application dated 15.06.2024 is reproduced below:

“ ...

*Ref:SUZ/TL/MOD/2024-25/JAM/01*

*Date: 15.06.2024*

*To,*

*Headquarters South Western Air Command*

*Command Air Traffic Control Officer*

*Vayu Shakti Nagar (VSN) Chiloda*

*Gandhinagar Pin- 382042*

*Tele: 07923242600/Extn 5229*

*Sub:- Construction of 220KV SC line of Suzlon Global Services Limited from Tower location 42/0 at Bodi village, Kalavad taluk to Tower location 57/0 at Sogthi village, Jam Jodhpur, taluk, Jamnagar district, Gujarat.*

*Dear Sir*

*With respect to the above Defence proposal is being prepared and submitted at your good office for NOC for construction of 220kV SC*

*line. The said 220 kV SC transmission line is being constructed from Tower location 42/0 at Bodi village, Kalavad taluk to Tower location 57/0 at Sogthi village, Jam Jodhpur taluk, Jamnagar district, Gujarat, which is 12.80 kms in length and the nearest tower is around 41.90 kms from the Jamnagar IAF station. Details of the line including undertaking and distance of each tower is appended in Annexures.*

*We are submitting herewith the application for issuance of NOC for the execution of the said transmission line.*

*You are hereby requested to take necessary action and issue NOC at the earliest for the construction of said transmission line.*

*All the necessary documents are herewith furnished for your kind perusal & needful please The following documents are submitted for your kind approval.*

- 1. AMSL Certificate Annexure-1(Relevant details of Line for availing Defence Aviation NOC).*
- 2. Topo maps (Survey of India)*
- 3. Appendix B*
- 4. Appendix-D1*
- 5. Appendix DJ*
- 6. Appendix-E*
- 7. Tower Drawing*

*Thanking you and looking forward for kind support to complete this fast-track project of national importance as per the schedule time line.*

*Contact Person: Manoj Upadhyay*

*Mobile: 9310585080*

*Email Id Consultantant@gmail.com*

*Registered Office Address: SUZLON GLOBAL SERVICES LIMITED  
Suzlon, 5, Shrimali Society, Near Shri Krishna Complex,  
Navrangpura, Ahmedabad-380009.*

....”

12.29. We note that on 04.12.2024, the Petitioner issued a letter to the Command Air Traffic Control Officer, Gandhinagar and requested to approve the pending NoC and informed the said delay is impacting the Project’s timeline and that there would be adverse implications on the Petitioner if the project is not completed within the schedule. The said letter dated 04.12.2024 is reproduced below:

“ .....

*Ref SUZ/TL/MOD/2024-25/JAM/01. Date: 04.12.2024*

*To*

*Headquarters South Western Air Command*

*Command Air Traffic Control Officer*

*Vayu Shakti Nagar (VSN), Chiloda,*

*Gandhinagar Pin-382042*

*Tele: 07923242600/Extn 5229*

*Sub: Request for Urgent Approval of Pending NOC for 220KV SC Line  
Construction,*

*Dear Sir,*

*We would like to bring to your kind attention that we submitted an application on 15/06/2024 for the issuance of a No Objection Certificate (NOC) for the construction of a 220KV SC line for Suzlon*

*Global Services Limited. The proposed line extends from Tower Location 42/0 at Bodi village, Kalavad Taluk, to Tower Location 57/0 at Sogthi village, Jam Jodhpur Taluk, Jamnagar District, Gujarat (Ref: SUZ/TL/MOD/2024-25/JAM/01).*

*Following your office's observations communicated to us on 01/07/2024, we promptly addressed and rectified all points raised. The revised application, along with the corrections, was resubmitted and delivered to your office on 06/08/2024. However, as of today, it has been more than 110 days since the resubmission, and the NOC approval is still pending. This delay is significantly impacting the project's timeline, and we are concerned about the resultant implications on its completion schedule.*

*We kindly request you to prioritize this matter and facilitate the grant of the NOC at the earliest possible. Your support and prompt action in this regard would be greatly appreciated.*

*Thank you for your understanding and cooperation. Please let us know if there is any further information or documentation required to expedite the process.*

*Looking forward to your favourable response.*

*Contact Person Mobile: 7898700549*

*Email Id: [Consultaniani1@gmail.com](mailto:Consultaniani1@gmail.com)*

*.....”*

12.30. We also note that on 20.12.2024, the Command Air Traffic Control Officer, Gandhinagar issued a letter to the Petitioner and stated that NoC

application is under scrutiny and is being reviewed and vetted by all the concerned agencies and once all necessary clearances are obtained the approved NoC shall be promptly forwarded to the Petitioner.

“.....

SWAC/2564/2/ATS (BM-11)

20 December 2024

Mr. Manoj Upadhyay

M-6 BDA Complex, Manisha Market,

Near Shekhar Hospital Shahpur Bhopal 402016 (M.P)

STATUS OF PROPOSAL FOR NOC FOR 220 KV SC LINE  
CONSTRUCTION

Sir,

1. Reference is made to your letter SUZ/TL/MOD/2024-25/JAM/01 dated 04 December 2024.

2. The case of NOC for 220 kV SC line construction is currently under process at this HQ. The proposal is being reviewed and vetted by all the concerned agencies. Further as part of the standard procedure, all cases are also forwarded to Air HQ for vetting by Nav specialist after recommendations from this HQ. Once all the necessary clearances are obtained the approved NOC will be forwarded to you promptly. All efforts to expedite the process for issue of NOC are being done at this office.

3. For your information, please

Your Sincerely,

s/d.

.....”.

12.31. We also note that on 17.02.2025 again the Petitioner issued a letter to the Command Air Traffic Control Officer, reiterated its earlier stand and requested to approve the pending NoC.

12.32. The NoC was granted to the Petitioner belatedly on 06.03.2025 i.e. almost after the delay of 9 months, for construction of 220 kV EHV SC line from tower location 42/0 at Bodi Village Kalavad Taluk to tower location 57/0 at Sogthi village, Jamjodhpur Taluk, Jamnagar District. The NOC approval dated 06.03.2025 is reproduced below:

*Tele: 079-23242700*

*CATCO Office*

*HQ SWAC, IAF*

*VSN, Chiloda*

*Gandhinagar*

*Gujarat -382042*

*06 Mar 25*

*SWAC/2564/4/7056/ATS (BM)*

*M/s. Suzlon Global Services Limited*

*"Suzlon", 5, Shrimali Society,  
Near Shri Krishna Complex,  
Navrangpura, Ahmedabad-380009*

*Mob: 9310585080*

*NOC FOR CONSTRUCTION OF 220 KV EHV SC LINE OF SUZLON GLOBAL SERVICES LIMITED FROM TOWER LOCATION 42/0 AT BODI VILLAGE, KALAVAD TALUK TO TOWER LOCATION 57/0 AT SOGTHI VILLAGE, JAM JODHPUR TALUK, JAMNAGAR DISTRICT, GUJARAT*

*Sir,*

1. Please refer your application on the subject.

2. The application has been examined within provisions mentioned under Section 5(2) of Gazette of India GSR 751 (E) read in conjunction with Sub Section (1) Clause (o) & Clause (r) of Sub Section 2 of Section 5 read with Section 9 A of Aircraft Act 1934, Works of Defence Act 1903 and other relevant orders on the subject. HQ SWAC has "No-objection" for installation of 46 towers for construction of 220 kV EHV SC Line of Suzlon Global Services Limited from Tower Location 42/0 at Bodi Village, Kalavad Taluk to Tower Location 57/0 at Sogthi Village, Jam Jodhpur Taluk, Jamnagar District, Gujarat, subject to following conditions:

- (a) The NOC is for construction of transmission line and cannot be used as document for any other purpose / claim whatsoever, including ownership of land where line is being laid/towers are installed.
- (b) The applicant is responsible to obtain NOC/ all statutory clearances from AAI/State Govt / Municipalities/ any other concerned authorities. Clearance shall also be obtained separately from any other defence establishment/Army/DRDO etc. in the proposed area of construction wherever applicable.
- (c) The site elevation and site coordinates provided by the applicant are taken for calculation of the permissible top elevation of the proposed structures. If however, at any stage it is established that the actual site elevation and site coordinates are different from those provided by the applicant, the NOC will be invalid.
- (d) The issue of NOC is further subject to the provisions of Sec 9A of the Indian Aircraft Act, 1934 and those of any notifications issued there under from time to time including the Aircraft (Demolition of Obstruction caused by buildings and trees etc) Rules, 1994.
- (e) The height and elevation of the towers shall not exceed the proposed height of 50.91m AGL or 214.91m AMSL, whichever is lower.
- (f) The company shall ensure provision for placing cable markers on all cables. Medium intensity Type 'B' obstruction lights in combination with Low intensity Type 'B' light shall be installed on all towers. The obstruction lights shall be kept 'ON' at all times during day night as per specifications given IS 5613 (Part-3/Section-1, and subsequent

amendments) and ICAO Annex-14, Chapter-6. Company shall maintain all the markers and obstacle lights in fully serviceable and visible conditions.

- (g) The commencement and completion certificate on construction including installation of obstruction lights shall be intimated to Air Office Commanding Air Force Station Jamnagar. Failure to render these certificates by the applicant within the stipulated time shall lead to cancellation of NOC.
- (h) The NOC is valid for Seven years from the date of its issue. If the towers /supporting structures/pylons are not constructed and completed within this period, the applicant may apply for extension of NOC from Indian Air Force.
- (i) The applicant shall obtain necessary security clearance from MHA/IB prior to employing any foreign national at the site.
- (j) The NOC will be null and void if the construction is found to be in deviation from the submitted proposal and in event of non-adherence to the above-mentioned conditions.

Yours sincerely

S/d.

Electronically Signed By GP CAPT T SELWYN  
(HQ SWAC (CATCO))

On 06-Mar-2025 13:29:46 (Ph-37117740) using  
Login ID authentication through eOffice

Copy:

Gp Capt Ops ATS, Air HQ (VB)

AFS, Jamnagar (SATCO

.....”

12.33. The MoD's declaration of restricted zones in December,2023 and the delays in grant of statutory approval/ NOC until March,2025, qualify as Force Majeure events/ unforeseen reasons in terms of Clause 3.8 of

Tariff framework. Hence, the Petitioner is entitled to relief due to circumstances beyond its reasonable control.

12.34. The Commission vide Order dated 04.07.2025 passed in Petition No.2462/2025 in Imandra Solar Private Limited v/s GETCO while recognizing the delay caused by MOD in granting NOC pursuant to declaration of 'No-Go/No-WTG Zone", as 'unforeseen reason' in terms of Clause 3.8 of Tariff Framework, duly extended the SCOD of the project. The Respondent No.1 i.e. GETCO in its pleadings questioned the existence of circumstance of MoD declaring No-WTG Zone(s) within the State of Gujarat as adumbrated in the present case and if at all the same would fall within the ambit of being unforeseen reason. The Commission ought to allow the extension of /SCOD from 30.06.2025 to 30.12.2026 by taking into account the unforeseeable hardship faced by the Petitioner.

12.35. Reliance is also placed upon M.P. Power Management Company Ltd. v. Renew Clean Energy Pvt. Ltd. reported as (2018) 6 SCC 15 (Para 12); (ii) GUVNL & anr. V. GERC and Ors. reported as 2014 SC online APTEL 23 (paras 25, 27, and 55); wherein the Hon'ble Courts have held that delay in grant of approval/ clearance by Government instrumentality amounts to giving rise to events beyond reasonable control and appropriate relief ought to be granted to the affected party.

12.36. Considering the above, we are of the view that the delay on account of declaration of no-go/No-WTG Zone in Gujarat consisting of the project area of the Petitioner by Ministry of Defense is qualified as unforeseen reason and the same is qualified for extension of time period sought by the Petitioner from 15.6.2024 to 06.03.2025 i.e for 265 days.

13. Now, we deal with the issue of Frequent change in GIS Bay Sequence at the behest of GETCO & other RE Developers.

13.1. It is submitted that significant delays have been caused in development of Petitioner's Project, at the instance of GETCO and other RE developers who have frequently sought changes in the 220 kV GIS Bay sequence and associated technical arrangements at GETCO's 220kV/400 kV S/s at Kalavad.

13.2. On 12.09.2023, GETCO convened a meeting with the developers regarding construction of 220 kV GIS Bay at Kalavad GETCO S/s. The sequence of Bay Nos. was (i) Morjar; (ii) Opwind and (iii) SGSL/Petitioner, and Siemens make GIS Bay was confirmed.

13.3. As soon as the Siemens make GIS Bay was confirmed, the Petitioner undertook the project related activities including submission of common drawing for its approval to GETCO.

- 13.4. Meantime, the connectivity of Morjar was cancelled/ revoked by the Respondent and thus connectivity and Bay allocations remain as (i) Opwind and (ii) SGSL/ Petitioner.
- 13.5. On 21.11.2023, GETCO convened another meeting with the developer regarding construction of 220 kV GIS bay at Kalavad OFTCO S/s and again changed the sequence of Bay's as (i) Op wind (ii) SGSL/ Petitioner and (iii) M/s Morjar.
- 13.6. On 22.02.2024, GETCO convened another meeting with the developers and the bay sequence was again changed as (1) M/s Morjar (ii) Opera (iii) SGSL/ Petitioner and (iv) M/s Cleanmax.
- 13.7. Initially, three bays of substation were allocated to four when connectivity was granted i.e. Morjar, Opera, SGSL/ Petitioner and Cleanmax but later on GETCO considered adding 4<sup>th</sup> Bay for reallocating the connectivity to M/s. Morjar on reapplication made by it.
- 13.8. Thereafter, M/s. Cleanmax requested GETCO for allotment of 3rd No. Bay Instead of 4<sup>th</sup> and the Petitioner agreed to the same vide its email dated 18.12.2023. However, owing to the technical issues the bay swapping was not possible and the same was recorded in the Minutes of the Kick-off meeting dated 09.08.2024.

13.9. The Petitioner had no control over the said changes in GIS Bay sequence which disrupted the project timelines, affecting EIV line commissioning and warranting SCOD extension to the Petitioner's Project.

13.10. As of March 2025, no developer constructed the 220 kV GIS Bay at Kalavad GETCO S/s and 3 Nos. of GIS Bays of Ms. Morjar, M/s. Opera and Cleanmax have been tested and the said developers had given the contract work to Siemens Limited, Aurangabad. However, the Petitioner's Bay was ready and tested/ inspected from 03.03.2025 to 06.03.2025, in the presence of GETCO and the Petitioner's officials.

13.11. The Commission vide its recent Orders to grant extension to the developers i.e., M/s Cleanmax Vayu Pvt. Ltd. and M/s. Morjar Renewables Pvt. Ltd. on account of uncontrollable and unforeseen factors not attributable to the Petitioners therein.

13.12. It is submitted that, delay due to frequent changes in GIS Bay sequence at the behest of GETCO and other RE Developers, is not attributable to the Petitioner being beyond the reasonable control of the Petitioner and therefore, constitutes "unforeseen reasons" within the terms of clause 3.8 of Tariff Framework. Hence, the Petitioner ought to be granted the relief of extension of the SCOD of the evacuation infrastructure.

13.13. There is no issue from September 2023. The meeting in September 2023 was in regard to the make and all parties agreed to SIEMENS. It is not clear how this caused any delay. There are four generators at Kalawad Sub-station and the meeting was made to ensure the consistency.

13.14. The meeting on 22.02.2024 was to coordinate and the bay sequence was *inter alia* decided. The bay sequence decided on 22.02.2024 was the same as understood in September 2023. Therefore, there was no change at this stage.

13.15. The revision was necessitated at the behest of M/s Cleanmax who citing lack of inputs from Petitioner, Suzlon, vide letter dated 29.07.2024 requesting for bay swapping with Suzlon to proceed with the evacuation as planned. Therefore, GETCO convened a meeting on 09.08.2024 with the M/s Cleanmax and Petitioner for discussion bay swapping as requested by M/s Cleanmax and pursuant to deliberation, the request for bay swapping was allowed. Thus, it was agreed to by the Petitioner and no objection was raised at the time of meeting nor did the Petitioner raise any issue of extension of time at this stage.

13.16. The bay sequence does not affect the transmission line to be laid down, particularly when Petitioner has not commenced any work. In fact, the change itself was necessitated due to the lack of progress by the

Petitioner. Had Petitioner proceeded well in time, this swapping could have been avoided.

13.17. The Petitioner has claimed that it continued construction activities but has neither claimed that there was any activity between September 2023 to February 2024 nor substantiated the claim that there was work between February 2024 to August 2024. There are no details let alone any supporting document or evidence. Even as per the alleged list of activities, it seems that no activity may have been carried out during the period between 22.02.2024 and 09.08.2024, let alone before September 2023. The Petitioner has cleverly omitted to provide the details of the alleged work but it is clear that the Petitioner was otherwise delayed.

13.18. The Commission may also have to consider if the Petitioner was otherwise delayed. The Petitioner had not obtained any vendor approval. Further the Petitioner did not submit the drawing for approval. This was not only stated in meeting on 12.09.2023 but also in meeting on 22.02.2024 but this was not submitted and GETCO had sent reminders on 22.05.2024 and 05.06.2024. In fact, as is clear from the representation by another developer, M/s Cleanmax Vayu, it was the Petitioner who was causing the delay in common drawing approvals. M/s Cleanmax wrote to GETCO on 03.07.2024 requesting for approval of

common drawing for Petitioner and other two generators except Suzlon and GETCO vide Letter dated 22.07.2024 reiterated that the drawings are not submitted and stated that in case of non-readiness of any developer, the common drawing alongwith other ready developers may be submitted. The Part Layout Plan, Section and SLD in respect of M/s Cleanmax, Morjar and OPWind was submitted for approval in August 2024 which was duly granted on 11.09.2024. However, drawing for the Petitioner has not been submitted.

13.19. In fact, even in regard to the vendor approvals, the same was obtained only as under:

- a. The Petitioner requested for approval of electrical and civil contractor vide letter dated 04.09.2024 received on 10.09.2024 GETCO had sought vide letter dated 17.09.2024 for certain aspects which was compiled only on 14.10.2024. GETCO has issued contractor approval vide letter dated 16.10.2024.
- b. The Petitioner requested for approval of equipment vendors vide letter dated 29.11.2024 received date 30.11.2024 and GETCO has issued vendor approval letter dated 06.12.2024.

13.20. There was not any frequent change of make and model of 220 GIS Bays.

The developers had all agreed to SIEMENS on 12.09.2023 and there has

been no change in the same. The Petitioner is connecting two different aspects and seeking to claim delay.

13.21. The Petitioner cannot claim delay from September 2023 to August 2024.

The Petitioner had not undertaken any work which had to be revised. It is clear that the Petitioner had not even completely done survey work which was only done by May 2024 even as per the Petitioner. The Petitioner had not applied for vendor approval or drawing approval. Further, the Petitioner apparently did not even have investors or customers, and this is the reason for Petitioner to delay the project.

13.22. The reference to the alleged ROW issues on grounds is not relevant admittedly the work has not even begun yet. It is the Petitioner's responsibility to resolve ROW issues.

13.23. We note that there were significant delays caused in development of Petitioner's project, at the instance of GETCO and other RE developers who have frequently sought changes in the 220 kV GIS Bay sequence and associated technical arrangements at GETCO's 220 kV/400 kV S/s at Kalavad. This is reflected from the following facts:

- (a) On 12.09.2023, GETCO convened a meeting with the developers regarding construction of 220 kV GIS Bay at Kalavad GETCO S/s.

The sequence of Bay Nos. was (i) Morjar; (ii) Opwind and (iii) SGSL/ Petitioner, and Siemens make GIS Bay was confirmed.

- (b) Pertinently, as soon as the Siemens make GIS Bay was confirmed, the Petitioner undertook the project related activities including submission of common drawing for its approval to GETCO.
- (c) Thereafter on 21.11.2024, GETCO convened another meeting with the developers regarding construction of 220 kV GIS Bay at Kalavad GETCO S/s and again changed the sequence of Bays as (i) Opwind; (ii) SGSL/ Petitioner; and (iii) M/s. Morjar.
- (d) On 22.02.2024 Respondent GETCO convened another meeting with the developers and the bay sequence was again changed as (i) M/s.Morjar; (ii) Opera, (iii) SGSL/ Petitioner and (iv) M/s. Cleanmax.
- (e) Initially, three bays of substation were allocated amongst four generators to whom connectivity was granted (i.e. Morjar, Opera, SGSL/ Petitioner and Cleanmax) but later on, the Respondent GETCO considered adding 4<sup>th</sup> Bay for reallocating the connectivity to M/s.Morjar on reapplication made by it after revocation of connectivity earlier by the Respondent.

(f) It is also contended that the Respondent GETCO has allocated 3<sup>rd</sup> Bay instead of 4<sup>th</sup> Bay to Cleanmax and the Petitioner agreed to it vide email dated 18.12.2022. It is also contended that however, owing to technical issue, the bay swapping was not possible, and it was recorded in the kickoff meeting dated 09.08.2024 which is reproduced below:

*Minutes of Kick Off Meeting for 220kV Kalawad GIS-Extension 220kv GIS bays Date: 09.08.2024 (Ref: MOM dated 22.02.2024)*

- 1) GIS bay sequence again revised as per the request of M/s. Clean Max and technical aspects of GIS arrangement. Now GIS Bay sequence shall be 1. M/s Marjar 2. M/s OPwind 3. M/s Clean max. & 4. M/s Suzlon.*
- 2) In continuation to the point No. 11 of MOM dated 22.02.2024, M/s. Suzlon shall have to procure same make of GIS in line with other three developers.*
- 3) Primary drawing (i.e. SLD, Plan & Section as well as GIS GA, GSLD etc.) proposing all 4 GIS modules at a time shall be submitted for approval duly vetted by all the developers.*
- 4) All the points mentioned in MOM dated 22.02.2024 except changes related to bay swapping between M/s. Clean Max and M/s. Suzlon shall be applicable as it is.*

13.24. From the aforesaid, it is clear that the bay swapping was carried out at the Respondent substation on the ground of revocation of connectivity

granted to Morjar Ltd., and re-connectivity granted to it by the Respondent. Moreover, on the request of the developer for swapping of bay allocated to them and the same was allowed by the Respondent. Once the allocated bay sequence has been changed at substation level, the connectivity at substation place is changed and it also required to change transmission network creation i.e. bay and some of the transmission line works for the evacuation of power from power plant of the project developer in the present case.

13.25. The aforesaid fact is clear that the change in GIS bay sequence at 220 kV Kalavad GETCO substation by the Respondent lead to uncertainty about creation of work at Kalavad s/s by the project developer which include the Petitioner, and it is beyond the control of the Petitioner in this case and it is qualified as unforeseen reason and also ground for grant of extension sought by the Petitioner.

13.26. We also note that the Petitioner has submitted that as on March,2025 i.e. on the day of filing of petition no developer has constructed 220 kV GIS bay at Kalavad substation and 3 no. of GIS bay of M/s. Morjar, Opera and Cleanmax have been tested and they have given contract of Siemens Ltd. The Petitioner's Bay was ready and tested /inspected from 03.03.2025 to 06.03.2025 in presence of the Respondent and Petitioner

representative. Thus, the Petitioner has already allocated the work of GIS bay to the manufacturer and also tested and inspected at Respondent substation.

13.27. We also note that the Commission has passed Order in the similar matter and grant extension to the developer i.e. M/s. Cleanmax Vayu Pvt Ltd. and M/s. Morjar Renewable Pvt. Ltd. on account of uncontrollable factors not attributable to the Petitioners of that cases.

13.28. We also note that the Commission in its order dated 17.06.2025 in Petition No. 2401 of 2024 in the matter of Cleanmax Vayu Pvt. Ltd. v/s GETCO held as under:

*16.7. In addition, as far as the issue of delay in status of lead generator is concerned, it is submitted that a non-lead generator is not responsible for construction of evacuation line. Therefore, the provision of termination of connectivity and encashment of BG does not apply to non-lead generator.*

*16.8. The petition was listed for hearing on 17.01.2025, pursuant to which daily order dated 18.01.2025 was passed by this Commission. The Commission raised certain questions in its daily order dated 18.01.2025 to the Respondent GETCO on the issue of lead generator, reply to which was submitted by GETCO vide its additional submissions dated 22.01.2025 wherein made following submission:*

16.9. *Question from GETCO in the Daily Order dated 18.01.2025.*

*(i) Clarity with regard to responsibility of construct Bays, i.e., whether it is responsibility of GETCO or lead generators or concerned developers? In present case, who have constructed bays on behalf of all four developers, whether developed by common vendor alongwith name of vendor, date of commencement of work, its tatus, date of completion of work etc.*

16.10. *Response of GETCO to the query of the Commission*

*30. In case of sharing, the first Grantee or lead Generator is entrusted with work of dedicated line from its project to the sub-station as well as feeder bay at the sub-station and the subsequent grantees share the said bay. The subsequent grantee erects the line from their pooling station to the sub-station of the first grantee.*

16.11. *Subsequently, the present petition was listed for hearing on 23.01.2025 for which daily order/ record of proceedings has been passed on 11.02.2025 During the proceeding on 23.01.2025 the Respondent GETCO acknowledged the conditions imposed on the generators and the difficulties faced by the Petitioner, thereby supporting the genuine claim of the Petitioner. Relevant paragraphs from the daily order dated 11.02.2025 are extracted below:*

7.1. *On the issue of status of lead generator:*

*“2.1 The Counsel for the Respondent GETCO submitted that the delay occurred in the present case is due to non-action on part of the Applicant/Petitioner and there is no delay on part of the Respondent*

*GETCO. She submitted that in regard to issue of lead generator, generally first connectivity holder is considered as lead generator and in case connectivity granted to first generator is revoked, in that case second connectivity holder became as lead generator. In the present case, the Applicant/Petitioner requested to grant status of lead generator subsequent to revocation of connectivity granted to the lead generator Morjar Renewables Pvt. Limited. However, Morjar Renewables Pvt. Limited approached to the High of Gujarat and there were directions for maintaining status quo which led to delay, to declare the Applicant/Petitioner as lead generator.”*

*7.2. Delay associated with vendor approval for GIS*

*“2.2 With regard to vendor approval, she clarified that as decided and discussed in the Minutes of Meeting (MoM) with the developers, it was mandatory to select common vendor by all developers for extension/construction of their respective Bays.*

*2.4. She further submitted that initially the Applicant/Petitioner vide letter dated 29.02.2024 requested GETCO to grant approval for the existing vendor M/s CHINT Global of 220 KV Kalavad substation for creating new 220 KV Bays, which was denied by GETCO vide email date 02.04.2024 due to Govt. of India Cross Border Business Policy. In view of limited vendors in India for GIS substation and further when the vendor is different than original equipment, there are requirements to design the adaptors to connect the existing GIS modules. Thereafter, the Applicant/Petitioner vide its letter dated 21.06.2024 requested for approval of common vendor, which was granted by GETCO vide its letter dated 08.07.2024. Some developers approached GETCO immediately for approval of common vendor whereas other*

*developers approached GETCO after delay. However, GETCO granted approval within reasonable time as and when they approach to the GETCO for vendor approval.”*

**7.3. Common drawing approval**

*“2.3 With regard to common drawing approval, she clarified that there was no individual approval in respect to the Bays to be constructed, as it is necessary to submit common drawing for approval of GETCO. However, this was not done by the developers on a ground of non-readiness of one of the developers viz. Suzlon. The Applicant/Petitioner vide letter dated 03.07.2024 requested for approval of common drawing for the Applicant/Petitioner and other two generators except Suzlon. GETCO vide letter dated 22.07.2024 intimated that in case of non-readiness of any developer, the common drawing along with other ready developers may be submitted. Accordingly, common drawing in respect of the Applicant/Petitioner alongwith other two developers, viz, (i) Morjar and (ii) OP Wind was submitted for approval in August 2024 which was granted vide GETCO's letter dated 11.09.2024. She further clarified that an individual approval of the drawing to the Morjar as referred in the Daily Order dated 18.01.2025 is for GETCO Bays/equipment, which were allowed to use by M/s Morjar under the temporary arrangement and not with respect to extension/construction of Bays to be done by individual developers, i.e. M/s Morjar.”*

**16.12.** *We note that the Petitioner has contended that the Respondent has put up a condition that all connectivity holders of 220 kV Kalavad Sub-station who have been granted connectivity are required to construct the respective bays for evacuation of power from their RE projects have to create GIS system which is capable to connect with*

*existing GIS system of the Respondent GETCO. The Respondent has also stated and explained in its MOM dated 22.02.2024 that the connectivity holders which includes the Petitioner shall require to submit a common drawing and get approval from the Respondent. We note that neither the connectivity procedure dated 07.01.2023 notified by the Commission provide such conditionality nor there is any document on record which states that all connectivity holders who are different and distinct from each other required to submit common drawing for approval of the Respondent. Thus, it is a clear case that the Respondent has stated that all connectivity holders have to submit common drawing for approval of the Respondent. The time period needed for creation and submission of common drawing is qualified as unforeseen reason arise due to technical reason which need to be allowed by the Commission.*

*16.13. We further note that the contention of the Petitioner is not disputed and denied by the GETCO.*

*16.14. From the above discussion and analysis, we note that additional requirements being imposed by the Respondent are as under:*

- i. Sourcing and supply of GIS of same make and manufacturer.*
- ii. Submission of common drawings for approval.*

*16.15. The Petitioner submitted that majority of the time lapsed due to additional requirements of coordination with all the developers for common drawing, in which important role was played by the Respondent GETCO to facilitate the same. This delay was beyond the control of the Petitioner who has shown nothing but efforts to commission the evacuation line within the given timeframe.*

*16.16. We also note that the Petitioner has stated that the current status of work done is concerned, the following may be noted:*

- i. *220kV Gantry and Beam erection completion- 80%*
- ii. *220kV equipment structure erection completion- 80%*
- iii. *Main grid earthing 100% completed and equipment earthing completion- 45%*
- v. *220kV erected equipment- completed.*

16.17. *In view of above, we decide the present petition succeeds. The delay occurred in clarity of status of Petitioner as lead generator for the period from 28.07.2023 to till 22.02.2024 i.e. 209 days is qualified for extension in creation of transmission system.*

13.29. We also note that the Commission in its order dated 28.7.2025 in Petition No. 2465 of 2025 in the matter of Morjar Renewable Pvt Ltd. vs GETCO has held as under.

(xviii) *The Respondent on 22.05.2024 issued Minutes of Meeting dated 22.02.2022 and asked Petitioner and other generator to submit a single drawing duly vetted by all generators to enable the Respondent to grant common approval for the same.*

(xix) *The contractor of the Petitioner M/s. Kintech Synergy Pvt. Ltd. on 24.05.2024 on behalf of the Petitioner issued email to the Respondent that they are facing difficulties in bus measurement for constructing permanent bay for the Petitioner and requested for intervention of the Respondent become necessary for existing GIS module bus measurement qua adaptor designing work, since even continuous follow with M/s. Chint for required details and deputing the representative of the said company which effect process of construction of permanent bay by the Petitioner. As there is no response from M/s. Chint the Petitioner through its contractor sought of intervention to expedite the M/s. Chint make GIS bus*

measurement work at kalavad S/s of the Respondent. The said email dated 24.05.2024 issued by M/s. Kintech Synergy Pvt. Ltd. to the Respondent is reproduced below:

“.....

*From:* MANHAR PATEL <manhar@kintechnsynergy.com>

*Sent:* 24 May 2024 15:41

*To:* [ceengg.getco@gebmail.com](mailto:ceengg.getco@gebmail.com)

*Cc:* ahmedmiyamalek@gmail.com; ASHOK SHAH;  
GHANSHYAM PATEL; Jigar Shah; Ravi Shankar;  
nv.venkat

*Subject:* Urgent Request for GIS Bus Measurement at 400KV  
Kalavad GETCO. Substation

*Attachments:* Quotation for bus measurement works to Kintech dated 14.05.2024. pdf

*Dear Sir,*

*Please note that M/s. Kintech is constructing the 220KV GIS Feeder bay for M/s. Morjar Renewables Private Limited at the 400KV Kalavad GETCO substation. For this, we need the existing GIS module bus measurements for adapter designing work. Despite our continuous follow-up with Chint for the required details to release the PO, there has been a delay in their response.*

*We need your intervention to expedite the Chint make GIS bus measurement work at the 400KV Kalavad GETCO substation.*

*We are ready to proceed with the payment as per the attached quotation amount for the bus measurement work.*

*Your prompt assistance in this matter would be greatly appreciated.*

*Best Regards,*

*Manhar Patel*

*Kintech Synergy Private Limited*

.....”

(xxii) *We note that the Petitioner has vide its letter dated 27.05.2024 requested the Respondent for approval of common drawing submitted by the Petitioner and M/s. OP Wind Ltd. which was approved by the Respondent on 07.10.2024, i.e. after more than 4 months. The aforesaid delay on part of the Respondent which is mandatory approval imposed by the Respondent is qualify as unforeseen reason and eligible for time extension sought by the Petitioner. The said letter dated 07.10.2024 is reproduced below:*

“.....

To,

*M/s. Kintech Synergy private Limited.*

*Kintech House 8-9, Shivalik plaza, opp. AMA, IIM road*

*Ambawadi, Ahmedabad- 380015*

*Sub: Approval of 220kV LCC schematic diagram for allocation of 220KV*

*GIS feeder bays to M/s. Morjar, M/s OPWIND, M/s. Clean- Max & Mis.*

*Suzlon at 220KV Kalavad GETCO S/S for evacuation of Hybrid*

*(Solar + Wind) power under option-III.*

*Ref:*

*(1) GETCO Estimate No. (To Morjar): (a) GETCO/R&C/RE/690 and 08.04.2004 (b) GETCO/R&C/ RE/692 dated 08.04.2004 (c) GETCO/R&C/RE/159 dated 25.01.2004*

*(2) GETCO Estimate No. (To Cleanmax): (a) GETCO/R&C/RE/507 dated 12:03.2024*

*(3) GETCO Estimate No. (To Opwind): (a) GETCO/(R&C)/RE/156 dated. 25.01.2014 (b) GETCO/(R&C)/RE/157 dated. 25.01.2004 (c) GETCO/(R&C)/RE/691 dated. 08.04.2024*

- (4) MOM of Kick-off meeting at GETCO HO dated 22.02.2004
- (5) Vendor + Contractor Approval:CE(P)/ACE/SE(P)/EE(SS)/T-5/VA/Morjar/ 125MW/4738 dtd. 23.05.2024 (for Morjar Bay)
- (6) Vendor + Contractor Approval:CE(P)/ACE/SE(P)/EE(SS)/T5/VA/Cleanmax/ 100MW/5830 dtd. 08.07.2024 (for Cleanmax Bay)zzhis office approval letter no, GETOO/CE(Engg)/220kV Dholera GIS/ Tranrail/I/C/O-007715 dt. 22.10.2021
- (7) This office approval letter no. GETCO/ CE (Engg)/ 220kV Dholera GIS/ Tranrail/I/C/ O-008019 dt. 15.12.2021
- (8) M/s Kintech letter no. KSPL/GETCO/CR180924/0142 dtd 18.09.2024
- (9) VC meeting with m/s Siemens dtd 20.09.2024
- (10) Revised drawing submission dtd 30.09.2024

Dear Sir,

With reference to above, drawings as noted below for 220 kV GIS LCC approved vide this office letter under ref (7) & (8) are considered valid for this project also. These original drawings shall be made available to inspector as and when required.

SN	Particulars	Drawing No.	Remarks
<b>220kV, 3150A, 50kA for 3sec, type: 8DN9, make: Siemens</b>			
1	220 kV GIS LCC GA & Schematic drawings for line bays	(3) G71770-AD388-U401-C Rev-C Sh 1 to 131 except sheet nos. 1,14,18, 35,44,55,56,56,56,86, 89, 90,91,92,93 & 94	Approved with comment vide letter no. 7

SN	Particulars	Drawing No.	Remarks
<b>220kV, 3150A, 50kA for 3sec, type: 8DN9, make: Siemens</b>			
1	220 kV GIS LCC GA & Schematic drawings for	(3) G71770-AD388-U401-D Rev-D revised sh A44, B44, A45,	Approved vide

	line bays	86,89,90,91,92 & 94 of 131	letter no. 8
5	Bill of material	Total sheets – 3 Rev3	
6	Zone trip logic	(3) G71770-AD388 – S012-C Rev-C SH 1 to 5	Approved with comment vide letter no. 8

*With reference to above, drawings as noted below for 220 kV GIS LCC submitted vide ref no. (11) are technically scrutinised & status is as under.*

SN	Particulars	Drawing No.	Remarks
<b>220kV, 3150A, 50kA for 3sec, type: 8DN9, make: Siemens</b>			
1	220 kV GIS LCC GA & Schematic drawings for line bays	(3) G71770-AD664-U119 Rev-0 revised Sheet 1,14,18,35,44,45,55,56,56,90 ,93 of G71770-AD388-U401-C Rev-C 131) New sheets 132,133,134,135,136,137,138,139,140	Approved with comment

*If any change required in any of the drawings for this project, only that particular sheet /drawing shall be submitted for the approval.  
Any modification required to match SCADA/C&R scheme drawing shall be modified at site during commission  
This approval, however, does not absolve you from the warranty of the equipment or from rectifying the defects due to faulty design or use of incorrect materials This is without any prejudice to the terms and conditions of the order.*

*Yours faithfully,*

*For, Gujarat Energy Transmission Corporation Ltd*

*(BP Sani)*

*I/C Addl. Chief Engineer (Engineering)*

*Copy f.w.c.s. to: (1) CE (Project) GETCO, Vadodara.*

*.....”*

*(xxiii) It is also necessary to refer section 39 (c) of the Electricity Act, 2003, which reads as under:*

*39 (c)- to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;*

*(xxiv) The aforesaid Section 39 (c) of the Electricity Act, 2003 provides that it is the duty of the State Transmission Utility/Transmission Licensee for ensuing development of efficient, coordinated an economical system of intra-state transmission lines for smooth flow of electricity from generating station to the load centers. We note that the effort taken by the Respondent GETCO to take actions and enforce the compliances of its directions contended in letter dated 05.06.2024 to submit common drawing approval by the RE developers with a view to peculiar requirement arose in the present case wherein it is necessary for the Respondent to see that common drawing for its necessity. Thus, we note that the action of the Respondent to demand common drawing for all the RE generators for construction of GIS system is with consideration of aforesaid provisions of the Act.*

*(xxv) We also note that the Stage-II connectivity granted to the Petitioner and other RE generator/developers are different and distinct from each other. There is no condition that all RE developer/generator shall be required to submit common drawing for GIS system needs to construct and operate at Respondent sub-station. It is qualifying as additional condition imposed by the Respondent. The said condition imposed by the Respondent with consideration of safe and easy operation of GIS system constructed and operated at Petitioner S/s with consideration of technical aspects. The aforesaid condition and issue is qualify as additional condition and delay*

*occurred in fulfillment of aforesaid condition by the Petitioner is qualify for unforeseen reason and also for grant of extension as sought by the Petitioner.*

*(xxvi) We also note that the Petitioner has on 05.06.2024 requested to the Respondent that there is non-cooperation from the M/s. Chint with respect to 220 kV bus measurement in existing Chint make GIS module which is under Respondent warranty period. In response to aforesaid on 11.06.2024 M/s. Chint after delay of more than 2 and half month agreed to depute its representative at project site. The aforesaid delay on account of M/s. Chint Ltd. is unforeseen reason affecting the construction of permanent bay of the Petitioner and it was delayed which is not under the control of the Petitioner. The Petitioner has informed to the Respondent vide its letter dated 18.06.2024 and requested to grant an extension for construction of its permanent bay until 31.03.2025. The aforesaid contention of the Petitioner seems valid and qualify for extension of time period for construction of GIS bay which is beyond its control and unforeseen reason is qualify for extension of time period. The Petitioner has also requested to the Respondent to extend time period for the usage of temporary bay allocated by the Respondent upto 31.03.2025 or until completion of permanent bay. The said letter dated 18.06.2024 is reproduced below:*

*“.....*

*Ref. No. MRPL/GETCO/R&C/2024/Tem bay – Usage Extension/021 18.06.2024*

*To,*

*The CE (R&C),*

*GETCO, Vadodara.*

***Subject:*** *Progress on Permanent Bay allocated and Extension of temporary bay usage time allotted to Morjar Renewables Pvt*

*Ltd (MRPL) and M/s. Opwind Energy Pvt (OPWIND), Ltd at 220 kV Kalavad substation.*

*Ref:*

- 1. GETCO MOM dated 22.02.2024*
- 2. GETCO letter. CE(R&C)/SE(STU)/735 dated 16.04.2024- Temporary Bay swapping*
- 3. GETCO Letter No. CE(R&C)/SE(STU)/583dated 21.03.2024- Temporary Bay allotment*
- 4. Our Letter: MRPL/GETCO/R&C/2024/Tem Bay/007dated 24.03.2024- Comm of Temporary Bay*
- 5. GETCO email dated 02.04.2024- Rejecting use of existing make GIS by RE developers*
- 6. Our Letter: MRPL/GETCO/R&C/2024/GIS Adapter/003 dated 05.04.2024- Bus measurement*
- 7. Our Letter: MRPL/GETCO/R&C/2024/Permanent Bay/040 dated 05.06.2024-Bus measurement*
- 8. GETCO Letter No. CE(R&C)/SE(STU)/964 dated 22.05.2024- Common drawing submission*
- 9. Our Letter: MRPL/GETCO/R&C/2024/Permanent Bay/021 dated 27.05.2024- Common Drawing*
- 10. GETCO Letter No. CE(R&C)/SE(STU)/1079 dated 05.06.2024- Common drawing submission*

*Dear Sir,*

*With reference to the 220KV permanent GIS bays and 220KV Temporary GIS Bays allotted to MRPL, and OPWIND at 400/220 KV Kalavad substation, we wish to bring to your attention the following:*

**1. Permanent Bay Allotment:**

*Vide GETCO letters referenced under (1) and (3) above MRPL and OPWIND were allotted the space for permanent 220 KV GIS line Bay at 220KV Kalavad Substation as below:*

- 1. MRPL was allotted the Future Line Bay No. II (1<sup>st</sup> in the sequence from existing 220 KV GIS end module- connecting through bottom circuit of existing 220KV Gantry at Kalavad 55)*
- 2. OPWIND was allotted the Future Line Bay No. I (2<sup>nd</sup> in the sequence from existing 220 KV GIS end module – connecting through top circuit of existing 220 KV Gantry at Kalavad SS).*

**2. Temporary Bay Allotment:**

*Vide GETCO letters referenced under (3) above MRPL and OPWIND were allotted the space for temporary 220 KV GIS line Bay at Kalavad as below for usage until 30<sup>th</sup> June 2024:*

- 1. MRPL was allotted the Spare 220 KV GIS Feeder Bay Line -1 (connecting through top right circuit of existing GETCO MCT to top circuit of 220 KV Gantry at Kalavad SS).*
- 2. OPWIND was allotted the Spare 220 KV GIS Feeder Bay Line -2 (connecting through bottom right circuit of existing GETCO MCT to bottom circuit of 220 KV Gantry at Kalavad SS).*

*In this connection, we wish to submit that we have made considerable progress on the construction of Permanent Bays and Temporary Bays allotted to M/S MRPL and OPWIND and provide below the key progress achieved:*

- 1. Both MRPL and OPWIND has placed PO on M/s. Siemens for the new GIS modules and GIS adaptor required for coupling the MRPL's bay with existing Chint Make GIS(Copies of Pos enclosed).*
- 2. MRPL have placed order on M/s. Chint for 220 KV bus measurement support required to design the adaptor module. The bus measurement works are planned to be completed on or before 30<sup>th</sup> June 2024 depending on the outage schedule of GIS from GETCO end (copy of Po to Chint enclosed).*

*Both MRPL and OPWIND has appointed M/s. Kintech Synergy as their contractor and necessary contractor approval from GETCO is already obtained.*

- 3. Both MRPL and OPWIND has obtained part layout drawing approval for the Permanent Bay on 27<sup>th</sup> March 2024 and further GIS drawings will be submitted for approval to GETCO after GIS Bus Measurement.*
- 4. MRPL have submitted the GAS SLD drawings of Permanent Bay allotted which is awaiting approval from GETCO due to combined drawing submission which in turn to be supported by other RE developers.*
- 5. The Temporary Bay works allotted to MRPL and OPWIND at Kalavad Substation are completed and ready for charging and we expect to charge the Temporary Bay allotted to MRPL on or before 10<sup>th</sup> July 2024 after necessary approvals/charging permission which are under process.*

*We humbly submit and it could be observed that both MRPL and OPWIND have considerably progressed both on the Permanent Bays and Temporary Bays allotted to us despite the following challenges faced by us:*

- 1. Delay from Chint on acceptance of PO from Kintech and deputation of their representative for existing GIS Bus Measurement.*
- 2. Lack of support from other two RE developers in submitting common drawings for Permanent Bay.*
- 3. Additional time and efforts required for MRPL and OPWIND in finalizing the optimal location for DEMCT tower spotting inside Kalavad substation which was finalized under the support and guidance of GETCO*
- 4. Confirmation on usage of existing make GIS or Siemens Make GIS*
- 5. Minimum 5 months manufacturing lead time required for new Siemens GIS module which are linked to existing GIS bus measurement and triggered after Adaptor module design and GIS drawing approval from GETCO.*

*Based on the key challenges faced by us listed but not limited to above, MRPL and OPWIND are confident to complete the Permanent Bay works on or before 31<sup>st</sup> March 2025.*

*Considering the Project investments made by us, progress achieved so far and commissioning readiness of our projects, we hereby request GETCO to extend the timeline for usage of the Temporary bays allotted to MRPL and OPWIND until the completion of permanent Bays i.e. until 31.03.2025 and oblige.*

*.....”*

*(xxvii) From the aforesaid, it is clear that the Petitioner is unable to carry out the*

*construction and commissioning of permanent bay work for itself at Respondent Kalavad S/s. In absence of the measurement of the GIS bay of M/s. Chint, based on it designing of adapter, manufacturing of the construction and installation of the same at the Respondent Kalavad S/s. The delay occurred on aforesaid reason is beyond the control of the Petitioner and qualify for unforeseen reasons for which the Petitioner is eligible for extension in time period for construction for permanent bay at Respondent Kalavad S/s.*

*(xxviii) We also note that on 27.06.2024, the outages on existing 220 kV Bus 1 and Bus 2 was provided by the Respondent and thereafter, the measurement was carried out by the contractor of the Petitioner for further necessary work. The aforesaid delay obtaining the outages and carryout the measurement work link to delay the process of construction and completion of the Petitioner Bay. The aforesaid fact also prove that the Petitioner could not be at fault, the delay occurred in construction and development of the bay are reasons which are not in control of the Petitioner and the Petitioner is eligible for grant of extension.*

*(xxix) We also note that the Respondent has vide its letter dated 29.06.2024 informed to the Petitioner that the usage of the spare 220 kV GIS bays at Respondent S/s allocated to the Petitioner extended temporary basis till 31.12.2024 subject to submission of notarized undertaking in line with the undertaking which was given by the Petitioner earlier.*

*9.32 Considering the aforesaid facts, we are of the view that delay caused on account of dealing with the approved vendor of the Respondent and in designing GIS adaptor and approval of drawing by the Respondent is from 15.05.2024 (i.e. date of application for vendor) to 07.10.2024 (date of approval of drawing) is beyond the control of the Petitioner and qualify as unforeseen reasons and the Petitioner is eligible for extension for aforesaid grounds.*

.....”

13.30. From the aforesaid orders of the Commission, it transpires that the delay occurred in construction and commissioning of 220 kV GIS permanent bay at Kalavad substation was due to delays which are uncontrollable and unforeseen factors not attributable to the Petitioner. The Commission has also decided and directed to the Respondent not to disconnect the Petitioner project from the grid and allowed the continuous use of temporary bay till the permanent bay become operational.

13.31. We also note that the commission has recognized the delay in commissioning of bay work at its substation by other project developers who were declared as the lead generators and also allocated Respondent bay by the Petitioner unable to construct the project in Petition No. 2401 of 2025 and 2465 of 2025 and qualify for extension of completion of transmission network on a ground of force majeure event for the period from 28.07.2023 to 22.02.2024.

13.32. We note that the petitioner has submitted that the delay occurred in completion of transmission systems as well as the project due to one of the reasons that GETCO has carried out swapping of bay allocated earlier to the project developer to whom connectivity was granted. It is

undisputed that the original bay allocated by the respondent on 12.9.2023 as Morjar-OPwind-Suzlon. From the above, it seems that the petitioner was allocated bay 3 at respondent substation. It is also an admitted fact that the connectivity of Morjar was cancelled on 16.09.2023 which was challenged by the Morjar before the Hon'ble High Court of Gujarat wherein interim order passed by the Hon'ble High Court of Gujarat against such cancellation. Thereafter, a meeting was held by the Respondent GETCO on 22.11.2020 wherein the bay sequence considered as OPwind-Suzlon- Morjar. From the above, it seems that the bay-2 was allocated to the Petitioner by the Respondent. We also note that after order dated 22.12.2023 by Hon'ble High Court and capacity allocated to Morjar being cancelled and fresh connectivity was granted on the capacity including Morjar and OPwind. The petitioner and the respondent have also admitted that in the meeting held on 22.02.2024 the bay sequence was decided as Morjar, Opwind, Suzlon and Cleanmax. The petitioner and respondent have admitted that bay 3 was allocated to the petitioner and the sequence become Morjar, Opwind, Suzlon and Cleanmax. It is also stated that later on 09.8.2024, the said bay was changed as per meeting and the bay sequence become Morjar, Opwind, Cleanmax, and Suzlon. It seems that the bay-4 was allocated to the

Petitioner by the Respondent. Thus, the change in bay sequence made by the respondent from time to time. The petitioner contended that due to change in the bay allocated by way of bay swapping, it affects to carry out the work related to bay and transmission system seems valid. The uncertainty due to swapping of bay by the respondent will create the uncertainty with regard to carry out work of bay and transmission system by the project developer. We note that due to change in bay sequence of the project developer allocated at Respondent s/s, the project developers are not able to carry out the construction activity of the Substation and due to uncertainty about the bay and its location Substation, the transmission network which needs to lay down by the project developer be affected because the connectivity of transmission network of the project came at the bay allocated by the respondent at its substations and it affected as and when change in bay occurred. Thus, we are of the view that the change in bay system by the respondent affected the petitioner to carry out the transmission system network from 12.9.2023 to 09.8.2024.

13.33. Considering the above, we are of the view that the delay occurred on account of swapping of allocated bay to the project developers by the Respondent at its substation led to uncertainty about construction of bay

work by the project developer and the period spent for it is qualified for the extension of bay construction work by the Petitioner. The said period is from 12.09.2023 to 09.08.2024 i.e. for 333 days.

14. Now, we deal with the issue regarding delay due to tariff vacuum for wind power project in the State of Gujarat raised by the Petitioner.

14.1. The Wind Tariff Order 2020 (Order No. 02 of 2020) which was operative since 30.04.2020, expired on 31.03.2022, and no new tariff framework was in force until 31.08.2024 when the Commission issued new wind tariff order vide Order No. 05 of 2024.

14.2. Though the 2024 Tariff Order was retrospectively applied from 06.06.2022, the period from 01.04.2022 to 31.08.2024 witnessed a Regulatory vacuum, causing significant uncertainty for wind power developers with regard to unclear transmission and wheeling charges, ambiguity in banking charges and the uncertainty in Policy incentives which discouraged the WTG owners from investing in wind projects. The aforesaid tariff vacuum hindered the progress of the Petitioner's Project as well due to regulatory uncertainty resulting in loss of investor's confidence in the viability of Project.

14.3. The Petitioner sought to clarify that the Hon'ble APTEL vide its Order dated 03.07.2025 in Appeal No. 06 of 2025 and batch has set aside the

Tariff Order dated 31.08.2024 passed by the Commission in Order No. 05 of 2024, in so far as the said Order was given retrospective effect from 06.06.2022. Furthermore, the Hon'ble APTEL was pleased to remand the proceedings related to the said batch Appeals to the Commission for its fresh consideration.

- 14.4. The Petitioner right after the grant of Stage-II Connectivity on 30.06.2023, started making efforts to secure investors for the Project from July 2023 onwards. It is therefore erroneous on the part of GETCO to contend that the Petitioner failed to connect/ invite the investors for more than a year after grant of connectivity. Instead, most of the existing investors declined to go forward with the Project due to financial risks arising out of regulatory uncertainty.
- 14.5. On 03.06.2023, the Petitioner confirmed via a 'comfort letter to GETCO that the project was funded through internal accruals and customer collections (i.e., WTG owners). However, due to the absence of an active tariff framework, WTG owners refused to commit funds, affecting the financing and construction of the project's common evacuation system.
- 14.6. The letter dated 23.09.2023 issued by one of investor i.e. BN Papers who showed its apprehension for continuing with the investment in the Petitioner's Project due to prevailing Regulatory uncertainty. Similar

letters were issued by Bajrang Processors Pvt. Ltd. on 17.10.2023 and by Shree Sai Calnates on 18.09.2023.

14.7. In multiple meetings, potential WTG owners cited the tariff vacuum (from 01.04.2022 to 31.08.2024) as the primary reason for their disinclination to invest in the wind project. Until the issuance of the Wind Tariff Order 2024, most investors had either rejected the Petitioner's offer or not responded at all. A similar issue arose before the Commission in the matter of Distributed Solar Power Association & Anr. V. GUVNL & Ors. (Case No. 2128 of 2022), where project developers were left stranded due to uncertainty under the Wind-Solar Hybrid Policy, 2018.

14.8. In terms of the Order in Case No. 2128 of 2022, this Commission, in view of the difficulties faced by the developers, granted relief by extending the SCOD of the projects to allow developers to avail incentives. Therefore, it is safe to submit that the regulatory uncertainty caused by the tariff vacuum (from 01.04.2022 to 31.08.2024) in Gujarat mirrors the precedent in the Wind-Solar Hybrid case well. Accordingly, the similar dispensation ought to be given to the Petitioner in terms of extension of SCOD from 30.06.2025 to 30.12.2026.

14.9. Per contra the Respondent submitted that the Petitioner has sought to claim that the Wind Tariff Order dated 30.04.2020 expired on 31.03.2022 and since then there was no operative Wind Tariff Order and in this regard the Petitioner is claiming delay from July 2023 to August 2024 which cannot be accepted. This was not an unforeseen reason.

14.10. The Tariff Order dated 30.04.2020 read with Order dated 26.05.2020 for wind power projects was applicable for the control period upto 31.03.2022. Therefore, at the time that the Petitioner applied for Connectivity and obtained Stage-I Connectivity and applied and obtained Stage-II Connectivity was all after the expiry of the earlier Tariff Order. The Petitioner was well aware of the situation and circumstances when it applied for connectivity. Such circumstances cannot by any measure be considered as unforeseen.

14.11. The Petitioner has claimed that it had approached investors/potential WTG owners between 01.07.2023 to 31.08.2024. Therefore, for more than a year after obtaining connectivity, the Petitioner had not even received investors and therefore, clearly it did not make any progress in the project. It was the Petitioner's choice to obtain connectivity, and it cannot then claim inability to set up the project due to alleged lack of investors. The issues of financing etc. cannot be claimed to be

unforeseen or reasons beyond the control of the Petitioner. Such contentions of the Petitioner cannot be a basis of claiming extension in time. Further the alleged uncertainty claimed is the absence of tariff order which has already submitted was not unforeseen since the period was always known to the Petitioner even when it applied for Connectivity.

14.12. There was no reason why the Petitioner applied for connectivity and blocked the capacity when it could have chosen to wait for the Tariff Order to be issued. All entities were aware of the control period of the earlier Order and there is no basis for the Petitioner to now claim any alleged adverse impact on the confidence of investors or otherwise of any alleged regulatory uncertainty or claim that the Project viability was at risk when the Project was conceived when the tariff order had already expired. It was choice of the Petitioner to apply for connectivity without getting investors on board and being aware of the alleged regulatory uncertainty.

14.13. The Petitioner was well aware of the alleged uncertainty of applicable transmission and wheeling charges for wind power projects when it applied for connectivity, and it cannot now claim any issue on this

account. In fact, the Tariff Order had expired for more than a year when the Petitioner applied for Stage-II Connectivity.

14.14. Further the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 had already been notified. Therefore, it is not clear even otherwise, whether there was any uncertainty. Further the Green Open Access Regulations 2024 provided for banking charges as per the Regulations. It is not clear why this would create uncertainty.

14.15. It is not clear when the investors allegedly offered letters of financial comfort or even if the letters were given or the terms of said alleged letter or agreement between the Petitioner and such investors. But the fact remains that the Petitioner had applied for Connectivity and blocked the capacity and is liable to meet the timelines. It cannot be that the Petitioner blocks the capacity and then is unable to find the investors or procurers or otherwise does not find the project viable etc.

14.16. The contention made on the investors is contrary to the Petitioner's undertaking dated 03.06.2023 submitted along with the Stage-II application as required under the Procedure dated 07.01.2023. It was the stand of the Petitioner, that the source of funding was "internal accruals"

14.17. Even at the time of this undertaking, the Petitioner was well aware that the earlier Tariff Order had already expired.

14.18. The inability of the Petitioner to find customers/investors etc. is not a reason to justify the delay in development of evacuation facility/power project nor claim it to be unforeseen or equivalent to force majeure. Allowing the Petitioner to claim such delays would lead to a wrong precedent where such developers are allowed to block capacity and then take their own time, finding customers/investors etc. The entire purpose of providing timelines to ensure timely utilization would be rendered redundant.

14.19. The Petitioner has referred to other generators and in fact it appears from another developer M/s Cleanmax Vayu that the Petitioner was in fact not willing to share the dedicated transmission line presumably as they could not conclude the commercial arrangement for sharing.

14.20. The Petitioner has sought to rely on Order dated 17.03.2023 in Petition No. 2128 of 2022 in Distributed Solar Power Association and Another v. Gujarat Urja Vikas Nigam Limited and Others which is related to the control period of the Order dated 03.04.2021 and cannot be applied to the present case at all.

- 14.21. The issue is not the applicability of the Tariff Order but the timelines for completion of work to ensure optimum utilization of the network. It cannot be that the connectivity taken by developer for prolonged time without the project being developed since the capacity is getting blocked. Further the issues therein were completely different, and the uncertainty therein was different. Here the Petitioner was well aware of the time period even before applying for connectivity and it was its own choice to apply and obtain Stage-II Connectivity.
- 14.22. GUVNL in that case was not affected in any manner. However, in the present case, it has to be seen that the connectivity has been blocked by the Petitioner without utilizing it and this has resulted in delay in recovery of transmission charges and further affects other potential renewable energy developers who may have sought connectivity at the Kalawad sub-station.
- 14.23. With consideration of the rival submissions of the parties, it is evident that the generic Tariff Order No. 2 of 2020 dated 30.04.2020 was issued by the Commission which is having control period from 30.04.2020 to 31.03.2022. After 01.04.2022, there were no tariff framework available until 31.08.2024 when the Commission passed new Wind Tariff Order No.5 of 2024. Thus, during 01.04.2022 to 31.08.2022 there is vacuum

with regard to tariff applicable to wind generators in the State and other commercial aspects. It is also fact that the Order No. 5 of 2024 dated 31.08.2024 passed by the Commission having retrospective effect from 06.06.2022.

14.24. The contention of the Petitioner that during 01.04.2022 to 31.08.2024, there is regulatory vacuum causing significant uncertainty for wind power developer with regard to unclear transmission and wheeling charges, ambiguity in banking charges and uncertainty in policy incentive which discourage the WTG owners from investment in the wind project.

14.25. It is also fact that Hon'ble APTEL in its order dated 03.07.2025 in Appeal No. 6 of 2025 and batch matters set aside the Tariff Order dated 31.08.2024 passed by the Commission wherein the retrospective effect from 06.06.2022 given by the Commission and remanded back the matter to the Commission for fresh consideration.

14.26. The Petitioner contended that after grant of Stage-II connectivity on 30.06.2022, the Petitioner made effort to secure investor for the project from July,2023 onwards. However, it was not able to connect the investor for more than a year due to vacuum in tariff applicable for wind power generators.

14.27. The Petitioner has vide its letter dated 03.06.2023 confirmed with the Respondent GETCO with regard to submission of comfort letter stating that the finance for the project funded from internal approval and consumers contribution.

14.28. The Petitioner argued that due to uncertainty in tariff vacuum related aspects the WTG project developer is unable to obtain investment and carry out the project. The Commission has recognized the tariff vacuum uncertainty in Petition No.2128 of 2022 in case of Distribution of Solar Power Association and Others v/s GUVNL and extended the control period for SCOD of the project to allow the developer to avail the incentive. Based on above, the Petitioner requested to grant extension of SCOD from 30.6.2025 to 30.12.2026.

14.29. We note that the tariff period for Order No. 2 of 2022 started from 30.4.2022 to 31.3.2022. Thereafter the order No.5 of 2024 dated 31.8.2024 passed by the Commission wherein the Commission determined generic wind tariff and also other commercial aspects. The control period specified in order No.5 of 2024 dated 31.8.2024 from 06.06.2022 to 31.03.2027. Thus, the effective date of the said order was retrospective as per the Order of the Commission. We also note that the said order was challenged before the Hon'ble APTEL, wherein Hon'ble

APTEL passed order dated 03.07.2025 in Appeal No. 6 of 2025 and remanded matter back to the Commission for fresh consideration and pass appropriate order. The said order is under fresh consideration of the Commission.

14.30. The issue is that whether the vacuum period from 01.04.2022 to 31.08.2024 due to non-availability of tariff order affected to the Petitioner and similarly situated persons or not.

14.31. We note that during the aforesaid period, there is no valid tariff and commercial issues associated with wind energy generation and supply available in the State. Further, in absence of the valid tariff and commercial issues, the project developers are unable to get clarity with regard to viability of the project and return available from such projects. Neither the Petitioner nor anyone desires to set up the wind project to approach the Commission stating that due to vacuum in the tariff period, they are unable to execute the project. The Petitioner has not joined any party or person who is affected by way of non-availability of tariff during the aforesaid period. Hence, we are of the view that the Petitioner affected by way of non-availability of wind tariff is not accepted for the period from 01.04.2022 to 31.08.2022.

14.32. It is an admitted fact that the Petitioner was granted Stage -I connectivity on 20.01.2023 and Stage-II connectivity on 30.5.2023. Thus, the liability for creation of transmission system by the Petitioner starts from 30.05.2023. It is also fact that at that time the GOG wind Power Policy 2016 was in force. It is also fact that prior to grant of Stage-II connectivity i.e. 30.05.2023, the non-availability of Wind Tariff Order of the Commission does not come in any way of the Petitioner. Hence, the claim of the Petitioner to grant extension from 1.4.2022 to 31.8.2024 on a ground of non-availability of Wind Tariff Order is not legal and valid for the period prior to 30.5.2023.

14.33. The Petitioner has given reference of Judgment passed by the Hon'ble APTEL dated 03.07.2025 in Appeal No. 6 of 2025 and batch matter wherein the Order dated 31.08.2024 passed by the Commission was set aside by Hon'ble APTEL wherein the retrospective effect of the tariff from 06.06.2022 given by the Commission in its order No. 5 of 2024 dated 31.08.2024, the facts of which is under consideration of the Commission.

14.34. The Petitioner has contended that it has given comfort letter to GETCO that project was funded through internal accrual and customer collection. However, in absence of tariff framework the WTG owner

refused to commit the fund affecting the finance if any construction of the project, common evacuation system is concerned, we note that once the connectivity is obtained by the person, it is his duty to execute the responsibility associated with such connectivity which include the development of transmission system, evacuation of power from their project to place of connectivity of GETCO substation etc.

14.35. The enabling provision made in para 3.8 of the Tariff Order is with regard to grant of extension of completion of transmission system by the project developer in case of unforeseen reason which are beyond the control of the project developer. The finance of the project and utilization of energy generated from WTG are different and distinct from the unforeseen reason and it is not a ground for grant of extension sought by the Petitioner.

14.36. The Petitioner has relied on Order of the Commission in case No. 2128 of 2022 wherein the Petitioner has sought extension of SCOD of wind solar hybrid project control period specified by the Commission in its Order No. 1 of 2021 dated 03.04.2021 is concerned, the Commission has granted extension of the control period of that order from 01.04.2023 to 19.06.2023 with consideration of the facts of the case which is

different and distinct from grant of extension of transmission system in the present case by the Petitioner.

14.37. Considering the above, we are of the view that the relief sought by the Petitioner for extension of transmission system period on a ground of tariff vacuum /non-availability of tariff period during 01.04.2022 to 31.8.2022 is not accepted and the same is rejected.

**ORDER**

15. In view thereof, we decide that the present petition partly succeeds. We hold and declare that:

- (1) Delay in mandatory project registration from 4<sup>th</sup> October 2023 to 15<sup>th</sup> April 2024 by statutory authority i.e. GEDA under the provisions of the GoG RE Policy 2023 i.e. for 195 days.
- (2) Delay due to grant of development permission from 23.4.2024 to 17.05.2024 (for 71.4 MW), 29.07.2024 (for 46.2 MW), 12.08.2024 (for 21 MW), 28.11.2024 (for 10.50 MW), 16.04.2025 (for 12.60 MW) and 19.05.2025 (for 12.60 MW) consisting of 392 days.

- (3) Delay in declaration of no-go/No-WTG Zone in Gujarat consisting of the project area of the Petitioner by Ministry of Defense from 15.6.2024 to 06.03.2025 i.e., for 265 days.
- (4) Delay occurred on account of swapping of allocated bay to the project developers by the Respondent at its substation is lead to uncertainty. The said period is from 12.09.2023 to 09.08.2024 i.e. for 333 days.
- (5) The prayer of the Petitioner for extension in transmission system on ground of vacuum in tariff is not accepted.
16. Based on above, we decide that the Petitioner is eligible to get extension in commissioning of transmission infrastructure and system for a period of 616 days.
17. We order accordingly.
18. With this Order, the petition stands disposed of.

Sd/-

**[S.R.Pandey]**  
**Member**

Sd/-

**[MehulM.Gandhi]**  
**Member**

Place: Gandhinagar.  
Date: 18/10/2025