BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR

Petition No. 2002 of 2021.

In the Matter of:

Petition under Section 86 (b) and (e) of the Electricity Act, 2003 for refund of connectivity charges paid by those Small Scale Distributed Solar Project Developers who exercise the One Time Exist Option.

Petitioner	:	Gujarat Urja Vikas Nigam Limited
Represented By	:	Ms. Sailaja Vachhrajani, Mr. Parthik Joshi and Ms. Girija Dave
Co-Petitioner No. 1	:	Madhya Gujarat Vij Company Limited
Represented By	:	Mr. A. V. Saxena
Co-Petitioner No. 2	:	Uttar Gujarat Vij Company Limited
Represented By	:	Mr. K. B. Chaudhari and Mr. B. J. Brahmbhatt
Co-Petitioner No. 3	:	Paschim Gujarat Vij Company Limited
Represented By	:	Mr. Y. S. Ghedia
Co-Petitioner No. 4	:	Dakshin Gujarat Vij Company Limited
Represented By	:	Mr. B. K. Patel

CORAM:

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

Date: 29/11/2021.

DAILY ORDER

1. The matter was kept for hearing on 22.11.2021.

2. Ms. Sailaja Vachhrajani, on behalf of the Petitioner GUVNL submitted that the present Petition is filed for seeking approval of this Commission to allow the Co-Petitioner distribution companies (DISCOMs) of the Petitioner to give refund of connectivity charges levied as per Regulation 7(2) of GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 which provides regarding non-refundable connectivity charges of Rupees One lakh per application to those Small, Scale Distributed Solar Power Project Developers who exercise the one-time exit option approved by the State Government as special case.

2.1. It is also submitted that the Government of Gujarat had notified the "Policy for Development of Small Scale Distributed Solar Projects" vide GR No. SLR/11/2019/51/B1 dated 06.03.2019 for procurement of power from Small, Scale Distributed Solar Projects of 0.5 MW to 4 MW capacity and subsequently on 15.11.2019 the Government also notified guidelines for implementation of above policy.

2.2. It is further submitted that the Commission has also granted 'In-principle' approval for mechanism of applicable tariff for purchase of power under said policy. Moreover, it is submitted that the above scheme and applicable tariff is optional and referring to para 13.22 of Order dated 08.08.2019 in the Petition No. 1802 of 2019 it is argued that even the Commission has recognised that the scheme is an optional scheme and it is not compulsory for the generators to accept the tariff if it is not economically viable to them.

2.3. It is submitted that in pursuance of above, the Co-Petitioners had received total applications of around 12404 numbers aggregating to 7959 MW, but eventually around 4001 no. of the PPAs aggregating to 2497.31 MW were executed between the Co-Petitioners and developers of Small Scale Distributed Solar Projects till 31.03.2021 as per tariff mechanism under the "Policy for Development of Small Scale Distributed Solar Projects" and the tariff payable under aforesaid PPAs is as approved by the Commission of Rs. 2.83 per unit.

2.4. It is submitted that the Industries and Mines Department, Government of Gujarat on 07.08.2020 had notified 'Gujarat Industrial Policy 2020' with a provision for Capital and Interest Subsidy to MSMEs. It is argued that above developers assumed that provision of Capital and Interest Subsidy to MSMEs as per 'Gujarat Industrial

Policy 2020' will be available to them despite there being no mention regarding eligibility of Small-Scale Distributed Projects for receiving either Capital subsidy or Interest subsidy in 'Gujarat Industrial Policy 2020' since it is available to only MSME and also there is no provision for eligibility of Capital and Interest Subsidy as per Gujarat Industrial Policy 2020 to be available/receivable to/by such Solar Developers under "Policy for Development of Small, Scale Distributed Solar Projects" or the Guidelines dated 15.11.2019 of Energy and Petrochemicals Department, Govt. of Gujarat. It is also submitted that even in the PPAs executed by the Co-Petitioners with developers of Small Scale Distributed Solar Projects it is not mentioned that Capital and Interest Subsidy as per Gujarat Industrial Policy 2020 will be available to Solar Developers. However, such Solar Developers of Small Scale Distributed Solar Projects proceeded for signing of PPAs under presumption that they are eligible for Capital Subsidy and Interest Subsidy otherwise available to MSME under 'Gujarat Industrial Policy 2020'.

2.5. It is further submitted that subsequently it emerged that since there being no provision regarding any kind of subsidy/grant, some of the Small Scale Distributed Solar Project Developers made representations to the State Government stating that they had executed the PPAs with DISCOMs under anticipation that the Capital and Interest Subsidy would be available to them but now in the absence of availability of any such Capital and Interest Subsidy, it would not be viable or feasible for the developers to implement the Solar Projects and accordingly sought the permission to exit from the PPA without any Liquidated Damages and refund of payments made by them towards Application, Connectivity and Supervision charges and also return of the Bank Guarantee(s) furnished by them.

2.6. It is also decided that after due deliberations of the aforesaid aspects/issues relating to Capital Subsidy and/or Interest Subsidy in the scheme, it was decided that no subsidy shall be extended/provided in respect of applications received under Small Scale Distributed Solar Projects Policy 2019 but an one-time exit option may be provided to the Solar Project developers without any penalties / charges considering the nature of the developers and the number of applications received by the State DISCOMs. Further, Industries and Mines Department, Government of Gujarat has also conveyed the above decision of the State Government to MSME Commissioner, Gandhinagar.

2.7. Accordingly, Energy and Petrochemicals Department, Government of Gujarat conveyed to the Petitioner GUVNL that developers who have signed the PPAs with the DISCOMs and the charges recovered from such developers who exercise such exit option shall be refunded and no penalties/charges shall be imposed upon the developers. It is submitted that in view of this, the Petitioner GUVNL issued 'Public Notice' dated 20.07.2021 conveying above aspect regarding subsidy to the Stakeholders.

2.8. Also, the Petitioner GUVNL based on above consideration by the Government regarding exit option to the developers conveyed to Energy and Petrochemicals Department, Government of Gujarat vide its letter dated 16.07.2021 that in case it is decided to give exit option to the developers without any penalties/charges then in that case issues regarding refund that need to be decided are (i) Non-Refundable Application fees of Rs. 5 per kW collected by the DISCOMs and GEDA each as per Guidelines issued vide GR dated 15.11.2019; (ii) Non-refundable connectivity charges of Rs 1,00,000/- per application levied as per GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 to be refunded after taking GERC's approval (iii) Bank Guarantee of Rs 5 Lakh / MW which is towards liquidated damages of Rs 3000 per MW per day for delay in commissioning may be returned to developers and no Liquidated Damages may be charged and (iv) Provisional Supervision Charges at the rate of 15% of rates determined by GERC for HT consumers for new connection / load extension which works out to about Rs. 1.12 – Rs. 10.80 lakhs per application depending on project capacity.

2.9. Subsequently, EPD, GoG vide letter dated 07.08.2021 informed GUVNL that based on the discussion and deliberation at State level, it has been decided that a one-time exit option shall be given to the Solar Project Developers who have signed PPAs with the State DISCOMs and the charges recovered from Developers who exercise such exit option shall be refunded.

2.10. Referring to para 25 of the Petition it is submitted that in accordance to above decision of the Government, the Petitioner GUVNL had uploaded a Public Notice on 09.08.2021 conveying the above decision of the State Government to the Stakeholders providing for the one-time exit option to the Solar Project Developers

who have signed PPAs with the State DISCOMs and for refunding of charges recovered from such Developers who exercise such exit option as under:

(a) Application fees of Rs. 5 per KW collected by DISCOMs and GEDA each shall be refunded to the developers;

(b) Liquidated Damages and Supervision charges shall not be levied on the developers availing exit option. Accordingly, the Bank Guarantees as well as Provisional Supervision charges paid by the such developers shall be returned by DISCOMs;

(c) Non-refundable connectivity charges of Rs. 1,00,000/- per application levied as per Regulation 7(2) of GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 would be refunded after taking approval of the Commission and based on the decision of the Commission.

2.11. It is further submitted that as per Regulation 7(2) of GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011, the connectivity charges of Rs. 1,00,000/- collected by the DISCOMs are non-refundable. However, considering the nature of the small developers of Solar project, the Petitioners herein have approached the Commission seeking permission to allow the Co-Petitioners State DISCOMs to give refund of connectivity charges i.e., non-refundable fee of Rs. 1,00,000/- to the Small Scale Distributed Solar Developers who have exercised the one-time exit option approved by the State Government.

2.12. In response to the query of the Commission regarding how many such applications have been received by the Petitioners, it is submitted that the Petitioners have received 2609 no. of applications from the developers for 1548.55 MW capacity. It is also submitted that out of PPAs signed for 2497.31 MW capacity, exit option exercised by Solar Developers is for around 1548 MW and thus, now PPAs with 1392 developers for around 948.86 MW are valid PPAs.

2.13. On a further query from the Commission in respect of any cut-off date for making such application to avail exit option was provided to the developers, it is submitted that although in the public notice it is mentioned that the developers who are willing to avail such onetime option shall have to submit their written request in clear terms alongwith the prescribed undertaking to DISCOMs on or before 31.08.2021 but later on it was also extended upto 05.09.2021 because of some

holidays. In response to further query from the Commission regarding any exit option for refund of Non-Refundable charges has been provided by the Petitioners in the past, it is submitted that there are no such past incidents where such exit options and refund of any charges were provided to the developers.

3. We have considered the submissions made by the Petitioners. We note that the present Petition has been filed by the Petitioner GUVNL alongwith its subsidiaries distribution companies as Co-Petitioners under Section 86 (1) (b) and (e) of the Electricity Act, 2003 seeking permission for refund of connectivity charges paid by those Small Scale Distributed Solar Project Developers who have executed Power Purchase Agreements with the DISCOMs but have thereafter exercised the One Time Exit Option pursuant to Public Notice issued by the Petitioner GUVNL in pursuance of letter No. SLR/11/2019/51 (2)/B1 dated 07.08.2021 of Energy & Petrochemicals Department, Government of Gujarat.

3.1. We also note that the Petitioner GUVNL have not filed necessary documents in support of its Petition like various Policy documents/GR of the Government of Gujarat, details of the PPAs actually executed by the Co-Petitioners with developers, copy of various correspondence, any details regarding such exit option provided in past by it or its subsidiary companies etc. Hence, the Petitioner GUVNL is directed to file on affidavit all such necessary details with supporting documents.

3.2. We also note that neither the Petitioner nor the Co-Petitioners have filed (i) details of PPAs actually executed by the Co-Petitioners with developers with name of Developer, capacity tied up, CUF, date of PPA, Scheduled COD, substation where connectivity is provided etc. (ii) details of DISCOM wise no. of applications for Exit Option received from developers till 05.09.2021 like date on which received, name of Developer, PPA date etc. (iii) any list of developers who have opted for exit option, (iii) details of any request for availing exit option received after 05.09.2021, (iv) Response, if any, given on applications of exit option received after 05.09.2021, (v) details of any letters or communications or representations received by the Petitioner and the Co-Petitioners from any Developers raising any issues/concerns etc. therein irrespective of whether such developer has opted for exit option or not (vi) whether any response / communication or reply to such representations alongwith its details (vii) whether any dispute has been raised or has arisen in this

regard (vi) Other necessary details. Hence, the Petitioner and the Co-Petitioners are directed to separately file above details on affidavit.

3.3. We direct the Petitioner GUVNL and Co-Petitioner DISCOMs to file their respective submissions and details on affidavit alongwith all necessary / supporting documents within 15 days from the date of this Order.

4. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 29/11/2021.