

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Review Petition No. 01 of 2023 in Petition No. 2108 of 2022

With

Review Petition No. 02 of 2023 in Petition No. 2109 of 2022, Review Petition No. 03 of 2023 in Petition No. 2110 of 2022, Review Petition No. 04 of 2023 in Petition No. 2111 of 2022, Review Petition No. 05 of 2023 in Petition No. 2112 of 2022, Review Petition No. 06 of 2023 in Petition No. 2113 of 2022, Review Petition No. 07 of 2023 in Petition No. 2114 of 2022, Review Petition No. 08 of 2023 in Petition No. 2115 of 2022, Review Petition No. 09 of 2023 in Petition No. 2116 of 2022, Review Petition No. 10 of 2023 in Petition No. 2117 of 2022, Review Petition No. 11 of 2023 in Petition No. 2118 of 2022, Review Petition No. 12 of 2023 in Petition No. 2119 of 2022, Review Petition No. 13 of 2023 in Petition No. 2120 of 2022, Review Petition No. 14 of 2023 in Petition No. 2121 of 2022, Review Petition No. 15 of 2023 in Petition No. 2122 of 2022, Review Petition No. 16 of 2023 in Petition No. 2123 of 2022

In the Matters of:

Review Petitions under Regulations 72 (1) of the GERC (Conduct of Business) Regulations, 2004 for reviewing the Order dated 10.10.2023 passed by the Commission in Petitions No. 2108 of 2022 to 2123 of 2022.

AND

Petition No. 2291 of 2023

With

Petition Nos. 2292 of 2023, 2293 of 2023, 2294 of 2023, 2295 of 2023, 2296 of 2023, 2297 of 2023, 2298 of 2023, 2299 of 2023, 2300 of 2023, 2301 of 2023, 2302 of 2023, 2303 of 2023, 2304 of 2023, 2305 of 2023 and 2306 of 2023.

In the Matters of:

Petition under Section 86 (1) (b), (e), (f) of the Electricity Act, 2003 read with Regulations 23, 80, 81 and 82 of the GERC (Conduct of Business) Regulations, 2004 amendments thereunder read with Article 3.3, 8 & 11 of the PPA dated 19.04.2021 for Small Scale Distributed Solar Projects of 4 MW capacity with GUVNL seeking extension of Scheduled Commercial Operation Date on certain change in circumstances and other events for total 16 PPAs of 4MW each totalling to 64 MW.

Petitioners : Pasithe Infrastructure Limited
(in Petitions No. 2291 to 2295 of 2023 and Review Petitions No. 01 to 05 of 2023)

Vector Green New Energies Private Limited
(in Petitions No. 2296 to 2298 of 2023 and in Review Petitions No. 06 to 08 of 2023)

Vector Green New Solar Private Limited
(in Petitions No. 2299 to 2301 of 2023 and in Review Petitions No. 09 to 11 of 2023)

Vector Green Sunrise Limited
(in Petitions No. 2302 to 2306 of 2023 and in Review Petitions No. 12 to 16 of 2023)

V/s.

Respondent No. 1 : Uttar Gujarat Vij Company Limited
(in all the Petitions and Review Petitions)

Respondent No. 2 : Gujarat Urja Vikas Nigam Limited
(in all the Petitions and Review Petitions)

Appearance:

Ld. Advocate Mr. Shrey Dave for the Petitioners **(in all the Petitions and Review Petitions).**

Ld. Adv. Ms. Ranjitha Ramachandran and Mr. B.G. Pranami for the Respondent No. 1 UGVCL **(in all the Petitions and Review Petitions).**

Ld. Adv. Ms. Ranjitha Ramachandran and Mr. Kishore Lakhani for the Respondent No. 2 GUVNL **(in all the Petitions and Review Petitions).**

CORAM:

Anil Mukim, Chairman

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 06/03/2024.

ORDER

1. The aforesaid Petitions have been filed by the Petitioners consist of common issues and prayers regarding extension of SCOD of 4 MW capacity Solar PV Power Projects desired to set up by the Petitioners under Government of Gujarat Policy for Development of Small Scale Distributed Solar Projects, 2019. Although the capacity, location etc. of Solar projects are different but these are the group of Petitions involving different Petitioners and same Respondents setting forth similar facts, cause of action, submissions/arguments advanced and legal basis upon which the Petitioners seek relief against the Respondents. All these Petitions are, therefore, heard and disposed of together by this common Order.
2. The Petitioners are 4 MW capacity Solar PV Power Projects Developers had executed PPAs with the Respondent UGVCL which is distribution licensee to supply electricity generated from the Petitioners' Solar Power Plants. The Petitioners have sought an extension in SCOD of the projects stated in the Power Purchase Agreement executed between the Petitioners and the Respondent from the date of signing of the supplemental/amended PPA.
3. The prayers sought by the Petitioners in the Review Petitions No. 01 of 2023 to 16 of 2023 are as under:
 - A) *Review the Order dated 10.10.2023 passed in Petition No. 2108 of 2022 and others as per GERC Regulation 72 (1) of the GERC Conduct of Business Regulations;*
 - B) *Allow time limit extension of SCOD by 9 months from the date of order up to 10.07.2024 considering force majeure conditions prevailing at the time of starting of the project;*
 - C) *During the pendency of the present application, the Commission be pleased to direct the Respondents not to issue notice for termination of*

PPA dated 19.04.2021 as the delay in SCOD is caused due to force majeure conditions;

D) Pass such other and further orders as deemed fit and proper in the interest of justice.

4. The Petitioners also filed the Petitions being Petitions No. 2291 of 2023 to 2306 of 2023 seeking extension of Scheduled Commercial Operation Date on certain change in circumstances and other events for total 16 PPAs of 4MW each totalling to 64 MW. The prayers sought by the Petitioners in the Petitions No. 2291 of 2023 to 2306 of 2023 are as under:

a) Declare that the Petitioner is entitled to an extension of 8 (Eight) Months the Scheduled Commercial Operation Date for Power Purchase Agreements Executed between Petitioner company and Respondent No. 1 herein;

b) Extended the Scheduled Commercial Operation Date for Power Purchase Agreements Executed between Petitioner company and Respondent No. 1 herein, with penalty from 6.12.2023 to 8 (Eight) months from receipt of the order in this petition;

c) Pending admission, adjudication and till the matter is finally decided by this Commission respondents may restrain from taking any conceive steps and/or terminating Power Purchase Agreement;

d) Pass such other/further Order/direction(s) as this Commission may deem fit in the facts and circumstances of the present case which are required for end justice or in the interest of justice.

5. The aforesaid prayers of the Petitioners are related to extension in SCOD of their power plant for period of 8 months from the date of signing of the amended/supplemental PPA executed between the parties.

6. The common facts of the cases are as under:

- 6.1. The Petitioners are Solar Power Project Developers setting up 4 MW capacity of plant. The electricity generated from the plant to be supplied to the Respondent UGVCL in terms of PPAs executed between the Petitioners and the Respondents.
- 6.2. The Petitioners had filed Petitions No. 2108 to 2123 of 2022 seeking extension of SCOD for eight months under grounds of force majeure conditions as specified in terms of PPA due to the COVID-19 pandemic and other grounds. The Commission vide Order dated 10.10.2023 has partially allowed the prayers and granted an extension of 57 days to the Petitioners in SCOD of the their plant with effect from 22.10.2022.
- 6.3. Being aggrieved and feeling dissatisfied, the Petitioners have filed the Review Petitions seeking time limit extension of SCOD by 9 months upto 10.07.2024 considering force majeure conditions prevailing at the time of execution of the PPAs for the project. On the same issue, the Petitioners have later on filed Petitions No. 2108 of 2022 to 2123 of 2022 seeking extension in SCOD from the extended period of 57 days (i.e., upto 06.12.2022) which was allowed by the Commission vide Order dated 10.10.2023 in earlier proceedings.
- 6.4. The Petitioners have also preferred the Review Petitions on ground that some documents which could not be produced at the time when the earlier Order dated 10.10.2023 in Petitions No. 2108 of 2022 to 2123 of 2022 passed by the Commission and also some mistakes or errors apparent from the face of the record. Earlier, the Petitioners have filed the Petition on 04.06.2022 for an extension in SCOD of 22.10.2022. The Commission has granted an extension of 57 days in SCOD vide its Order dated 10.10.2023. The revised SCOD with extension worked out to be 06.12.2022.

- 6.5. The original Petitioners companies were acquired by the new management during the pendency of the Petition Nos. 2108 of 2022 to 2123 of 2022 before the Commission.
- 6.6. The Petitioners (a company 100%) owned by Vector Green Energy Private Limited) was floated as a Special Purpose Vehicle for the development of Solar PV Projects under the SSDSP scheme. During the pendency of Petitions, the parent company Vector Green Energy Private Limited was acquired by Green Infra Wind Energy Limited (GIWEL). Further, during the pendency of earlier Petitions No. 2108 of 2022 to 2123 of 2022, the some of the documents were not submitted in the proceedings before the Commission as there was no change in the ownership pattern of the Petitioners in aforesaid Petitions. The Petitioners have produced the same in the Review Petitions to demonstrate that the delay in execution of projects were on genuine reasons. Further, the Petitioners have stated that the expertise and commitment of the holding company to execute the project if sufficient time is granted to the Petitioners. The extended time period is in benefit of the Respondent, UGVCL and the consumers of the State. The Petitioners have agreed to supply the electricity generated from their Solar Power Plants on original agreed tariff as specified in the PPAs.
- 6.7. It is stated that GIWEL is part of a global energy group Sembcorp is a leading name in RE development projects and is engaged in the development and operations of Renewable Power Projects and allied activities. At present, GIWEL owns and operates 801.2 MW wind-based power projects spread in 7 locations across 4 different States Karnataka, Maharashtra, Madhya Pradesh, and Gujarat. Apart from the Wind-Power Projects, GIWEL through its subsidiary Green Infra Renewable Energy Limited (GIREL) is operating a 249.9 MW Wind Power Project in Tuticorin, Tamil Nadu. Further, Green Infra Renewable Projects Limited, another subsidiary of the Company (GIWEL) is in the process of implementation of

400 MW SECI Solar Power Project. The total projects by all SPVs of GIWEL are 64 MW under the SSDSP scheme of Gujarat State.

6.8. The holding company of the Petitioners is a financially sound Company committed to the growth of Renewable Energy in the Country. The independent Auditors report of parent Company GIWEL submitted by Price Waterhouse Chartered Accountants LLP (PWC) states that the net worth of GIWEL is Rs. 4065.34 Crores as of 31.03.2023.

6.9. The project implementation was apprehended during the pendency of Petition Nos. 2108 of 2022 to 2123 of 2022 and other similar matters as the holding company was acquired by the new entity and the work can be initiated only after receiving an Order from the Commission for extension of SCOD. The Petitioners submitted that project site at Village Piluda having evacuation granted at 66 KV Dhulva Substation is complete with land acquisition. To complete the project at the earliest, the Petitioners had undertaken a final discussion with the solar module suppliers to have immediate delivery. As of now, the final order has been received, and a Letter of Intent (LOI) for work is also given to an experienced agency in anticipation of an extension of SCOD by the Commission as prayed in the review petitions and Petitions filed on 06.12.2023 by the Petitioners. The Commission passed Order with consideration of MNRE's Notification dated 29.06.2021 and accordingly granted an extension for 57 days only i.e. from 19.04.2021 (date of PPA) to 15.06.2021, whereby, as per the MNRE's Notification, the extension was granted from 01.04.2021 to 15.06.2021 i.e. for 57 days. At this juncture, it is evident that the MNRE' Notification for Time Limit Extension was issued on 29.06.2021 which is after the completion of the period granted by the said notification i.e. from 01.04.2021 to 15.06.2021. In other words, the Government has allowed a time limit extension for all projects for 57 days due to the COVID-19 pandemic. It cannot be interpreted that the COVID-19 pandemic started on 01.04.2021 and finished on 15.06.2021. The extension was granted for the

delayed work/procedure in the completion of the RE projects due to the COVID-19 pandemic. The Commission has granted an extension of 57 days under this particular notification only. As even the extended date in the original SCOD has already passed, the extension in SCOD may be granted from the date of Order of the Commission in aforesaid Petitions.

- 6.10. The Petitioners had executed the PPAs under all adverse conditions during the peak pandemic period with risk to personal safety just to honor the Government Policies and norms. Even the Commission decided to extend the date of signing of the PPAs two times. In such a situation, it is obvious that the work cannot be initiated after the signing of the PPA. In such circumstances, 180-day limit to complete the project should be considered from the last date allowed by the Commission to sign the PPAs irrespective of the date of signing the PPAs. In the case of the Petitioners company, the SCOD should be 180 days from the last date of signing the PPAs, i.e. from 31.05.2020.
- 6.11. The Petitioners had asked for a time limit extension in SCOD due to Force Majeure as per Article 8 of the PPA. The conditions where Force majeure in support of the Petitioners have relied upon is applicable and not applicable are described in detail in the Order of the Commission and it is agreed that the COVID-19 pandemic should be considered as a Force Majeure condition.
- 6.12. Accordingly, a notice is to be served by the affected party to the other party maximum within 7 days from the event of force majeure.
- 6.13. As per the Article 8 of the PPAs the affected party should serve the notice after the end of the occurrence in this particular force majeure event. Considering the facts of the present case, it is clear that the starting and end dates of the COVID-19 pandemic were not specified by any appropriate authority and the same cannot be decided. When the starting

dates and end dates of the force majeure event are not specified and when it is not possible to decide the same, Article 8 (C) of the PPA loses its rationality. This is the first of its kind of force majeure in recent decades and many first measures are taken by the Government as and when required. The Commission is requested to take a lenient view and consider the fact that no industry was operating as per normal circumstances, and it is very difficult to execute the project as per schedule and adhere to SCOD. In the case of the Petitioners, as the parent company is under the acquisition process, the work implementation can be executed only after an Order of the Commission granting sufficient time for the completion of the project. The Petitioners prayed to the Commission to consider the ground realities and allow a sufficient time for the completion of the Solar PV Projects by allowing sufficient extension in SCOD to execute the projects as the Petitioners company is all set to kick off the project.

6.14. As regards the force majeure condition, it is clear that once the force majeure condition starts, the relief granted due to the force majeure event will stand implemented till the force majeure event is continued. On the other side, relief granted due to force majeure also cannot be persistent for an indefinite period. Therefore, the Commission may review/revisit/allow the extension in SCOD considering the following aspect of the present matter as stated below.

- I. The final date of PPA execution for the SSDSP project was extended from 31.03.2021 to 30.04.2021 by the Commission vide order dated 25.03.2021 in Petition No. 1954 of 2021. Again, the date of execution of PPA was extended to 31.05.2021 vide Order dated 23.04.2021 under a Suo-Moto Petition by Commission.
- II. The COVID-19 pandemic created such a situation that the prospective participant of the SSDSP scheme found it extremely difficult to reach the office of the respective Distribution Licensee

even for the signing of the PPA. In addition to that, several restrictions were operating during that period concerning activities that involved groups of people and their work. Hence, there is no question of initiating the work even though the PPA was signed by the Petitioners on 19.04.2021.

- III. The Government of Gujarat has issued various Notifications dated 06.04.2021, 12.04.2021, 04.05.2021, 11.05.2021, 17.05.2021, 20.05.2021, 02.06.2021 and 09.06.2021 regarding restrictions on various activities due to COVID-19 pandemic. This shows that the situation was liquid and it was not possible to commence any work regarding the SSDSP project from the Petitioners' end.
- IV. In addition to that due to various import limitations on spare parts and machinery from foreign countries, Indian manufacturers were struggling with multiple problems like supply chain disturbance, labour availability, financial crunch, etc. Such slashing effects of the pandemic had hit the project execution very badly and the same has resulted in the standstill of the project as a whole.
- V. Without prejudice to the aforesaid, it is submitted that the PPA was executed at Rs. 2.83 per unit to purchase power from the Petitioners' companies by the Respondents. As per the Policy of SSDSP, the power can be procured by the solar generators under the SSDSP scheme at 20 paise more than the average tariff discovered under the bidding by Respondent GUVNL during the last six months. The present average rate of bidding is Rs. 2.71 per unit so the PPA at this stage, under the SSDSP scheme should be made at a purchase rate of Rs. 2.91 per unit. The Petitioners' company had executed a PPA to provide power at Rs. 2.83 per unit which will be a great benefit to the Respondents and consumers

considering the average generation of 6.4 million units per year with a PPA for 25 years by the Petitioners.

- VI. Recently, under the KUSUM Scheme, the solar generator offered power at Rs. 3.20 to Rs. 3.50 per unit to GUVNL. It is learnt that a counteroffer by GUVNL is made to purchase power at Rs. 3.00 per unit. This rate is subject to Central Finance Assistant (CFA) to successful bidders to the tune of Rs. 1.05 Crore per MW after completion of the project. It is further submitted that the power from IEX is sometimes purchased to cater to the rising demand of the State at more than double the rate offered under the SSDSP scheme by the Petitioners' company. Hence, even otherwise, allowing the Petitioners to continue with the scheme is also beneficial to the Distribution Licensee and consumers of the Gujarat State.
- VII. The project implementation was apprehended during the pendency of Petition No. 2108 of 2022 and allied matters as the holding company of above Petitioners company was acquired by the new entity and the work can be initiated only after receiving an Order by the Commission for extension of SCOD. The project site at Village Piluda having evacuation granted at 66 KV Dhulva Substation is complete with land acquisition made as per documents submitted in Petition No. 2108 of 2022. To complete the project at the earliest, the Petitioners' company had undertaken a final discussion with the solar module supplier to have immediate delivery. As of now, the final order has been received, and a Letter of intent (LOI) for work is also given to an experienced agency in anticipation of an extension of SCOD by the Commission as prayed in the review petition.

- VIII. The great technical advantage of a Distributed solar scheme is the generation by small solar power generators to be evacuated at different existing substations. Most of the power generated will be used by the consumers of the same Sub-Station only. The savings in transmission and Distribution losses will be nearly 10 %.
- IX. As per the latest pilot project, the agriculture consumers from the Sub-Station having Solar Power Evacuation may get power during the day time because of the SSDSP scheme. The total power offered by all the Petitioners is 64 MW which is quite a significant quantum.
- X. Considering the present situation, the Petitioners undertakes to pay the liquidated damages to the Distribution Licensee as per the provisions of the PPAs. The Petitioners un-conditionally undertake to waive the benefit under the 'Change of Law' situation for Basic Custom Duty and GST though the BCD on the module increased from 0% to 40%, GST on the solar module increased from 5% to 12% and the GST on BOS is also increased from 8.9% to 13.8%. The Petitioners are withdrawing the claim for the above benefits.
- XI. The Petitioners, have already completed the formalities of land leasing and acquired a huge land for different projects under the SSDSP scheme. Any coercive action by the Respondents will result in financial catastrophe for the Petitioners as well as loss to the Distribution Licensee and consumers.
- 6.15. As per Article 3.3 of PPA, after one year from the SCOD, the Respondent Distribution Licensee has the right to terminate the Power Purchase Agreement. As per condition 3.3 (1) of the PPA, the agreement will not be

terminated if the project is not commissioned due to force majeure condition. As per the Order, the delay in execution of the project is caused by force majeure conditions. The Petitioners requested the Commission to direct the Respondents not to invoke Article 3.3 of the PPA as delay in execution of the projects was due to Force Majeure Conditions.

- 6.16. The Petitioners requested to the Commission to direct the Respondents to continue with the PPA and to extend SCOD for execution of the project since the delay has been caused by force majeure conditions only.
7. The aforesaid matters were kept for hearing on 04.12.2023, 02.01.2024, 06.01.2024 and lastly on 22.02.2024.
8. During the hearing in aforesaid Petitions, there was consensus arrived between the Petitioners and the Respondent UGVCL that the Respondent UGVCL which is a distribution licensee agreed to grant an extension of SCOD from 8 months to the Petitioners with consideration of lower tariff of electricity generated from the Petitioners' Plants which is benefitted to the Respondent distribution licensee and consumers of the licensees. Further, it will also helpful to reduce and avoid procurement of power at higher tariff in terms of PPAs executed between the parties without prejudice the rights and contentions of UGVCL with regard to Power Purchase Agreement executed between UGVCL and the Petitioners including termination of the PPA due to delay in commissioning of the project beyond 8 months after the SCOD.
9. During the hearing on 06.01.2024, the representatives of the Petitioners and the Respondent submitted that they have arrived at mutual agreement in terms of the PPA with regard to amendment in the existing PPA and grant the extension in execution of solar projects of the Petitioners in terms of settlement arrived between the parties as per joint application dated 23.01.2024 which is reproduced as under:

"JOINT APPLICATION FILED BY THE PETITIONER AND THE RESPONDENT NO. 1

- 1. That the present Application is being filed jointly by the parties to place before the Hon'ble Commission the settlement arrived at by the parties.*
- 2. The parties had entered into Power Purchase Agreement dated 19.04.2021 with the Respondent No. 1 at the tariff of Rs. 2.83/kWh from the Petitioner's each project 4 MW capacity under the Government of Gujarat Policy for development of Small Scale Distributed Solar Projects 2019.*
- 3. That the present Petitions have been filed by the Petitioners seeking extension of SCOD by 8 months. The present Application is without prejudice to the rights and contentions of UGVCL in regard to the power purchase agreement entered into between UGVCL and the Petitioner, including the right to terminate the PPA due to the delay in commissioning of the project beyond 1 years after the SCOD.*
- 4. That the Petitioner has proposed the following terms which has been accepted and approved by the Gujarat Urja Vikas Nigam Limited and the Uttar Gujarat Vij Company Limited which are subject to approval of the Hon'ble Commission:*
 - a. The Petitioners shall not raise any objection in regard to the encashment of the bank guarantee as liquidated damages by the Respondent No. 1 against the delay in commissioning beyond the original SCOD as specified in the PPA.*
 - b. The Petitioner shall not raise any claim for any revision of tariff under change in law of the PPA on account of change in BCD, GST and applicability of Safeguard duty from the date of the PPA to the date of extended SCOD.*
 - c. The PPA tariff shall remain unchanged and the tenure of the PPA shall be 25 years from the date of successful SCOD.*

- d. *The Petitioner shall not claim return of Bank Guarantee encashed as liquidated damages on successful commissioning of the project after extension of SCOD.*
- e. *The Petitioner shall withdraw all the petitions before this Hon'ble Commission.*
- f. *The Petitioner shall not raise any dispute/litigation/proceeding against UGVCL in regard to the above aspects.*
- g. *All other terms and conditions of the PPA dated 19.04.2021 would remain the same.*

An undertaking dated 19.01.2024 furnished by the Petitioner in this regard also.

5. *That subject to the approval of the Hon'ble Commission and subject to the above conditions, the parties are agreeable to an extension of SCOD by 8 months from the date of the Order of this Hon'ble Commission. In case of failure of the Petitioner to commission the project within such period of 8 months of the Order of this Hon'ble Commission, UGVCL shall have the right to terminate the PPA and take further appropriate action under the PPA, if any.*
 6. *That the Petitioner states that the Petitioner has filed Petition No. IA no. 43 to 58 of 2023 in Petition no. 2108 to 2123 of 2022 in addition to the present Petitions before the Hon'ble Commission which shall be withdrawn unconditionally. The Petitioner states that there is no other Petition or proceeding by the Petitioner against GUVNL or UGVCL before this Hon'ble Commission or any other Forum.*
 7. *In view of the above, it is respectfully prayed that this Hon'ble Commission may dispose off the present Petitions on the above terms.*
10. As per the above joint application, the Petitioners who are Solar Power Project Developers and the Respondent distribution licensee agreed to arrive the settlement by way of extending the 8 (eight) months to the Petitioners' Plants by the Respondent. Further, it is also agreed between

the parties that the Respondent and Petitioners have right to terminate the PPA if delay in commissioning of the project beyond 8 months agreed in terms and conditions as stated above.

11. Heard the parties. We note that the Petitioners are Solar Power Project Developers who had entered in the Power Purchase Agreements dated 19.04.2021 with the Respondent at tariff of Rs. 2.83 per kWh for each 4 MW capacity of solar PV projects set up by the Petitioners under the Government of Gujarat Policy for Development of Small-Scale Distribution Solar Projects 2019.
- 11.1. We note that earlier there was dispute between the same parties for which Petitions No. 2108 of 2022 to 2123 of 2022 with allied IAs, filed by the Petitioners wherein the Petitioners have sought extension in SCOD on various grounds of force majeure sought by the Petitioners and the Commission has passed Order dated 10.10.2023 and granted an extension of 57 days in SCOD. The relevant portion of the said Order is reproduced below:

“4.30. Based on the above, we are of considered view that granting extension to the SCOD of the Petitioners’ project is limited to 19.04.2021 to 15.06.2021. Thus, the extension in SCOD is granted for 57 days works out to 06.12.2022 as revised SCOD. Accordingly, the Petitioners are eligible to commission the project within that time period. If the Petitioners failed to commission project in above stipulated period the consequence of PPAs followed. Since the Commission has decided to allow the prayers of the Petitioners partly in the main Petitions regarding extension of Scheduled Commercial Operation Date, the prayers in IAs filed therein, are allowed limited to that extent only. Accordingly, the decision of the Commission in its Daily Order dated 03.06.2023 directing the Respondent not to take any coercive action

and precipitative measures including levying of liquidated damages against the Petitioners is now vacated. Accordingly, the Respondent is now at liberty to act further in accordance with law. Accordingly, we hold and decide that the reliefs / prayers sought in the main Petitions as well as the IAs filed therein are granted partly accordingly.”

11.2. Thereafter, the Petitioners have filed the Review Petitions No. 01 of 2023 to 16 of 2023 and Petitions No. 2291 of 2023 to 2306 of 2023 for grant of further extension of 8 months in SCOD period granted as earlier by the Commission vide Order dated 10.10.2023 in Petitions No. 2108 of 2022 to 2123 of 2022 as stated above.

11.3. During the pendency of the present Petitions i.e. Review Petitions No. 01 of 2023 to 16 of 2023 and Petitions No. 2291 of 2023 to 2306 of 2023, the settlement has arrived between the Petitioners and the Respondent on the subject matter of the present cases, wherein the Petitioners and the Respondent have filed joint application before the Commission which is reproduced as under:

“JOINT APPLICATION FILED BY THE PETITIONER AND THE RESPONDENT NO. 1

- 8. That the present Application is being filed jointly by the parties to place before the Hon'ble Commission the settlement arrived at by the parties.*
- 9. The parties had entered into Power Purchase Agreement dated 19.04.2021 with the Respondent No. 1 at the tariff of Rs. 2.83/kWh from the Petitioner's each project 4 MW capacity under the Government of Gujarat Policy for development of Small Scale Distributed Solar Projects 2019.*
- 10. That the present Petitions have been filed by the Petitioners seeking extension of SCOD by 8 months. The present Application is without prejudice to the rights and contentions of UGVCL in regard to the power purchase agreement entered into between UGVCL and the Petitioner, including the right to terminate the PPA due to*

the delay in commissioning of the project beyond 1 years after the SCOD.

11. That the Petitioner has proposed the following terms which has been accepted and approved by the Gujarat Urja Vikas Nigam Limited and the Uttar Gujarat Vij Company Limited which are subject to approval of the Hon'ble Commission:

- h. The Petitioners shall not raise any objection in regard to the encashment of the bank guarantee as liquidated damages by the Respondent No. 1 against the delay in commissioning beyond the original SCOD as specified in the PPA.*
- i. The Petitioner shall not raise any claim for any revision of tariff under change in law of the PPA on account of change in BCD, GST and applicability of Safeguard duty from the date of the PPA to the date of extended SCOD.*
- j. The PPA tariff shall remain unchanged and the tenure of the PPA shall be 25 years from the date of successful SCOD.*
- k. The Petitioner shall not claim return of Bank Guarantee encashed as liquidated damages on successful commissioning of the project after extension of SCOD.*
- l. The Petitioner shall withdraw all the petitions before this Hon'ble Commission.*
- m. The Petitioner shall not raise any dispute/litigation/proceeding against UGVCL in regard to the above aspects.*
- n. All other terms and conditions of the PPA dated 19.04.2021 would remain the same.*

An undertaking dated 19.01.2024 furnished by the Petitioner in this regard also.

12. That subject to the approval of the Hon'ble Commission and subject to the above conditions, the parties are agreeable to an extension of SCOD by 8 months from the date of the Order of this Hon'ble Commission. In case of failure of the Petitioner to commission the project within such period of 8 months of the Order of this Hon'ble Commission, UGVCL shall have the right to terminate the PPA and take further appropriate action under the PPA, if any.

13. *That the Petitioner states that the Petitioner has filed Petition No. IA no. 43 to 58 of 2023 in Petition no. 2108 to 2123 of 2022 in addition to the present Petitions before the Hon'ble Commission which shall be withdrawn unconditionally. The Petitioner states that there is no other Petition or proceeding by the Petitioner against GUVNL or UGVCL before this Hon'ble Commission or any other Forum.*

14. *In view of the above, it is respectfully prayed that this Hon'ble Commission may dispose off the present Petitions on the above terms.*

11.4. In aforesaid joint application the Petitioners and the Respondent have requested the Commission to pass an appropriate Order with consideration of the aforesaid terms and conditions of settlements as agreed between the parties in terms of the PPAs.

11.5. It is therefore necessary to refer the relevant provisions of the PPAs which is reproduced as under:

Article 11: Dispute Resolution

11.1 *All disputes or differences between the Parties arising out of or in connection with this Agreement shall be first tried to be settled through mutual negotiation.*

11.2 *The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.*

11.3 *Each Party shall designate in writing and communicate to the other Party its own representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of the Parties hereto to make decisions by mutual agreement.*

11.4 *In the event that such differences or disputes between the Parties are not settled through mutual negotiations within sixty (60) days, after such dispute arises, then it shall be adjudicated by GERC in accordance with law."*

11.6. As per the aforesaid provisions the Petitioners who are power producers and the Respondent who is distribution licensee i.e. power procurer procuring power from the Petitioners' plants are eligible to resolve the dispute in terms of PPA.

11.7. It is also necessary to refer the relevant provisions of the PPAs in respect of “Amendment” in the PPAs executed between the Petitioners and the Respondent, which is reproduced as under:

“13.8 Amendments: This Agreement shall not be amended, changed, altered, or modified except by a written instrument duly executed by an authorized representative of both Parties. However, DISCOM may consider any amendment or change that the Lenders may require to be made to this Agreement.”

11.8. As per aforesaid provisions the Power Producer and Power Procurer are eligible for add, amend and alter in the PPA subject to approval of the Commission.

11.9. We note that the Petitioners and the Respondents have agreed to amend the terms of the PPA executed between them the parties by granting an extension of the 8 months of SCOD to the Petitioners’ Projects to commission their project from the date of signing of amended PPA for the projects which are small scale size of 4 MW and are distributed generation projects connected with distribution system. The energy generated from such plants are in renewable nature and it will helpful to the Respondents to fulfill their RPO requirement. Further, the submissions of the parties that the price for electricity is Rs. 2.83 per unit is quite lower and attractive for the distribution licensee, i.e. Respondents to meet out the demand of their consumers and it will also be helpful to avoid Procurement of Power at higher rate by the licensee seems valid. Further, the submissions of the parties that the plants may be connected at the Sub-Stations from where it can be supply to the consumers and also helpful to reduce the losses as well as reduce the Procurement of Power price of the licensee and therefore, grant of extension in SCOD is beneficial to the licensees and consumers seems to be valid. We also note that the Petitioners agreed that they will withdraw all these Petitions filed by them claiming ‘Change in

Law' wherein they have claimed for pass on input of GST as 'Change in Law' to the Petitioners' Power Plants. By withdrawal of such Petitions, the Respondent will not be affected by way of financial impact of 'Change in Law' and also not affecting the tariff. It is beneficial to the Respondents and its consumers that they are not affected in the result of 'Change in Law' Petitions.

11.10. We note that the tariff discovered under the KUSUM scheme bids invited by GUVNL/Discoms having price of Rs. 2.87 to Rs. 3.00 per unit as stated by the Petitioners. We note that as the Petitioners and the Respondents have agreed for mutual settlement against their disputes and desire to amend the PPA as per terms of PPA, we allowed the same.

11.11. We note that the Petitioners and the Respondents stated that the amendment sought by the parties are as per terms of the PPA and in the interest of licensees and consumers at large where no financial impact came on licensees or its consumers as per the discussions stated above, we allow to approve it. Also, we decide to take on record the joint applications of the Petitioners and the Respondent seeking withdrawal of Petitions No. 2192 of 2023 to 2306 of 2023 and Review Petitions No. 01 of 2023 to 16 of 2023 and also agreed for extension of SCOD of 8 (eight) months from the date of execution of amendment PPAs as agreed and sought by the parties. The Petitioners and Respondent are at liberty to execute the amended/supplemental PPAs specifying the terms and conditions as stipulated in joint application dated 23.01.2024 filed before the Commission and filed an affidavit in this regard.

11.12. The other terms and conditions of the PPAs shall not be altered and remain in force.

12. In view of above, we decide that aforesaid Review Petitions No. 01 of 2023 to 16 of 2023 and Petitions No. 2291 of 2023 to 2306 of 2023 stand disposed of in terms of joint application filed by the parties on 23.01.2024

in the present matters. The effective date of extension in PPAs for achieving the SCOD started from date of signing of amended supplemental PPA between the parties in terms of the joint application dated 23.01.2024 and this Order.

13. With this Order, the Petitions alongwith the Review Petitions as stated above are disposed of.
14. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 06/03/2024.

