

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1998 of 2021.

In the Matter of:

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

Petitioner : Goodwatts WTE Jamnagar Pvt. Limited
10th Floor, Sangeeta Complex, Near Parimal Crossing,
Ellisbridge, Ahmedabad – 380006.

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

V/s.

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

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

Respondent No. 2 : Jamnagar Municipal Corporation

Represented by : Nobody was present

Respondent No. 3 : Gujarat Energy Development Agency

Represented by : Nobody was present

Respondent No. 4 : Gujarat Energy Transmission Corporation Limited

Represented by : Ld. Adv. Ms. Harini Subramani alongwith Mr. Vasant Patel and Mr. Sobhraj Jaiswal

Respondent No. 5 : State Load Despatch Centre - Gujarat

Represented by : Ld. Adv. Ms. Harini Subramani alongwith Mr. Parag Parmar and Ms. Rashmi Vasava

Objector No. 1 : Mr. Nitin Madaam

Represented by : Nobody was present

Objector No. 2 : Utility Users' Welfare Association (UUWA)

Represented by : Nobody was present

Objector No. 3 : Laghu Udyog Bharti - Gujarat (LUB)

Represented by : Nobody was present

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 11/01/2023.

DAILY ORDER

1. The matter was listed for hearing on 07.12.2022.
2. Ld. Sr. Adv. Mr. Rashesh Sanjanwala, appearing on behalf of the Petitioner at the outset submitted that recently the Energy & Petrochemicals Department, Government of Gujarat (EPD-GoG) through G.R. No. WTE/11/2022/1361/B1 dated 02.11.2022 has framed the Gujarat Waste to Energy Policy, 2022 with operative period of 5 years. It is submitted that the Petitioner has set up a 7.5 MW Municipal Solid Waste (MSW) based Power Project at Jamnagar under the Gujarat Waste to Energy Policy, 2016 for disposal of waste while generating electricity therefrom and

in furtherance to several initiatives at National level as well as State level by way of various Policies including Swachh Bharat Abhiyan. It is submitted that earlier the Gujarat WTE Policy, 2016 was notified vide GR dated 28.03.2016 with operative period of 5 years followed by an amendment in aforesaid WTE Policy vide G.R. dated 01.05.2018. Thereafter, the said Policy has been extended through G.R.'s dated 28.06.2021 and 13.04.2022 until 31.07.2022.

- 2.1. It is submitted that new Waste to Energy (WtE) Policy of 2022 has bearing on the present case because as per Clause 5.2 of the WTE Policy 2022, the previously notified WTE Policy of 2016 and its amendments stand extended till the notification date of the new Policy. Moreover, the aforesaid Policy has also recognized 'Projects in pipeline' under Clause 7.8 whereby the projects which are under construction / implementation but not commissioned are eligible for benefits under WTE Policy, 2016 and Amendment thereto, if such projects are commissioned by March-2024.
- 2.2. It is submitted that the Petitioner has executed a PPA with the Respondent GUVNL on 30.05.2018, wherein the stipulated Scheduled Commercial Operation Date (SCOD) is 30.06.2020 and the same was extended to 30.11.2020. However, being first of its kind project in the State, considerable time was consumed during construction and there has been delay in commissioning of said MSW project on account of various reasons including COVID-19, disruption in supply etc. Therefore, present Petition is preferred by the Petitioner seeking extension of SCOD without any financial implications including non-levy of liquidated damages *inter alia* claiming force majeure amongst others.
- 2.3. Now, pursuant to issuance of new Waste to Energy (WtE) Policy of 2022 by EPD-GoG, the Petitioner has filed an affidavit for bringing latest developments on record of this matter. It is submitted that the Petitioner has commissioned the aforesaid project and commenced supply of electricity generation to the Respondent GUVNL. It is submitted that in case the Respondent GUVNL prefers to file its reply to aforesaid affidavit, the Petitioner may be granted liberty to file rejoinder-in-reply.
- 2.4. Responding to the query of the Commission regarding the provisions of the new WTE Policy, Ld. Sr. counsel while referring the same submitted that the operative

period of the WTE Policy of 2016 and its amendments is extended till the notification date of the new Policy whereas the operative period of new policy is for 5 years i.e. up to 01.11.2027. Referring to Clause 7.8 it is submitted that said clause pertains to projects which are under construction and yet to be commissioned as 'Projects in Pipeline which reads as under:

“.....

7.8 The Projects in pipeline: The projects which are under – construction / implementation but are not commissioned as on date of notification of this Policy will be termed as 'Pipeline Projects', Such projects, if commissioned by March-2024 shall be eligible for benefits under the WTE Policy 2016 and Amendments thereto.

.....”

- 2.5. It is argued that broadly two aspects emerge through above Policy i.e. (a) Extension of WTE Policy of 2016 till 01.11.2022 and (b) consideration of projects under construction or implementation but not able to achieve commissioning prior to 02.11.2022 and having PPA to be eligible for benefits under WTE Policy, 2016 and Amendment thereto if commissioning is achieved prior to March-2024.
- 2.6. It is submitted that the Petitioner has commissioned the Jamnagar WtE Project in November-2021 and commenced supply of electricity generated from said project to the Respondent GUVNL. Moreover, the Petitioner has also raised invoices for same and during previous hearing it was submitted by the Petitioner that the Respondent GUVNL is seeking an undertaking prior to releasing payment towards same and it was agreed by the Respondent GUVNL to provide the format of undertaking to the Petitioner so as to enable the Petitioner to submit the same. However, despite having submitted the undertaking to the Respondent GUVNL, only 85% of the invoice amount is released to the Petitioner without any justification for withholding the balance 15% amount. It is submitted that despite the grievance raised by the Petitioner regarding non-release of payment against the invoices raised, the Respondent GUVNL is not releasing the full payment, when the tariff issue is without prejudice to rights & contentions of both parties in this matter and subject to final decision.

2.7. it is further submitted that tariff determined by this Commission vide Order dated 10.11.2016 is Rs. 7.03 per unit comprising of basic tariff of Rs. 6.31 and balance amount to be borne by Urban Local Body / Urban Development Department. Moreover, the control period for such tariff up to 31.03.2021 is already over. Therefore, even assuming that there may be claim of GUVNL towards liquidated damages but the same is subject to decision in present matter. Referring to para 3.5 of Daily Order dated 02.11.2022, it is submitted that the Commission has recorded as under:

“.....

3.5 As far as non-payment of any amount against invoices raised by the Petitioner, it is submitted that since the project is commissioned in November-2021 and after 31st March 2021 what is applicable tariff decided / determined by the Commission. As per the PPA, the Respondent is required to pay the tariff for MSW projects effective on the date of commissioning of the power project i.e. lower of the tariff stated in the PPA for the earlier control period or new tariff as determined by the Commission for new control period after March-2021. Hence, in absence of any tariff decided by the Commission as per the PPA, it is not possible for the Respondent GUVNL to make any payment being a regulated entity and dealing with public money. As such there is no dispute regarding receipt of invoices raised by the Petitioner but payment can be made after requisite undertaking is provided and agreed that the Respondent GUVNL will provide the format of same.

.....”

2.8. As desired by the Respondent, the Petitioner has submitted the ‘Undertaking’ and therefore, there is no reason for withholding the balance payment of 15% by the Respondent. Therefore, the Petitioner is seeking indulgence of this Commission of directing the Respondent GUVNL to release the said amount.

3. Ld. counsel appearing on behalf of the Respondent GUVNL submitted that in this matter, the Petitioner has prayed to declare that the events pleaded in the Petition qualify as Force Majeure and accordingly the SCOD under the PPA needs to be extended as claimed in the Petition with continuation of tariff entitlement as per original tariff control period without imposition of any liquidated damages for

delay. However, bare perusal of Clause 7.8 of new WTE Policy 2002 reveals that the projects which are under construction / implementation but not yet commissioned are eligible for benefits under WTE Policy, 2016 and Amendment thereto, if such projects are commissioned by March-2024. Thus, said clause pertaining to 'Projects in Pipeline' does not say about the tariff but only provides for extension of benefits of WTE Policy, 2016 as amended, if commissioned prior to March-2024. Moreover, no blanket extension of SCOD is provided or explained in new Policy of EPD-GoG. It only says that benefits as per previous Policy extended if the project is commissioned prior to March-2024.

- 3.1. It is contended that PPA is binding on the parties since the terms & conditions agreed between the parties as contract is recorded in the said document and tariff is sacrosanct as per Article 5 of the PPA executed between the parties. The tariff agreed between the parties shall be as determined and decided by the Commission under the provisions of the Act. Referring to Article 5.1, it is submitted that tariff applicable for the project of the Petitioner is Rs. 7.03 per unit comprising of basic tariff of Rs. 6.31 per unit and the modalities for differential tariff of Rs. 0.76 per unit shall be as decided by the State Government as agreed by the Petitioner and the Respondent GUVNL. Further, in the said PPA, it is agreed between the Petitioner and the Respondent and specified that said tariff shall apply for the projects commissioned on or before 31st March, 2021 and in case commissioning of the project is delayed, the tariff shall be as determined by the Commission for MSW projects effective on date of commissioning or above tariff, whichever is lower. Therefore, anything contrary is same is not admissible. Moreover, there is no blanket extension given for the projects for the Scheduled Commercial Operation Date in above Policy and with regard to the applicable tariff, the aforementioned terms & conditions of the PPA would be applicable. The extension of SCoD and payment towards liquidated damages are governed by the provisions of the PPA which is binding to the parties. Therefore, the new WTE Policy-2022 has only extended the benefits provided in WTE Policy – 2016 and nothing else.
- 3.2. It is submitted that the Respondent GUVNL is disputing the tariff payable on the date of commissioning of the project and therefore, only making payment of 85% of

the invoice amount as undisputed because the PPA clearly stipulates that in case project commissioning is delayed beyond 31.03.2021, then the tariff applicable shall be as determined by the Commission for MSW projects effective on date of commissioning or above tariff, whichever is lower. It is also submitted that since so far as applicable tariff is concerned, it is governed by the binding terms & conditions of the PPA and therefore, it is premature on part of the Petitioner to seek any reliefs or to claim tariff of Rs. 7.03 per unit with consideration of the PPA clause and in absence of any tariff determined by the Commission when the Respondent is not only opposing the Force majeure claim for extension of SCOD sought by the Petitioner but on the contrary also claiming liquidated damages payable for delay in commissioning of the Jamnagar WTE Power Project.

- 3.3. It is further submitted that the Petitioner in guise of claiming full tariff is avoiding the claim of liquidated damages of the Respondent GUVNL because the project is commissioned in November-2021 whereas the extended SCOD is upto 30.11.2020 only. Hence, not only GUVNL is entitled to liquidated damages for delay but even the tariff applicable on date of commissioning is pending for determination before this Commission. Therefore, the allegation that GUVNL is withholding 15% tariff payment is not correct.
- 3.4. Responding to query of the Commission about whether any 'Notice' is issued by the Respondent GUVNL to the Petitioner disputing the tariff, it is submitted that GUVNL is paying 85% of invoice amount as per terms of the PPA, which is within four corners of what is agreed between the parties in a contract. Referring to para 3.5 of Daily Order dated 02.11.2022, it is submitted that the Commission has already recorded the submissions made by the Respondent GUVNL regarding what is applicable tariff decided / determined by the Commission after 31.03.2021 is pending because as per the provisions of the PPA, the Respondent is required to pay the tariff stated in the PPA i.e. lower of the tariff for the earlier control period or new tariff as determined by the Commission for new control period after March-2021. Therefore, the effective tariff on the date of commissioning of the power project, which is in November-2021 has to be lower amongst tariff of previous control period or new tariff. Hence, in absence of any tariff decided by the

Commission and with consideration of the provisions of the PPA, it is not possible for the Respondent GUVNL to make any payment being a regulated entity and dealing with public money of consumers at large. The aforesaid PPA along with above terms & conditions for tariff being sacrosanct, there is an issue regarding applicable tariff for the project of the Petitioner on account of tariff determination for new control pending by the Commission.

- 3.5. It is submitted that thus there are two aspects which need to be considered by the Commission with regard to demand of the Petitioner for releasing balance 15% payments i.e. (i) events of Force Majeure allegedly claimed by the Petitioner are yet to be finally decided and (ii) pendency of tariff determination of new control period. However, Ld. counsel for the Respondent GUVNL agreed to file submissions stating the facts in this regard.
- 3.6. It is further submitted that the Petitioner is yet to provide the data and details regarding the Capital cost for the Jamnagar WTE project.
- 3.7. It is also submitted that the Commission may grant time to the Respondent to file its reply/submissions as above including its response to additional affidavit / submissions filed by the Petitioner and also argue the matter thereafter.
4. During the hearing the representative appearing on behalf of the MPSEZ Utilities Limited (MUL) submitted that being a distribution licensee, request for impleadment as party Respondent in this matter alongwith other similar matters being Petition No. 1865/2020, 2024/2021 and 2044/2021 is made stating that MUL is an obligated entity under the GERC RPO Regulations and renewable attribute units and their cost is being apportioned by nominated agency to all Distribution Companies in proportion to their power consumption of previous year. It is further stated that the Respondent GUVNL has raised invoices as a Nodal Agency for the period 01.11.2021 to 31.03.2022 and 01.04.2022 to 31.08.2022. Accordingly, MUL may to be impleaded as one of the Respondent in this matter being pertaining to Municipal Solid Waste to Energy Projects in the State of Gujarat.

5. Moreover, Objector Mr. Nitin Madam through affidavit dated 06.12.2022 has stated that additional affidavit of further submissions of the Petitioner is received on 02.12.2022 which are new and required to be examined. However, due to short time available for responding to same and filing reply, it is requested to grant time period of around 30 days. Moreover, the Petitioner has filed above further submissions at a belated stage post filing of the Petition and after completion of submissions by all the parties when the matter is being heard by the Commission. Hence, is not clear whether it is relevant with the case details or can it be considered at this stage as well as whether the Commission needs to hear the same and since legally whether it is permissible or not on which the Objector is desirous to make submissions. Further referring to previous submissions already made including cost of the project is around Rs. 50 crores and old plant & machinery appear to have been utilized. Also, Brickwork credit rating project report filed mentions loan amount of Rs. 44.09 crore and SEBI Order is referred. Even, details have been collected from JMC under RTI Act which shows that the Petitioner has been allowed to use untreated water and there is possibility of boiler & other machinery getting damaged which may result in accident, spread of diseases etc.
- 5.1. Also, M/s Abellon Clean Energy Ltd., which is related company of the Petitioner group has wrongly recovered money from the Respondent GUVNL in the past for which it is necessary for the Commission to take appropriate steps. Also, while referring the website of the Commission, it is noticed that different matters are pending before the Commission. Also, the Commission has decided Petition No. 1888 of 2020 vide Order dated 13.07.2022, which may be taken on record of this matter and unless the amount directed to be paid to GUVNL is not paid, this matter may not be taken up for further hearing. It is further stated that the submissions have been provided to the Petitioner and others through email by the Objector.
- 5.2. It is also stated that the Petitioner is operating the WtE project in such a manner with possible intention of causing difficult to the general public residing in the vicinity of the project site. Also, the plant is not efficiently operated and very less quantum of electricity generation is supplied to the Respondent. Hence, it is

necessary to impose penalty towards short supply of electricity as against the contracted quantum.

6. We have considered the submissions made by the parties. We note that an additional affidavit is filed by the Petitioner on 01.12.2022 and the Respondent GUVNL has sought time to file reply to same. Ld. counsel for the Respondent GUVNL has also agreed to file submissions regarding part payment of tariff invoices with factual details. Let the same be filed with copy to others. Moreover, the Petitioner is directed to serve the copy of additional affidavit to Objectors, who are at liberty to file their reply, if any, with copy to other side. The Petitioner is also at liberty to file its rejoinder-in-reply, if any, on above.
- 6.1. We note that during the hearing, the representative appearing on behalf of MPSEZ Utilities Limited submitted that being a distribution licensee, impleadment as party Respondent in this matter alongwith other similar matters being Petition No. 1865/2020, 2024/2021 and 2044/2021 stating that it is an obligated entity under the GERC RPO Regulations and the Respondent GUVNL has raised invoices as a Nodal Agency for renewable attribute cost apportionment for the period 01.11.2021 to 31.03.2022 and 01.04.2022 to 31.08.2022. We note that pursuant to request for impleadment made by Mr. Nitin Madam, UUWA Utility Users' Welfare Association (UUWA) and other consumer group like Laghu Udyog Bharati - Gujarat (LUB) to represent the interest of the consumers in this matter, it has been decided be impleaded them in this matter so as to enable them to file their submissions, if any and hear them in interest of the consumers in this matter. Accordingly, we decide to implead MPSEZ Utilities Ltd. as party in this matter to be arrayed as 'Respondent' in memo of parties. Accordingly, the Petitioner is directed to provide copy of this Petition alongwith all submissions & documents therein within 10 days from date of this Daily Order. Upon receipt of the same, MPSEZ Utilities Ltd. is at liberty to file their submissions, if any, with copy to other parties. Also, the Respondent GUVNL and 'the Objectors' to provide copy of their reply/submissions already filed in the present matter to other side & newly joined party. Copy of this Daily Order to be provided by the staff of the Commission to MPSEZ Utilities Ltd.

- 6.2. The direction regarding no coercive action by the Respondent GUVNL till next hearing in earlier orders, also stands to be continued till next hearing.
- 6.3. We decide to adjourn the matter. Next date of hearing will be intimated separately.
7. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 11/01/2023.

