

**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

Represented by : Ld. Advocates Ms. Poonam Verma, Mr. Saunak Rajguru & Mr. Tabish Samdani alongwith Mr. Ashish Mehta, Mr. Anup Pillai, Mr. Krutarth Oza and Mr. Aatrey Pandya

V/s.

Respondent No. 1 : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Adv. Ms. Harsha Manav alongwith Ms. Sailaja Vachhrajani and Ms. Girija Dave

Respondent No. 2 : Jamnagar Municipal Corporation

Represented by : Nobody was present.

Respondent No. 3 : Gujarat Energy Development Agency

Represented by : Mr. H. S. Silajiya and Mr. Jatin Desai.

Respondent No. 4 : Gujarat Energy Transmission Corporation Limited

Represented by : Ld. Adv. Ms. Harsha Manav alongwith Mr. Y. J. Gamit

Respondent No. 5 : State Load Despatch Centre - Gujarat

Represented by : Ld. Adv. Ms. Harsha Manav alongwith Mr. D. N. Shah

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: 02/11/2022

DAILY ORDER

1. The present matter was listed for hearing on 15.03.2022.
2. At the outset, Ld. Adv. Ms. Poonam Verma, appearing on behalf of the Petitioner, submitted that the Commission in its Daily Order dated 17.02.2022 had decided to join / implead the objectors and further directed the said newly joined parties to file their submissions in the matter. However, the Petitioner has not received any submissions / reply from any of newly joined parties and accordingly, no rejoinder-reply has been filed. Also, the Petitioner has not received further submissions from other party Respondents and therefore, in absence of any such submissions, the Petitioner needs to address this Commission on the contentions raised and arguments made on behalf of the Respondent GUVNL.
 - 2.1. It is submitted that although the Respondent GUVNL has not come up with any specific material grounds against the reliefs sought but the Petitioner has filed a note in tabular form regarding rejoinder submissions to different contentions raised by the Respondent GUVNL with response of the Petitioner to same. Referring to the said note, it is submitted that vague contentions have been raised by the Respondent which have been dealt by the Petitioner.
 - 2.2. Insofar as the contention raised by the Respondent GUVNL that no notice of force majeure was given by the Petitioner, referring aforesaid note it is submitted that Force Majeure Notice for COVID-19 was issued on 03.06.2020 in compliance of Article 8.1(c) of the PPA immediately after lockdown in Gujarat was relaxed on

31.05.2020 and offices re-opened. Therefore, it is not correct on part of the Respondent to state that no notice of Force Majeure was given As far as other events are concerned, GUVNL was duly informed of the problems faced by the Petitioner on various issues like (i) Approach Road and overhead power lines, (ii) Grant of clearance for erection of Chimney (iii) Delay in charging sub-station vide the quarterly project reports. It is submitted that the Petitioner has provided relevant details in the note filed in tabular form mentioning dates of quarterly reports wherein several instances of Force Majeure are stated in compliance of PPA terms. It is argued that Central Electricity Regulatory Commission in its Order dated 03.04.2018, in *Purulia & Kharagpur Transmission Co. Ltd.* in Petition No. 110/MP/2016 has held that provisions of the contract with respect to force majeure can be held to be complete if the aggrieved party intimates the other party before approaching the Commission. Thus, Regulatory Commissions do adopt liberal interpretations of contract qua procedural compliances stipulated in the contract. Even, Hon'ble Apex Court in *Union of India v. D. N. Revri & Co.*, {(1976) 4 SCC 147} adopted liberal interpretation of contracts inter alia holding that 'meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation It is submitted that although in the present case Force Majeure events were notified by the Petitioner to the Respondent GUVNL albeit in a different form than that required under the PPA but it is settled law that courts should not adopt pedantic approach to defeat justice on mere technicalities as substantial rights like entitlement to Force Majeure relief of parties prevail over procedural technicalities and even otherwise this Commission exercises plenary powers to do substantial justice. Since form cannot prevail over substance, the Commission may invoke plenary powers to grant relief to the Petitioner.

- 2.3. With regard to contention raised by the Respondent GUVNL that time taken by authorities to grant statutory clearances ought to have been reasonably contemplated by the Petitioner and that it was the responsibility of the Petitioner to obtain said approvals from authorities, it is submitted that time taken by government authorities was beyond reasonable control of the Petitioner. Also, the time taken for grant of NoC for erection of chimney is around 1 year & six months and that for RTU by SLDC is about one year. Thus, the delay in grant of approvals

has lasted for about one and half years, which is almost the period granted to the MSW based power developer to construct the power plant because as per PPA dated 30.05.2018, the SCoD is 30.06.2020 i.e. 2 years and 7 month is given to construct as per PPA. As far as contention is raised that application was made before incorrect authority by the Petitioner or that it is reasonably known that authorities do take time but the Petitioner assumed its own timelines it is submitted that in any case the Petitioner is claiming very limited period towards condonation of delay in obtaining chimney clearance.

- 2.4. It is submitted that the objection of the Respondent GUVNL that delay in providing approach road is not a force majeure event and did not impact commissioning of the project is not correct because it was an obligation of Respondent No. 2 Jamnagar Municipal Corporation (JMC) under the Concession Agreement to provide approach road up to project site but the same was provided after delay of around 908 days. Lack of approach road resulted in delayed transportation of critical equipment to the Project site. Considering the Project works could not be halted for such a long period, the Petitioner evaluated options to mitigate the delay and through its due diligence opted an alternate/temporary approach road which could be used for purposes of the transportation of equipment for which 57 days is sought to be condoned in view of the reasonable time taken to undertake prudent utility practices and mitigate the Force Majeure event. However, said alternate approach road was found narrow and had overhead power lines blocking transportation of heavy equipment to the Project site. It was only after a gap of 1-3 days each on 21 different occasions on deliveries by the suppliers, it was possible for heavy equipment to reach the project site through the alternate road and civil works resumed for which delay of 41 days beyond reasonable control is sought to be condoned. Additionally, even in the alternate/temporary approach road, significant huddles at different intervals were faced in view of the washing away of the approach road during monsoon period with cumulative delay on account of washing away of alternate/temporary approach road is 50 days which is sought to be condoned. It was bona fide act on part of the Petitioner to use the alternate route instead of waiting for the originally envisaged approach road to be provided by JMC so as to mitigate the delay and the Petitioner cannot be held responsible for any delay associated with the alternate route which was not the originally envisaged

approach road and in fact, the Petitioner is entitled to condonation of the entire delay in approach road being made available but the Petitioner is restricting the same for 148 days only being 57 days for locating an alternate road plus 41 days delay due to overhead power lines shifting in the alternate route and 50 due to washing away of said alternate road.

- 2.5. Moreover, contention is raised by saying that some part of Boiler could be at site by August 2019 which shows that the Petitioner was able to transport heavy equipment contrary to claims in Petition. In this regard it is submitted that contentions of the Respondent are based on an incorrect assessment of the submissions made by the Petitioner. It is argued that the case of the Petitioner is not that the work was completely stalled for the entire period when the approach road was not available but the Petitioner claims qua time extension are restricted to the actual delay caused in transporting heavy equipment through alternate road and accordingly, it was clarified that as of August 2019, only part of Boiler related equipment could reach the site but balance equipment were delayed on account of non-availability of proper approach road. The Petitioner had even, in its quarterly report dated 13.01.2021 informed to the Respondent regarding delay in delivery of Boiler and other machinery on account of lack of an approach road. It is submitted that said equipment are heavy and big in size necessitating suitable road upto the project site. Also, it was not possible to transport such huge/heavy equipment on the road that was available at relevant time and accordingly, the Petitioner had intimated the same to the Respondent which shows that the plea advanced by the Petitioner with regard to proper approach road not available is not an afterthought.
- 2.6. Also, at relevant time, since there was no COVID-19, there were no travel restrictions. But thereafter, travel restrictions were imposed on account of prevailing COVID-19 pandemic, which further delayed various activities. Although, the Petitioner was in its quarterly reports informing the Respondent GUVNL about the situation that was prevailing and issues being faced, the Respondent GUVNL suddenly raised claims.
- 2.7. It is submitted that Concession Agreement was signed on 20.04.2017 by the Petitioner with the Respondent No. 2 Jamnagar Municipal Corporation (JMC), whereas; the PPA was executed by the Petitioner on 30.05.2018 with GUVNL. Also,

till the PPA was signed, no rights and obligations arose for either party but still the Petitioner even before the Concession Agreement and the PPA were signed had started requesting JMC for providing proper approach road required for the Project. Therefore, the contention raised by GUVNL that the Petitioner has not explained its efforts made during period of 13 months qua proper approach road between date of signing of Concession Agreement and signing of PPA is not proper because the Petitioner was well aware about the issue of lack of originally envisaged approach road and efforts in this regard were already initiated even prior to signing the PPA. Moreover, even after signing the PPA, the efforts made by the Petitioner are evident from five letters addressed to the Respondent JMC requesting for proper approach road. Further, it was also legitimate expectation of the Petitioner to assume the same, as JMC is otherwise mandated in terms of Article 6.1.2 (c) of Concession Agreement to provide the approach road and it was with this understanding, that the Petitioner had signed the PPA and proceeded to honour its contractual obligations. However, the originally envisaged road was provided only in January-2021.

- 2.8. It is further submitted that for delay due to COVID-19, extension of 5 months is already granted as per MNRE Office Memorandum but the stand of GUVNL is that no further extension can be granted which is not tenable because project execution works was hindered at different stages due to the outbreak as well as the resurgence of the novel corona virus which has been declared as a pandemic by World Health Organization. COVID-19 pandemic event unfolded over several months and made it impossible to predict and plan project development activity due to constant and unprecedented disruptions, including disruptions in operations and construction leading to demobilization at site, disruption in supply chain and impacting availability of work force and labour etc. There was lack of manpower in view of nation-wide lockdown orders immediately upon the outbreak of COVID-19 in India around mid-March 2021 when a nation-wide lockdown was declared by the Government of India through Notification dated 24.03.2020 w.e.f. 25.03.2020, issued in exercise of powers under the Disaster Management Act, 2005. Notably, the manpower involved at Project Site constituting of labourers from Odisha, Bihar and Uttar Pradesh, Engineers and management personnel etc. from Bangalore, Maharashtra, Chennai, and West Bengal etc. Even, though the MHA Notification

dated 23.03.2020 exempted the construction of power projects, however, most of the manpower decided to return to their respective states in view of the widespread rise in cases of COVID-19 and in view of the uncertainty qua travel restrictions. The Jamnagar district was classified as orange zone but the construction activity was completely hindered / affected at project site and thereafter, when construction work was partially resumed in September-2020, there was sudden spike of COVID-19 cases in October-2020 and again construction and supplies got disrupted. Even, the manpower was required to quarantine prior to commencing work being specific with the technology and peculiar to Waste to Energy project. Also, during said period many personnel, workers, contractors etc. tested positive and eventually construction, erection, commissioning activities were impacted.

- 2.9. It is argued that apart from the five months extension allowed to the Petitioner as per MNRE Office Memorandum the Petitioner is otherwise entitled to further extension since the PPA provides an independent right to generator to claim extension of SCoD on the actual delay which was caused due to force majeure events or due to reasons not attributable to the Petitioner and said right is irrespective of the duration for which extension is granted in terms of MNRE notification. It is submitted that the Petitioner has dealt in this regard by referring Article 4.3 and 8.1 and is thus claiming a contractual relief without any financial implication in this matter. Even, in the subsequent Office Memorandum of MNRE it is clarified that RE developers can claim further extension before appropriate forum. The Petitioner has also responded to the contention by the Respondent that RE projects were under essential services which were permitted to be functional even during lockdown period.
- 2.10. It is submitted that with regard to issues regarding international travel restrictions and that the Petitioner chose to procure equipment from Europe, two international suppliers were engaged for supply, erection and commissioning of the pre-processing equipment for the WtE project well in advance and prior to emergence of COVID-19. Hence, the contention of the Respondent GUVNL is misleading since the modern waste management technology developed by Untha and Komptech is regarded as one of the best technologies in the world which is not available in India to match the quality and performance parameters as required to set up MSW based WTE Plant. From amongst above two suppliers one is from Austria and other from

Germany and just to raise aspersions is not appropriate when the Petitioner is dealing with technology for MSW based WtE project, which is at its nascent stage.

- 2.11. It is submitted that with regard to levy of liquidated damages, the law is well settled. In terms of Articles 4.3.1 and 4.3.3 of the PPA, if the Project cannot be commissioned by SCoD because of (a) Force Majeure event or (b) delay in evacuation system for reasons solely attributable to the Respondent GETCO, then the Petitioner will not be liable for any adverse financial implications including levy of Liquidated damages and it is a settled position of law that LD is imposed only if there is actual loss suffered by other contracting party for which reliance is placed on *Fateh Chand v. Balkrishan Dass [AIR 1963 SC 1405]* and *Kailash Nath Associates vs. DDA [(2015) 4 SCC 136]*.
- 2.12. It is further argued that power supply-demand gap in the State of Gujarat is not on account of the Petitioner and GUVNL has not placed on record the reasons why it was forced to procure costlier power. There is no direct or indirect nexus between delay in commissioning of the WtE project and the fact that GUVNL was forced to procure costlier power since the Respondent GUVNL has not established any such direct/indirect nexus between the two events. Moreover, GUVNL has PPAs with several state generating thermal power stations and Independent Power Producers to meet its power demand and it is not clear as to why GUVNL was required to avail power on short-term basis in such a situation.
- 2.13. Accordingly, unless and until the Respondent can prove that it has suffered actual loss, no liquidated damages are required to be paid. Even, Hon'ble APTEL in several judgments has held that claiming force majeure is substantial right and if same is granted then there is no reduction in tariff.
- 2.14. Regarding the contention that since the project is not commissioned by 31.03.2021, the tariff for previous control period or the new control period, whichever is lower will apply, it is reiterated that in terms of Articles 4.3.1 and 4.3.3 of the PPA, if the Project cannot be commissioned by SCoD because of (a) Force Majeure event or (b) delay in evacuation system for reasons solely attributable to the Respondent GETCO, then the Petitioner will not be liable for any adverse financial implications including reduction in tariff and it has been appreciated by courts that in case due

to occurrence of Force Majeure events and the SCoD of the project is extended then the tariff entitlement of the generator in terms of the PPA agreed tariff is also protected for which reliance is placed on judgments passed by Hon'ble APTEL in (i) Clearsky Solar Private Ltd. v. KERC & Ors., (ii) Husankodilli Solar Power Project LLP v. BESCOM and (iii) Chennamangathihalli Solar Power Project LLP v. BESCOM.

- 2.15. The Respondent GETCO has contended that it was choice of the Petitioner to opt for connectivity at Navagam sub-station instead of existing Hapa sub-station and therefore, non-readiness of Navagam S/s cannot be claimed as a Force Majeure event and more particularly when it was specifically clarified that GETCO would not be responsible for any delay. In this regard it is submitted that non-readiness of Navagam S/s is a delay attributable to GETCO which resulted in delaying the commissioning of the project because Clause 12 of the WTE Policy 2016 and Order No. 04 of 2016 passed by this Commission dated 10.11.2016 i.e. MSW Tariff Order mentions that GETCO to provide the nearest sub-station for the purpose of connectivity and evacuation of power and the Petitioner therefore rightly applied for the nearest S/s viz. Navagam S/s which was adjoining the Project at the distance of only 100 meter instead of Hapa S/s which was 6 KM away from project site as well as such nearest sub-station also avoids duplication of transmission losses. It is also submitted that GETCO completed the construction of the sub-station and back-charged it on 27.03.2019 itself but could commercially operate the sub-station only 08.06.2021 and such significant delay is a delay solely attributable to GETCO in terms of Article 4.3.3 of the PPA for which the Petitioner cannot be held liable. Moreover, it is clarified that no claims or reliefs are made against GETCO in so far as this delay is concerned and as such, GETCO is not an aggrieved party to oppose the prayers sought for in the Petition by the Petitioner.
- 2.16. As far as the contention regarding delay is attributable to the Petitioner because the plant was not ready even though evacuation sub-station of GETCO was ready and that delay in charging of said sub-station is therefore not ground to claim any relief by the Petitioner, it is submitted that despite the WtE project was ready before 31.03.2021 but the sub-station was commissioned on 08.06.2021 and RTU was made available only on 24.06.2021. It is further submitted that the plant could not be commissioned and synchronized with the evacuation facility because start up power was yet to be provided by the concerned DISCOM i.e. PGVCL and until the

start-up power was provided to the Petitioner in September-2021, the project could not have been commissioned. Also, the commissioning of pre-processing equipment which makes the refused derived fuel ("RDF") out of the waste was delayed due to inability of international suppliers to travel to India and same being critical as the pre-processing equipment was to be installed and commissioned which was procured by the Petitioner from international suppliers Germany and Austria i.e. Untha and Komptech. The agreements with both suppliers mandate that erection and commissioning be undertaken in their presence but because of international travel restrictions, their personnel could not travel for the commissioning activity.

- 2.17. It is submitted that the Petitioner had applied in timely manner on 16.04.2020 to SLDC for obtaining RTU connection and after relaxation of lockdown again requested on 02.06.2020 for an RTU data sheet and estimate but it was only after repeated follow-up that SLDC responded after eight months on 16.12.2020 stating that certain details like GST number, address etc. were required for preparing the invoice. Thereafter, on 09.01.2021, SLDC responded to the Petitioner's request for an estimate while imposing a condition that connectivity will be granted after dues of group companies / sister companies are paid. Eventually, RTU connectivity was only granted on 24.06.2021 even though SCoD of the Petitioner or extension thereof is not concerned with its sister / group companies, which are separate legal entities.
- 2.18. It is further submitted that the Petitioner has also dealt with other issues and contentions raised by the Respondents like (i) Payment of estimate fee for 66 kV transmission network, (ii) no delay on part of the Petitioner for obtaining start-up power and that no material fact have been omitted by the Petitioner. Moreover, all the events have been submitted in two page chart.
- 2.19. Referring to Daily Order dated 16.09.2021 wherein it is stated that the Petitioner is in a position to commission the plant within fifteen days, the Respondent is not making any payments towards the energy generated and supplied after commissioning the plant on 15.11.2021 for which invoice is also raised on the Respondent GUVNL.
- 2.20. Responding to query of the Commission that what are the reasons for delay in commissioning the project on 15.11.2021 when GETCO sub-station was ready on

08.06.2021 it is submitted that pre-processing equipment could be commissioned only after start-up power was made available. Accordingly, considering all relevant events which had cascading effect, there is delay in commissioning on account of force majeure events and factors beyond reasonable control of the Petitioner.

2.21. It is also submitted that objectors UUWA and LUB are not represented during the hearing but certain issues have been raised saying that pending decision in Review Petition No. 1704 of 2018 filed by UUWA, this Commission ought to first decide the same wherein legal issues are raised. It is further submitted that this Commission after hearing all stakeholders including one of the group company of the Petitioner i.e. M/s Abellon Clean Energy Limited, distribution licensees and others passed Order No. 04 of 2016 dated 10.11.2016 in the matter of “Determination of Tariff and other terms & conditions for Procurement of Power by Distribution Licensees from Municipal Solid Waste to Energy Projects in the State of Gujarat” deciding the control period for same upto 31.03.2019. Thereafter, vide Order dated 23.10.2017 in Suo-motu Petition No. 1654 of 2017, the Commission in exercise of the inherent power of the Commission as per Regulations 80 and 85 of the GERC (Conduct of Business) Regulations, 2004 extended the control period specified in Order No. 04 of 2016 dated 10.11.2016 is to be considered upto 31.03.2021 instead of 31.03.2019. During the proceedings of both these matters, the Commission had heard various stakeholders and UUWA as well as LUB were also objectors therein. However, UUWA filed aforesaid Review Petition No. 1704 of 2018 seeking review of Order dated 23.10.2017 in Suo-motu Petition No. 1654 of 2017 on the ground that exercising inherent powers by the Commission is not permissible in light of the judgment 25.10.2017 passed by Hon’ble Supreme Court in Civil Appeal No. 6399 of 2016 in matter of GUVNL v. Solar Semiconductor Power Company (India) Pvt. Ltd. & Ors. It is argued that in said matter some Solar project developers faced certain difficulties and project got commissioned during other control period but the plea of the Respondent Solar Semiconductor was rejected by the Apex court. Referring to the aforesaid judgment, it is submitted that M/s Solar Semiconductor had prayed before this Commission to extend the control period. The Hon’ble Supreme Court decided in said judgment that the Commission cannot exercise its inherent jurisdiction / powers and vary the terms to extend the control period.

- 2.22. It is argued that in case the project is delayed for reasons other than force majeure events, in that case only liquidated damages are applicable as per the provisions of the PPA.
- 2.23. Referring to para 14 of the Gujarat Waste to Energy Policy – 2016 notified by the Govt. of Gujarat it is submitted that it deals with 'Sale of electricity to obligated entities' wherein it is provided that the nominated agency shall apportion the power to all distribution licensees including private distribution licensees in the State in proportion to their power consumption of previous year.
- 2.24. It is also argued that the stand taken by SLDC that outstanding dues of sister concern need to be paid is untenable when the Petitioner being separate legal entity and not operating power plants of such sister companies. It is because the issue involved therein is regarding actual injection qua scheduled energy being less and UI charges. However, the Petitioner is in no way concerned for issues / dispute with other group companies.
- 2.25. It is submitted that the Respondent GUVNL is seeking an undertaking prior to releasing payment towards energy generated and supplied by the Petitioner from the Jamanagar WtE project for which invoices have also been submitted. As such seeking an undertaking is not appropriate but even the format of such undertaking is not provided even though the Petitioner has requested for same. It is submitted that in the given circumstances, the Petitioner is ready and willing to give an unconditional undertaking as desired by the Respondent GUVNL so that payments can be received because the Petitioner is facing financial issues. Therefore, the Respondent GUVNL may be directed to provide the draft undertaking.
- 2.26. It is submitted that another important consideration is that original purpose for encouraging MSW based Waste-to-Energy projects is disposal of MSW in a scientific manner.
3. Ld. Adv. Ms. Harsha Manav responding to above submissions made on behalf of the Petitioner argued that generally during development of any power project many hurdles / issues emerge but mentioning all such events as force majeure and seeking relief is not permissible. It is argued that the Petitioner has failed to point out relevant provisions / clauses under which the reliefs are claimed. The PPA

clearly defines the contractual relationship and obligations of the parties. Even, force majeure events are clearly mentioned including the exclusions and none of the claims made by the Petitioner fall within the force majeure events.

- 3.1. It is further submitted that objections raised by the Petitioner regarding procurement of power on short term basis is not proper and although it is not necessary to prove the actual loss, the Respondent has provided relevant details regarding power procured in order to meet the demand / energy requirements of consumers at large. It is also submitted that the subsidiary distribution licensees have universal obligation and manage the power requirements.
- 3.2. It is submitted that the onus is on the Petitioner to prove as to why liquidated damages are not applicable in the present case but there is no submission in this regard.
- 3.3. It is an admitted fact by the Petitioner that the sub-station was commissioned and ready for connectivity / evacuation in June-2021 but the power project was commissioned in November-2021, which proves that the WtE power project was not ready till November-2021.
- 3.4. It is also submitted that the Petitioner itself had insisted for providing connectivity to Navagam-Ghed sub-station despite being clearly informed that said sub-station is not likely to be available in the time frame envisaged by the Petitioner. It was also clarified that the Respondent GETCO will not be responsible in any manner for delay in commissioning of Navagam-Ghed sub-station and the Petitioner will be solely responsible for any consequences arising on account of any delay in commissioning of said sub-station. Further, the said sub-station was only for providing connectivity and evacuation of power from the project of the Petitioner. Therefore, it was for the Petitioner to separately avail start-up power from the concerned distribution licensee and it is only the Petitioner who is responsible for delay in getting the start up power.
- 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.

4. We note that the Ld. counsel for the Respondent GUVNL has agreed to provide the format of undertaking to the Petitioner in order to enable the Petitioner to submit the same to the Respondent GUVNL. Let the same be provided by the Respondent GUVNL to the Petitioner. We accordingly decide to adjourn the matter. The direction regarding no coercive action by the Respondent GUVNL till next hearing in earlier orders, also stands to be continued till next hearing.
5. Next date of hearing will be intimated separately.
6. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 02/11/2022.