

**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. Sr. Advocate Mr. Mihir Thakore alongwith Advocates Mr. Saunak Rajguru, Ms. Gayatri Aryan, Ms. Poonam Verma & Mr. Tarak Damani alongwith Mr. Aditya Handa, Mr. Arjun Handa, Mr. Ashish Mehta, Mr. Anup Pillai and Mr. Pankaj Patel
- V/s.
- Respondent No. 1 : Gujarat Urja Vikas Nigam Limited
- Represented by : Ld. Advocates Mr. Anand Ganesan and Ms. Harsha Manav alongwith Ms. Sailaja Vachhrajani, Ms. Girija Dave & Mr. Kandarp Mistry
- Respondent No. 2 : Jamnagar Municipal Corporation
- Represented by : Nobody was present.
- Respondent No. 3 : Gujarat Energy Development Agency
- Represented by : Mr. H. S. Silajiya
- Respondent No. 4 : Gujarat Energy Transmission Corporation Limited
- Represented by : Ld. Advocate Mr. Anand Ganesan alongwith Mr. K. J. Bhuva
- Respondent No. 5 : State Load Despatch Centre - Gujarat
- Represented by : Ld. Advocate Mr. Anand Ganesan alongwith Mr. A.B.

CORAM:

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

Date: 17/02/2022

DAILY ORDER

1. The present matter was listed on 14.02.2022 through virtual hearing.
2. At the outset, Ld. Adv. Mr. Anand Ganesan, appearing on behalf of the Respondents, submitted that submissions and arguments in the matter on behalf of the Respondents have been completed during previous hearing.
3. Ld. Sr. Adv. Mr. Mihir Thakore, appearing on behalf of the Petitioner, submitted that one intervener seeking impleadment has to make submissions and argue the matter although during last hearing it was agreed by the representative of Laghu Udyog Bharti to provide copy of impleadment application filed before the Commission but the same is not received by the Petitioner till date. Hence, the Commission is requested to direct LUB – Gujarat to provide their impleadment application to the Petitioner at the earliest to avoid further delay in the matter. It is also submitted that in compliance to directives of the Commission, the Petitioner has already filed its reply/submissions vide affidavit dated 22.12.2021 in respect of other two impleadment applications filed by Objectors UUWA and Mr. Nitin Madam which may also be considered by the Commission with regard to impleadment application of LUB–Gujarat also.
4. Responding to above, it is submitted by Mr. Sharad Bohra, appearing for Laghu Udyog Bharati (LUB) – Gujarat that an impleadment application vide affidavit dated 12.01.2022 has been filed before the Commission in the present matter and copy of same was already forwarded immediately after hearing on 02.02.2022 to the Petitioner and other parties through email. The hard copy of same has not been served upon the Petitioner because office address of the Petitioner is not available with LUB. However, in case the address of Petitioner is provided, the copy of same can also be served through post.
 - 4.1. It is thereafter submitted that the Commission may implead LUB – Gujarat in the matter because any decision in the present matter may affect the tariff directly impacts the consumers at large including LUB. It is further submitted that LUB – Gujarat requires copy of Petition and all other documents on record to enable LUB to file its submissions/reply in the matter. Hence, the Commission may direct the parties to make available copies of Petition and all other documents to LUB- Gujarat

at the earliest. With regard to submission made by Ld. counsel of the Petitioner that the Petitioner has filed its reply/response towards other two impleadment applications filed by Mr. Nitin Madam and UUWA which may also be considered by the Commission in respect of impleadment application of LUB-Gujarat, it is submitted that the copy of said reply of the Petitioner may also be directed to be provided to LUB – Gujarat.

5. Ld. Sr. Adv. Mr Thakore submitted that let LUB-Gujarat provide their email ID in chat box so that the copy of Petitioner's reply to impleadment applications will be also provided to LUB-Gujarat.
- 5.1. It is further submitted that in respect of rejoinder arguments on behalf of the Petitioner for today's hearing, brief note of arguments detailing different events of force majeure and response of the Petitioner on same with relevant page numbers is prepared which can be emailed to the Commission while continuing with his submissions or the matter may be kept for hearing on any other date so that for sake of convenience the said note is available with the Commission. He agreed to keep the matter on 24.02.2022 at 3:30 P.M. through virtual hearing.
6. Mr. Nitin Madam while reiterating his submissions that copy of Petition and other documents have still not been provided to him despite having clearly mentioned in his application to enable making submissions in the matter. In the absence of same it is not possible to make any submissions. It is further submitted that copy of Daily Order passed by the Commission for last hearing is also not provided to him.
7. We have considered the submissions made by the parties. We note that Ld. Sr. Adv. Mr. Thakore appearing on behalf of Petitioner submitted that copy of impleadment application of Laghu Udyog Bharti is not received by the Petitioner although it was agreed during last hearing. We also note that Ld. Sr. counsel further submitted that reply of the Petitioner filed vide affidavit dated 22.12.2021 in respect of other two impleadment applications of Objectors UUWA and Mr. Nitin Madam may also be considered by the Commission with regard to impleadment application of LUB-Gujarat Accordingly, we are of the view that the said reply be considered towards impleadment application of the LUB.
- 7.1. We have also noted the submissions of Mr. Sharad Bohra, that LUB – Gujarat needs to be impleaded in the matter because any decision in the present matter affect the tariff directly impacts the consumers at large including LUB while seeking copy of Petition and all other documents on record to enable LUB to file its submissions/reply in the matter. We also note that during the hearing on 11.01.2022, Mr. Bharatbhai Gohil on behalf of UUWA has made elaborate submissions regarding impleadment in this matter while referring to various paras of Order dated 19.10.2016 passed by the Commission in Petition No. 1475 of 2015. It was argued that in above Petition, UUWA had filed an impleadment application and the Commission after noting the submissions in para 8 onwards and duly

considering the same in para 11 decided to implead UUWA and Laghu Udyog Bharati in para 12 of above Order. It has been also submitted that various contentions raised by the Petitioner in its reply in present matter like locus standi, private contract, privity of parties have been considered by the Commission in aforesaid Order and thereafter decided impleadment of UUWA and LUB. Even, otherwise principle of natural justice demands that stakeholders need to be heard as decision in the present matter affect the consumers and their tariff. It is submitted that present Petition involves levy of liquidated damages and issue of tariff. Hence, impleadment in such matter is necessary while directing the parties to provide Petition, reply, rejoinder etc. with all relevant documents.

7.2. It is further noted that during above hearing on 11.02.2022, Mr. Nitin Madam also made extensive submissions objecting to grant of delay in commissioning of project, and no reduction in tariff as sought by the Petitioner based on documents pertaining to loan component in cost of project. It was also submitted that MSW plant of the Petitioner is located in proximity of residential area and thereby creating environment and health issues. Even, Hon'ble Apex court provides opportunity of hearing considering equal rights of all stakeholders. It is also submitted that Government has provided land for the project to the Petitioner at token rate. Also, documents regarding loan availed by the Petitioner are submitted by him apart from media reports in newspaper and photographs. The variation of tariff of the Petitioner power plant as sought by the Petitioner shall not be allowed as it has to be ultimately borne by consumers at large. It is further submitted that previously in such matters, this Commission in various earlier matters like Petition No. 1000/2010, 1389/2014, 1429/2014, 1456/2014, 1475/2015 etc. had impleaded different stakeholders. Moreover, in this matter, there is single Advocate appearing on behalf of GUVNL, GETCO and SLDC whereas, nobody is appearing on behalf of Jamnagar Municipal Corporation. It is necessary to protect consumers' interest by the Commission. The outcome of the present proceedings directly affect the consumers. Hence, this Commission needs to implead him while directing to provide copy of record so as to enable making submissions in the matter,

7.3. In the present petition, the Petitioner has sought for (i) refund of Bank guarantee encashed by the Respondent GUVNL as plant was not commissioned as per terms of the PPA, (ii) non levy of liquidated damages on the Petitioner though the SCOD of the Power Plant was not achieved as per the terms of the PPA on a grounds of Force Majeure and other reasons, (iii) no reduction in the existing tariff and (iv) no termination of PPA by the Respondents. The issues stated here at (i) to (iii) impact on the consumers' tariff. Therefore, we are of the view that (i) Mr. Nitin Madam, (ii) Utility Users Welfare Association and (iii) Laghu Udyog Bharati be impleaded in this matter. Hence, we decide to implead (i) Mr. Nitin Madam, (ii) Utility Users Welfare Association and (iii) Laghu Udyog Bharati as party Objectors in this matter. The Petitioner and the Respondents are directed to provide copy of all submissions made by them in present Petition to above impleaded Objectors. After receipt of

respective submissions from the parties, the newly joined parties are directed to file their duly notarised submissions on affidavit, if any, within 15 days from the date of receipt of papers from the parties. The Petitioner and the Respondents No. 1 to 5 may file their response, if any, on the submissions of impleaders within 10 days, to the Commission with a copy to newly joined party. Also, the newly joined Objectors are directed to provide copy of all earlier submissions filed by them till date of this Order, to the Petitioner and the Respondents No. 1 to 5 and file affidavit of the service in this regard. Staff of the Commission is directed to array (i) Mr. Nitin Madam as Objector No. 1 (ii) Utility Users Welfare Association as Objector No. 2 and (iii) Laghu Udyog Bharati as Objector No. 3 in this matter.

- 7.4. In so far as submissions made by LUB regarding non-availability of office address of the Petitioner and accordingly request has been made to provide the address of parties by the office of the Commission to serve copy of application to all parties, we are of view that LUB needs to refer the daily order dated 17.12.2021 passed by the Commission in the present petition wherein the address of the parties are mentioned. Accordingly, LUB-Gujarat to provide a copy of impleadment application to all parties.
- 7.5. We also note that the Petitioner has prepared note of arguments in respect of his rejoinder submissions which may be emailed to the Commission with copy to the Respondents, within 3 days from the date of this Order.
- 7.6. We also note the submission of Mr. Nitin Madam regarding non-receipt of daily Order passed by the Commission pursuant to hearing held on 02.02.2022. Accordingly, staff of the Commission is also directed to make available a copy of Daily Order dated 11.02.2022 through email to all parties including Mr. Nitin Madam, if already not provided. We further note that the Commission vide Daily Order dated 11.02.2022 has decided that no coercive action by the Respondent GUVNL till next hearing, which also stands continued till next hearing.
8. The matter is posted for hearing on 24.02.2022 at 3:30 P.M. through V.C. Staff of the Commission is directed to provide copy of this Order and necessary hearing link to the parties including Mr. Nitin Madam, UUWA & LUB – Gujarat in connection with their application for impleadment in the present matter.
9. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 17/02/2022.