

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1936 of 2021

In the Matter of:

Petition under Section 86 and other applicable provisions of the Electricity Act, 2003 seeking incorporation of provisions of Solar Power Policy - 2021 notified by the Government of Gujarat vide GR No. SLR – 11/2020/77/B1 dated 29.12.2020 appropriately in the Order No. 3 of 2020 dated 08.05.2020 for Tariff framework for procurement of power by Distribution Licensees and Others from Solar energy projects and other commercial issues for the State of Gujarat and GERC (Net-Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 as amended from time to time.

Petitioner : Gujarat Urja Vikas Nigam Limited

Represented By : Learned Advocate Ms. Ranjitha Ramachandran alongwith Shri K. P. Jangid, Shri A. N. Khambhata, Shri V. T. Patel and Shri Hetal Patel

V/s.

Respondent No. 1 : Madhya Gujarat Vij Company Limited

Represented By : Shri A. V. Saxena.

Respondent No. 2 : Uttar Gujarat Vij Company Limited

Represented By : Shri K. D. Barot

Respondent No. 3 : Paschim Gujarat Vij Company Limited

Represented By : Shri J. J. Gandhi

Respondent No. 4 : Dakshin Gujarat Vij Company Limited

Represented By : Shri P. M. Patel

Respondent No. 5 : Torrent Power Ltd. Ahmedabad

Represented By : Learned Advocates Ms. Deepa Chawan, Ms. Reshma Nathani. Ms. Ruchi Patel with Shri Chetan Bundela, Shri

Jignesh Langalia and Ms. Luna Pal

Respondent No. 6 : Torrent Power Limited, Surat

Represented By : Learned Advocates Ms. Deepa Chawan, Ms. Reshma Nathani, Ms. Ruchi Patel with ShriChetan Bundela, Shri Jignesh Langalia and Ms. Luna Pal

Respondent No. 7. : Torrent Power Limited, Dahej

Represented By : Learned Advocates Ms. Deepa Chawan, Ms. Reshma Nathani, Ms. Ruchi Patel with Shri Chetan Bundela, Shri Jignesh Langalia and Ms. Luna Pal

Respondent No. 8 : Aspen Park Infra Vadodara Pvt. Ltd.

Represented By : Nobody was present.

Respondent No. 9 : Jubilant Infrastructure Limited

Represented By : Shri Pranay Shah and Shri Mahesh Mandwarya

Respondent No. 10 : GIFT Power Company Limited

Represented By : Shri Rakesh Inala

Respondent No. 11 : MPSEZ Utilities Limited

Represented By : Nobody was present.

Respondent No. 12 : Gujarat Energy Transmission Corp. Ltd.

Represented By : Nobody was present.

Respondent No. 13 : State Load Despatch Centre

Represented By : Shri K. J. Bhuva and Shri N. N. Shaikh

Respondent No. 14 : Gujarat Energy Development Agency

Represented By : Shri S. B. Patil

Objector No. 1 : Green and Green Agro Industries

Represented By : Shri Viral Dudhrejiya

Objector No. 2 : Federation of Renewable & Consumers of Energy

Represented By : Shri Kirtikumar Shah and Shri Vikram Shah

Objector No. 3 : Ravindra Energy
Represented By : Shri Yash Maheshwari
Objector No. 4 : Shree Digvijay Cement Co. Ltd.
Represented By : Shri A.P.Gupta
Objector No. 5 : Central Gujarat MSME Forum
Represented By : Shri Amit N. Patel
Objector No. 6 : Central Gujarat Chamber of Comm. & Ind.
Represented By : Nobody was present.
Objector No. 7 : Environomics Project LLP.
Represented By : Shri Parag Shah.
Objector No. 8 : Avaada Sunbeam Energy P. Ltd.
Represented By : Nobody was present.
Objector No. 9 : Pashava Energy P. Ltd.
Represented By : Shri Bhargav Anand
Objector No. 10 : Reliance Industries Ltd.
Represented By : Learned Advocate Ms. Amrita Thakore & Shri Anant Kapse
Objector No. 11 : KPI Global
Represented By : S. Hasan
Objector No. 12 : Prozeal Infra
Represented By : Learned Advocate Shri Paritosh Gupta with Shri Manan Thakkar
Objector No. 13 : Federation of Kutch Industries Association
Represented By : Learned Advocate Shri R.N.Purohit
Objector No. 14 : Federation of Gujarat Industries
Represented By : Shri Pranav Doshi
Objector No. 15 : National Solar Energy Federation of India

Represented By : Subrahmanyam Pulipaka
Objector No. 16 : M/s. Helios Natural Renewtech Pvt. Ltd.
Represented By : Nobody was present
Objector No. 17 : Fourth Partner Energy
Represented By : Shri Tarang Bhatt with Shri Kiran Kumar Perka
Objector No. 18 : Hare Krishna Power
Represented By : Nobody was present
Objector No. 19 : JJ PV Solar Pvt. Ltd.
Represented By : Nobody was present
Objector No. 20 : Shri K. K. Bajaj
Represented By : Nobody was present
Objector No. 21 : Madhu Silica Pvt. Ltd., Bhavnagar
Represented By : Shri Vikram Shah with Advocate Shri Param Shah
Objector No. 22 : Meghmani Organics Ltd.
Represented By : Nobody was present
Objector No. 23 : RSL Dyecot Pvt. Ltd.
Represented By : Nobody was present
Objector No. 24 : Screenotex Engineers Pvt. Ltd.
Represented By : Nobody was present
Objector No. 25 : Vimalachal Print and Pack Pvt. Ltd.
Represented By : Nobody was present
Objector No. 26 : Ajay Cotspin Industries
Represented By : Nobody was present
Objector No. 27 : Isha Snacks Pvt. Ltd.
Represented By : Nobody was present

Objector No. 28 : Harisun Energy LLP
Represented By : Shri Mrugesh

Objector No. 29 : Hari Exports
Represented By : Shri Mrugesh

Objector No. 30 : Nandeshwari Packaging
Represented By : Nobody was present

Objector No. 31 : Akash Fashion Prints
Represented By : Shri Akash Sharma

Objector No. 32 : Automotive Valves Pvt. Ltd.
Represented By : Nobody was present

Objector No. 33 : Sekhani Industries Pvt. Ltd.
Represented By : Nobody was present

Objector No. 34 : Shivam Power
Represented By : Nobody was present

Objector No. 35 : Federation of Solar Manufactures and Intermediaries
Represented By : Learned Advocate Shri Paritosh Gupta with Shri Sachin Shah and Shri Manish Bagodia

Objector No. 36 : Renesys Power Systems Pvt. Ltd.
Represented By : Learned Advocate Shri Paritosh Gupta

Objector No. 37 : Utility Users Welfare Association
Represented By : Shri Bharat Gohil

Objector No. 38 : HB Renesys
Represented By : Shri Hemant Bhatt

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

Date: 11/06/2021

ORDER

1. This petition has been filed by the Petitioner GUVNL for seeking the following reliefs:
 - i. To incorporate provisions of Solar Power Policy-2021 notified by the Government of Gujarat vide GR No: SLR-11/202020/77/B1 dated 29.12.2020 appropriately in the order dated 08.05.2020 for Tariff framework for procurement of power by Distribution Licensees and others from Solar energy projects and other commercial issues for the State of Gujarat and GERC (Net-Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 as amended from time to time.
 - ii. During pendency of present petition, as an interim arrangement, Commission may please allow Distribution Companies to implement provisions of Solar Power Policy – 2021 with effect from its notification dated 29.12.2020.
2. The brief facts mentioned in the petition are stated below:
 - 2.1. The Petitioner is a licensee and is assigned with the function of Bulk Purchase and Bulk Sale of Power on behalf of State owned distribution licensees in Gujarat.
 - 2.2. The Respondents (i) Madhya Gujarat Vij Company Ltd (MGVCL) Vadodara, (ii) Uttar Gujarat Vij Company Ltd (UGVCL) Mehsana, (iii) Paschim Gujarat Vij Company Ltd (PGVCL) Rajkot, (iv) Dakshin Gujarat Vij Company Ltd (DGVCL) Surat, (v) Torrent Power Ltd (Dist), Ahmedabad, (vi) Torrent Power Ltd (Surat), Surat, (vii) Torrent Power Ltd (Dist), Dahej, (viii) Deendayal Port Trust, Kandala, (ix) Aspen Infrastructure Ltd., At- Waghodia, Dist.- Vadodara, (x) Jubilant Infrastructure

Ltd., VagraDist: Bharuch, (xi) GIFT Power Co. Ltd, Gandhinagar, (xii) MPSEZ Utilities Pvt. Ltd., Mundra (Kutchh), are the distribution licensees in the State of Gujarat undertaking the function of distribution and retail sale of electricity to consumers within their respective area of supply.

2.3. The Government of Gujarat has notified Gujarat Solar Power Policy 2021 vide GR No: SLR-11/202020/77/B1 dated 29.12.2020. The policy framework is aimed to rapidly scale up the State's solar energy capacity in order to contribute to India's overall renewable energy targets keeping in mind India's commitments under International Climate Agreements.

2.4. The petitioner has further submitted that salient features of Solar Power Policy, 2021 notified by the State Government, are as under:

- a) The various entities such as (i) Solar Projects for Residential consumers, (ii) projects under captive use, (iii) projects under Third Party Sale arrangement, (iv) projects set up for sale to DISCOMs, (v) projects under REC Mechanism, (vi) solar projects set up for RPO Compliance by obligated entities etc. are eligible for various concessions/ relaxation /benefits as per the provisions of the Solar Power Policy 2021.
- b) The Policy came into effect from the date of its notification i.e. 29.12.2020 and shall remain in operation up to 31st December 2025.
- c) The minimum size of MW project shall be 1 MW and that for a KW scale project shall be 1 KW.
- d) Only new plant and machinery shall be eligible for installation under the policy. The restriction on use of fossil fuel is provided under clause 19.
- e) Important provisions for solar projects for Residential consumers is summarized as under:
 - Solar Projects set up by residential consumers on their rooftop / premises is allowed irrespective of consumer sanctioned load.

Incentives under existing schemes can be availed by consumers as per the provisions of the scheme.

- Solar Projects can also be set up by a developer on the rooftop / premises of a residential consumer for generation and sale of power to such consumer in the same premises (Third Party Sale) for which the developer and consumer can enter into a lease agreement and/or power sale agreement.

Capacity Restriction	No restriction on installed capacity
Capital subsidy	As per Government of Gujarat scheme announced from time to time
Third party sale	Allowed
Energy Accounting	As per billing cycle
Surplus Injection Compensation	For self-consumption Rs. 2.25/Unit for first 5 years, thereafter 75% of simple average of tariff discovered in GUVNL bid for Non-park based solar projects in the preceding 6-month period. For third party sale 75% of simple average of tariff discovered in GUVNL bid for Non-park based solar projects in the preceding 6-month period.
Banking Charges	None
Transmission and Wheeling	None

Charges	
Cross Subsidy and Additional Surcharges	Not applicable for self-consumption. Applicable in case of third-party sale.
Electricity Duty	As per the provision of Gujarat Electricity Duty Act, 1958.

f) Important provisions for solar projects under Captive use are summarized as under:

- The captive project refers to generation of power by Industrial, Commercial, Institutional and other consumers.
- The use of electricity for self-consumption within the same premises or at different premises by the consumer having 100% ownership of Solar Power Project shall be considered as captive use.
- No capacity restrictions shall be applicable under this category.
- Installation of solar projects with collective ownership of more than one consumer investing/holding 100% of equity amount collectively shall be allowed. In such cases of collective ownership, the energy generated is allowed to be consumed by each of the consumer based on ratio of their equity in such solar project.
- Projects set up for captive use shall have the option to switch over from captive use to Distribution licensee sale once in their life-time and upon such switch over, the applicable tariff under agreement to be signed with DisComs shall be lowest tariff discovered and contracted in competitive bidding process conducted by GUVNL for Non-park based Solar Projects as on the Commercial Operation Date (COD) of the project. Brief of various parameters of such captive power projects with benefits/incentives granted under the policy are stated below:

Capacity Restriction	No restriction on installed capacity
Energy Accounting	<p>For HT/EHV consumers: Energy set-off; Between 07.00 hours to 18.00 hours of same day</p> <p>For LT demand-based consumers: Energy set-off; Between 07.00 hours to 18.00 hours in the billing cycle</p> <p>For LT other than demand-based consumers: Energy set-off shall be on billing cycle basis.</p>
Surplus Injection Compensation	<p>For MSME: Rs. 2.25 for first 5 years, thereafter 75% of simple average of tariff discovered in GUVNL bid for Non-park based solar projects in the preceding 6-month period.</p> <p>For others: 75% of simple average of tariff discovered in GUVNL bid for Non-park based solar projects in the preceding 6-month period.</p>
Banking Charges	<p>MSME units and other than Demand Based Consumers: Rs. 1.10 per unit on energy consumed</p> <p>For demand-based consumers:</p>

	Rs 1.50 per unit on energy consumed For Government Buildings: Exempted
Transmission and Wheeling Charges	As decided by the commission from time to time
Cross Subsidy and Additional Surcharges	Exempted
Electricity Duty	As per the provision of Gujarat Electricity Duty Act, 1958

g) Important provisions for solar projects under Third Party Sale arrangement are summarized as under:

- This refers to solar power project of Industrial, Commercial, Institutional and other consumers.
- The sale of electricity by the owner of Solar Power Systems (SPSs) to separate consumer is to be considered as Third-Party Sale. Installation of solar projects by a developer for third party sale is allowed without any capacity restriction. Developers can also install solar projects on rooftop / premises of a consumer for generation and sale of power to such consumer in the same or different premises or to another consumer by entering into lease agreement and/or power sale agreement. Brief of various parameters applicable to third party sale of generators/consumers provided/applicable are stated below:

Capacity Restriction	No restriction on installed capacity
Energy Accounting	For HT/EHV consumers: Energy set-off; Between 07.00 hours to 18.00 hours of same day

	<p>For LT demand-based consumers: Energy set-off; Between 07.00 hours to 18.00 hours in the billing cycle</p> <p>For LT other than demand-based consumers: Energy setoff shall be on billing cycle basis.</p>
Surplus Injection Compensation	75% of simple average of tariff discovered in GUVNL bid for Non-park based solar projects in the preceding 6-month period.
Banking Charges	<p>MSME units and other than Demand Based Consumers: Rs. 1.10 per unit on energy consumed</p> <p>For demand-based consumers: Rs 1.50 per unit on energy consumed</p> <p>For Government Buildings: Exempted</p>
Transmission and Wheeling Charges	As decided by the Commission from time to time
Cross Subsidy and Additional Surcharges	As decided by the Commission from time to time
Electricity Duty	As per the provisions of Gujarat Electricity Duty Act, 1958

h) Projects set up for sale to DISCOMs

- Projects through Competitive Bidding – DisComs shall procure solar power with or without storage and / or blended with other RE sources by following competitive bidding process in accordance with

Guidelines issued by Government of India from time to time under Section 63 of the Electricity Act, 2003.

- Projects at pre-fixed levelized tariff (below 4 MW) –DisComs may procure solar power from distributed solar projects up to 4 MW capacity at pre-fixed levelized tariff as per the mechanism of applicable tariff stipulated under the “Policy for development of Small Scale Distributed Solar Projects – 2019” notified through GR No. SLR/11/2019/51/B1 dated 06.03.2019. The tariff shall be fixed at the time of signing of the PPA with the DisComs. Projects can be set up on land or other premises having ownership or legal possession of the developer. Installation of projects below 0.5 MW capacity may also be allowed under this category.

i) Important provisions for solar projects under REC Mechanism are summarized as under:

Developers are allowed to set up solar power projects under the REC mechanism in accordance with the administrative procedure regarding registration and accreditation, as decided by the Central Electricity Regulatory Commission, and as amended from time to time.

Capacity Restriction	Up to sanctioned load / contract demand if set up for Captive / Third Party Sale
Energy Accounting	15-minute time block basis
Surplus Injection Compensation	65% of the simple average of tariff discovered in GUVNL bid for Non-park based solar projects in the preceding 6-month period.
Banking Charges	Exempted
Transmission and Wheeling Charges	As decided by GERC from time to time

Cross Subsidy and Additional Surcharges	As decided by GERC from time to time
Electricity Duty	As per the provisions of Gujarat Electricity Duty Act, 1958

j) Important provisions for solar projects for RPO compliance by obligated entities are summarized as under:

Capacity Restriction	No restriction on installed capacity
Energy Accounting	15-minute time block basis
Surplus Injection Compensation	75% of the simple average of tariff discovered in GUVNL bid for Non-park based solar projects in the preceding 6-month period.
Banking Charges	Exempted
Transmission and Wheeling Charges	As decided by the Commission from time to time
Cross Subsidy and Additional Surcharges	For captive consumers: Not applicable For third party sale: As decided by the Commission from time to time
Electricity Duty	As per the provision of Gujarat Electricity Duty Act, 1958

k) Wheeling and Transmission of Electricity

Wheeling of power for captive consumption / third party sale is allowed on payment of transmission charges, transmission losses, wheeling Charges and wheeling losses, as applicable to normal open access consumers. If the generated solar energy is consumed within the same premises without use of grid, no transmission / wheeling charges & losses shall be applicable.

If a Solar Power Generator owner desires to wheel electricity to more than one location, he shall pay Rs 0.05 / kWh on energy fed into the grid to distribution licensee (DisCom) in whose area power is consumed in addition to the above-mentioned transmission charges and losses, as applicable.

l) Cross Subsidy Surcharge and Additional Surcharge

Cross Subsidy Surcharge and Additional Surcharge is not applicable in case of Captive Projects. In case of projects set up for Third Party Sale, Cross Subsidy Surcharge and Additional Surcharge is applicable as applicable to normal open access consumers. These charges shall be as determined by the Commission from time to time.

m) Evacuation Facilities

- Within Solar Park:
 - (i) Developer of Solar Project/ Solar Park shall establish dedicated line for evacuation of power up to STU/ CTU substation and install RTUs etc. at their own cost. Solar Power Generator (SPG) shall be integrated to the grid by installing RTUs to enable real time monitoring of the injection of power by SLDC.
 - (ii) Solar Project Developer/ Solar Park Developer shall lay dedicated line for evacuation of power up to sub-station of STU/ 11 kV system of DisComs as per system study by STU/ DisComs where the Project Developer/ Solar Park Developer desires to inject power in the State grid. From there onwards, STU/ DisComs shall ensure transmission/ distribution system and connectivity.
 - (iii) Solar Project Developer/ Solar Park Developer shall lay dedicated line for evacuation of power up to CTU interface/ substation as per system study by CTU if Project Developer/ Solar Park Developer desires to inject power directly in inter-state transmission system. From there onwards, CTU may ensure transmission system and

connectivity with inter-state network wherever power is to be exported out of the State.

- Outside Solar Park

To optimize costs, Common dedicated transmission line shall be encouraged for cluster of adjoining Developers with appropriate metering at their respective end of project as well as a common meter for such SPGs at the receiving end at CTU Interface/ STU substation/ 11 kV system of Distribution licensee. Energy injection by each SPG at the receiving end shall be worked out on the basis of meter reading of common meter appropriately apportioned as per the respective meter reading at the sending end meter of that SPG by SLDC.

- Metering

The electricity generated by the SPGs, shall be metered on 15-minute time block basis by STU/ Distribution licensee/ SLDC/ ALDC at the receiving end of the STU substation/ 11 kV system of Distribution licensee. For the purpose of energy accounting, solar generating projects shall provide ABT-compliant meters at the interface points. Interface metering shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations as amended from time to time. STU/ Distribution licensee shall stipulate specifications in this regard.

In case of consumers having contracted load / sanctioned demand not exceeding 1 MW, DisComs may allow installation of non-ABT meters at consumer level reprogrammed at consumer's cost as per the energy accounting requirement.

2.5. It is submitted that the generation and consumption of solar power in the State is governed as per the provisions of:

- (i) The Commission's order dated 08.05.2020 in the matter of '*Tariff framework for procurement of power by Distribution Licensees and others from Solar*

energy projects and other commercial issues for the State of Gujarat’ (referred to as “*Solar Tariff Order*”) - for Non-Rooftop solar projects involving wheeling of solar energy and;

- (ii) *GERC (Net-Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016* as amended from time to time (referred to as “*Net-Metering Regulations*”) – for Rooftop solar projects involving consumption of solar energy at the same location.

2.6. There are certain changes in the Solar Power Policy – 2021 vis-à-vis applicable Solar Tariff Order / Net-Metering Regulations for solar power projects in the State of Gujarat requiring incorporation in the Solar Tariff Order dated 08.05.2020 and GERC Net-Metering Regulations. The major changes are in relation to treatment of energy accounting, applicability of banking charges, removal of capacity restriction etc. The statements of major changes are summarized as under:

(A) Solar projects involving wheeling of power for Captive use / Third Party Sale:

Provisions	Provisions of Solar Order dated 8.5.2020	Solar Power Policy 2021	Justification of Policy Provisions
Capacity Restriction	For all cases: 50% of Sanctioned Load / Contracted Demand except Residential Rooftop and MSME (Manufacturing)	No restriction on installed solar capacity under captive/ third party sale except for REC based projects wherein solar capacity is allowed up to Sanctioned load	To allow consumers to set up required solar capacity for meeting their consumption requirement

Provisions	Provisions of Solar Order dated 8.5.2020	Solar Power Policy 2021	Justification of Policy Provisions
Energy Accounting	<p>For all cases:</p> <p>If RE attributes is given to DISCOM-Billing Cycle basis.</p> <p>If RE Attribute utilized for meeting self RPO / REC based projects - 15 min basis</p> <p>MSME installing solar capacity in excess of 50% of contract demand – 15 min basis.</p>	<p>For all Non-demand based LT consumers: solar energy set-off is to be given on billing cycle basis.</p> <p>For LT demand based consumers: solar energy set-off is to be given during time period between 07.00 hours to 18.00 hours in the billing cycle</p> <p>For HT/EHV consumers: solar energy set-off is to be given during time period between 07.00 hours to 18.00 hours of same day</p> <p>For all REC based projects and projects set up for meeting RPO Compliance by obligated entities –15 min basis</p>	<p>Generation of solar energy is of infirm nature and may not be available at the time of consumption. This has implication on grid operation apart from financial implication. Therefore, as a balancing of interest of solar projects and consumers, it is provided to utilize solar energy during the period of generation either on daily basis or billing cycle basis.</p>
Surplus Injection Compensation	<p>For all cases Rs. 1.75/Unit for 25 years except REC based projects- wherein rate is Rs. 1.50/Unit for 25 years</p>	<p>For MSME consumers: Rs. 2.25 for first 5 years, thereafter 75% of simple average of tariff discovered in GUVNL bid</p> <p>For all other cases except REC based projects: 75% of simple average of tariff discovered in GUVNL</p>	<p>Since, cost of solar generation is declining nature due to economy of scale and technological advancement, the compensation for infirm surplus energy injection is linked</p>

Provisions	Provisions of Solar Order dated 8.5.2020	Solar Power Policy 2021	Justification of Policy Provisions
		bid For REC based projects- 65% of simple average of tariff discovered in GUVNL bid	with bid discovered tariff.
Banking Charges	Not applicable	For MSME consumers and other Non-demand based consumers: Rs 1.10 / unit on solar energy consumed For all demand-based consumers(Other than MSME): Rs 1.50 / unit on energy consumed For Government Building: Exempted	*As per Note herein under
Wheeling Charges & Losses	Captive use- 50% Third Party Sale - 100% MSME- 100%	100% for all cases	Any under-recovery of wheeling charges and losses have implication on general body of consumers. Therefore, 100% wheeling charges and losses are suggested.

Provisions	Provisions of Solar Order dated 8.5.2020	Solar Power Policy 2021	Justification of Policy Provisions
Cross Subsidy and Additional Surcharges	<p>Captive- Not applicable</p> <p>Third Party (Non-REC) - 50%</p> <p>Third Party (REC) - 100%</p> <p>Third Party (MSME installing solar capacity in excess of 50% of contract demand)- 100%</p>	<p>Captive- Not applicable</p> <p>For all other cases: 100%</p>	<p>Cross Subsidy and Additional Surcharges is levied to compensate DisCom towards loss of Cross subsidy revenue from cross subsidizing consumers. In case any concession is granted the same will impact the ability of DISCOM to supply power at cheaper rate to other consumers such as BPL, AG category.</p>

(B) Rooftop Solar projects for Captive use /Third Party sale– Residential Consumers

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
Ownership	<p>Consumer shall have legal possession of premises and own solar rooftop project for self-consumption.</p>	<p>Solar Projects can also be set up by a developer on the rooftop / premises of a residential consumer for generation and sale of power to such consumer in the same premises (Third Party Sale) for which the developer and consumer shall enter into a</p>	<p>Restriction for ownership is removed to provide more flexibility to consumer and solar power project developers to utilize rooftop space for solar power</p>

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
		lease agreement and/or power sale agreement.	generation and consumption.
Capacity Restriction	No restriction for solar capacity	No restriction for solar capacity	
Energy Accounting	Solar energy Set off is to be given on billing cycle.	Solar energy Set off is to be given on billing cycle.	
Surplus Injection Compensation	Rs. 2.25/Unit for 25 years	For Self-consumption: Rs. 2.25/unit for the first 5 years and thereafter 75% of simple average of tariff discovered in GUVNL bid. For Third Party Sale: 75% of simple average of tariff discovered in GUVNL bid.	Since, cost of solar generation is declining nature due to economy of scale and technological advancement, the compensation for infirm surplus energy injection is linked with bid discovered tariff.
Banking Charges	Not applicable	Not applicable	For promotion of solar rooftop projects
Transmission and Wheeling Charges & Losses	Not applicable	Not applicable	Generation and consumption is at same location.

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
Cross Subsidy and Additional Surcharges	Not applicable since third party sale arrangement is not allowed	Self-Consumption- Not applicable Third Party Sale - Applicable	Cross Subsidy and Additional Surcharges is levied for Third Party Sale to compensate DisCom towards loss of Cross subsidy revenue from cross subsidizing consumers. In case any concession is granted the same will impact the ability of DISCOM to supply power at cheaper rate to other consumers such as BPL, AG category.

(C). Rooftop Solar projects for Captive use /Third Party sale – Non-residential consumers

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
Ownership	Consumer shall have legal possession of premises and own solar rooftop project for self-consumption.	Developers can also install solar projects on rooftop / premises of a consumer for generation and sale of power to such consumer in the same or different premises or to another consumer by entering into lease agreement and/or power sale agreement.	Restriction for ownership is removed to provide more flexibility to consumer and solar power project developers to utilize rooftop space for solar power

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
			generation and consumption.
Capacity Restriction	50% of Sanctioned Load / Contracted Demand MSME (Manufacturing)	No restriction on installed solar capacity under captive/ third party sale except for REC based projects wherein solar capacity is allowed up to Sanctioned load	To allow consumers to set up required solar capacity for meeting their consumption requirement
Energy Accounting	<p>Consumers allowing DISCOMs to utilize RE attribute of solar energy:</p> <p>On billing cycle basis</p> <p>If RE Attribute utilized for meeting self RPO / REC based projects–</p> <p>15 min time block basis</p>	<p>For Non-demand based LT consumers: On billing cycle basis.</p> <p>For demand based LT consumers:</p> <p>During time period between 07.00 hours to 18.00 hours in the billing cycle</p> <p>For HT/EHV consumers: During time period between 07.00 hours to 18.00 hours of same day</p> <p>For REC based projects and projects set up for meeting self RPO Compliance as obligated entities – 15 min time block basis</p>	<p>Generation of solar energy is of infirm nature and may not be available at the time of consumption. This has implication on grid operation apart from financial implication. Therefore, as a balancing of interest of solar projects and consumers, it is provided to utilize solar energy during the period of generation either on daily basis or billing cycle basis.</p>

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
	<p>MSME installing solar capacity in excess of 50% of contract demand –</p> <p>15 min time block basis</p>		
Surplus Injection Compensation	<p>Rs. 1.75/Unit for 25 years except REC based projects wherein rate is Rs. 1.50/Unit for 25 years</p>	<p>For MSME: Rs. 2.25 for first 5 years, thereafter 75% of simple average of tariff discovered in GUVNL bid</p> <p>For all other cases except REC based projects: 75% of simple average of tariff discovered in GUVNL bid</p> <p>For REC based projects- 65% of simple average of tariff discovered in GUVNL bid</p>	<p>Since, cost of solar generation is declining nature due to economy of scale and technological advancement, the compensation for infirm surplus energy injection is linked with bid discovered tariff.</p>
Banking Charges	Not applicable	<p>For MSME consumers and Non-demand based consumers: Rs 1.10 / unit on solar energy consumed</p>	*As per Note herein under

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
		<p>For demand-based consumers (Other than MSME): Rs 1.50 / unit on energy consumed</p> <p>For Government Building: Exempted</p> <p>None</p>	
Transmission and Wheeling Charges & Losses	Not applicable	<p>-Not applicable if generation and consumption is at same location without involving Distribution / Transmission network</p> <p>-100% in case of wheeling of power involving Distribution / Transmission network.</p>	Since wheeling of power is allowed from rooftop solar project to another location, levy of Transmission and Wheeling Charges & Losses is provided.
Cross Subsidy and Additional Surcharges	Not applicable since third party sale arrangement is not allowed	<p>Self-Consumption - Not applicable</p> <p>Third Party Sale - Applicable</p>	Cross Subsidy and Additional Surcharges is levied to compensate DisCom towards loss of Cross subsidy revenue from cross subsidizing consumers. In case any concession is granted the same will impact the ability of DISCOM to supply power at cheaper rate to other consumers

Provisions	Provisions of Net-Metering Regulations	Solar Power Policy 2021	Justification of Policy Provisions
			such as BPL, AG category.

*Note: Solar power generation is infirm in nature and there is time gap between generation of solar energy and consumption at recipient unit. Further, the solar capacity ceiling is removed allowing consumer to install solar capacity as per their consumption requirement irrespective of their sanctioned load/ contracted load. Moreover, consumer is allowed to consume generated solar energy any time during 7.00 Hrs to 18.00 Hrs basis. Therefore, the Distribution companies are required to keep equivalent generation capacity ready from conventional sources to meet the power requirement of such consumers at the time when solar generation is not available. This will have additional financial implication on Distribution Companies towards keeping equivalent additional conventional generation capacity available which is having fixed cost payment liability. In addition, there is also cost implication on DISCOMs due to backing down of conventional generation capacity to accommodate surplus solar generation when there is no/less consumption by respective consumers wheeling solar power. Considering the same, in order to balance the interest of solar power projects and general body of consumers specifically when solar capacity ceiling is removed in the Policy, it is provided to levy banking charges so that part of additional cost implication can be recovered from solar power consumption and burden on the general body of consumers can be reduced to that extent.

- 2.7. Based on above submissions, the petitioner has requested to bring corresponding amendments in the Solar Tariff Order No. 3 of 2020 dated 08.05.2020 and GERC Net-Metering Regulations, 2016 for incorporating above changes and charges among others in line with Gujarat Solar Power Policy -2021.
- 2.8. The Petitioner has submitted that the Government in Energy & Petrochemicals Dept., Gujarat vide letter dated 31.12.2020 has directed the Petitioner to seek approval of the

Commission for giving effect of provisions of the Solar Power Policy 2021 by way of filing of proper petition before the Commission.

- 2.9. The Petitioner has therefore preferred the present petition for seeking approval of the Commission for giving effect of provisions of the Solar Power Policy 2021 by incorporating provisions in Solar Tariff Order and Net-Metering Regulations.
- 2.10. The petitioner has submitted that under Section 61,62, 66, 86 and 181 of the Electricity Act 2003, the Commission has jurisdiction to entertain the present petition for incorporation of provisions of the Solar Power Policy 2021 in the order/regulations of the Commission for giving effect to provisions of Solar Power Policy 2021 in the State.
3. During the hearing, the Commission has directed the petitioner to implead STU, SLDC, GEDA as parties to the present petition since the subject matter is for amendment in Order No. 3 of 2020 dated 8.5.2020 and review of its Suo-Motu Order No. 6 of 2020 dated 05.08.2020 and amendment in GERC Net Metering Regulations 2016 and amendments made in it from time to time, the petitioner was directed to upload the petition along with documents on its website and issue a public notice in two daily Gujarati Newspaper and one English newspaper having wide circulation in the State/National level stating that the objectors/stakeholders file their objections/suggestions within 21 days from the date of issuance of public notice to the Secretary of the Commission in five copies along with affidavit in support of with a copy of the same to the petitioner.
4. In compliance to the aforesaid directives, the petitioner has filed an affidavit dated 5.3.2021 stating that the amendment in cause title has been filed by amended Memo of Parties arraying (1) GETCO, (2) SLDC and (3) GEDA as respondents to the petition. Further, the petitioner has issued public notice dated 6.3.2021 in Gujarat Samachar and Divya Bhaskar and dated 7.3.2021 in Indian Express and filed affidavit dated 8.3.2021 stating that the Petition was uploaded on its website for inviting

comments and suggestions in this regard. Necessary compliance in this respect has been made by the Petitioner.

5. In response to the public notice, the Commission has received comments/objections from Torrent Power Ltd., Federation of Renewable & Consumers of Energy, Reliance Industries, Utility Users Welfare Association and other stakeholders/objectors who are named as objectors in this order.
6. Their objections are summarized as under:
 - i. The petition is not maintainable.
 - ii. The objectors have contended that the Solar Power Projects which are under constructions prior to the Gujarat Solar Power Policy 2021 be allowed to install and commission under old Solar Power Policy, 2015. The act of the distribution licensees denying installation of solar power projects above 10 kW capacity which is against the then existing Solar Power Policy 2015 prevailing at the relevant time is illegal and arbitrary.
 - iii. The objectors have submitted that the Net-Metering Regulations 2016 and amendments made in it from time to time, provide the ceiling in capacity for installation of rooftop solar power projects at 1 MW. There are number of consumers who have planned for setting up the rooftop solar power projects at their premises who have been denied to set up such power projects by the distribution licensee on the ground that the Ministry of Power has notified the Electricity Rules, 2020 wherein the ceiling for establishment of rooftop solar power projects is kept at 10 kW under Net-Metering and above 10 kW is governed under gross metering and therefore, the capacity beyond 10 kW of rooftop solar power projects is not permitted under Net-Metering Regulations.
 - iv. The provision made in Energy Accounting for (a) Solar Projects set up by HT/EHV consumers under Captive Use as contained in paragraphs 4(f) and 6(A) of the petition and in the paragraphs 10.5 and 10.15 of the Solar Power Policy 2021 and; (b) Solar Projects for RPO compliance by obligated entities as contained in paragraph 4(j) and 6(A) of the petition and paragraph 14.1 of the Solar Power Policy 2021, with regard to Banking facility are in contravention of

the provisions of the Electricity Act, 2003 and the law settled by Hon'ble Appellate Tribunal.

Objection regarding Banking charges

- v. Order No. 3 of 2020 dated 8.05.2020 provides that there is no banking charge. However, it is proposed to introduce in the solar power policy 2021 of the State which is against the provision of law. The banking charges stated in para 10.12 and 10.15 of the Solar Policy 2021 and para 4(f) and para 6(A) of the petition for the Solar projects set up by demand based consumer under captive use, are not based on the data, documents, evidence, justification and also exorbitant and without any study and need not be allowed.
 - The solar power consumed is proposed to be treated as power banked is absurd. The banking charges is a matter of tariff determination which falls within the jurisdiction of the Commission and it cannot be the subject matter of the Policy. The Solar Power Policy 2021 unjustly discriminates among different types of solar power projects. No or minimum banking charges should be levied since such levy would be counter productive and detrimental to avowed objective of law and State Policy. The banking charges are required to be determined scientifically in accordance with the principle for tariff determination and not on ad-hoc basis. The petitioner is required to carry out detailed study and submit the report consisting of supporting data for such charge for consideration of the Commission as well as other stakeholders. The study for banking facility and charges be conducted to evolve equitable, fair and reasonable principle before levy of banking charges. The banking charge should be nominal and the same are on banked units and cannot be on ad-hoc basis. There is no material working or breakup or cost, detail, study or analysis as submitted in support of the banking charges.
- vi. The Objectors have relied on the following Judgements:
- 1) Tamil Nadu Spinning Mills Association Vs. TNERC & Others in Appeal No. 191 of 2018 dated 28.01.2021.

- 2) Fortune Five Hydel Projects Pvt Ltd. Vs KERC in Appeal No. 42 of 2018 dated 29.3.2019.
 - 3) MSEBCL Vs MERC & Others reported in 2014 SCC Online APTEL 166.
- vii. Some of the objectors have contended that no banking facilities should be provided to solar generators. If the banking facilities are permitted, then the same would be linked with FPPPA charge. Burden of banking energy and its adjustment cost should not be passed on to general category of consumers. The banking energy and utilization affect the power procurement of the licensee on real time basis. It affects the real time scheduled energy generation/procurement of energy carried out by the licensee and reflect as deviation in scheduled energy and actual procured energy, generation cost of energy, fixed cost of the power procurement etc. from generating company and reflect as part of FPPPA and major burden of such cost shall be on other consumers. Similarly, banking energy also leads to less recovery from cross-subsidization received as a part of tariff from such consumers who set up Solar Power Project and it impacts on general category of consumers. Moreover, stranded cost of the generation, transmission and distribution network also gets passed on the general category of consumers who do not avail benefit of the solar energy or banked energy.
- viii. The banking charge be kept lowest as promotional measure. The banking period for demand based LT industries and EHV/HT industries may be provided on billing cycle/monthly basis.

Wheeling and other charges:

- ix. The wheeling charge and losses for captive solar power project stated in para 10.11 and 10.15 of Solar Power Policy 2021 and para 4(f) and 6(A) of the present petition be dropped. Levy of 100% transmission charge and wheeling charge and losses on captive consumer is against the legislative provision to promote the renewable energy generation through solar power project. The Commission in its Order dated 8.5.2020 has decided the wheeling charge and losses @ 50%

applicable for captive use as a concessional measure to boost the generation and consumption of solar power. Levy of transmission charge/ wheeling charge on capacity basis leads to payment of hefty transmission charge.

- x. The objectors have also contended that there is no provision in the Order No.3 of 2020 regarding incorporation of the provisions of the Policy as requested in the present petition. There is no mention that under which provision of law the petition is filed for amendment in the regulations. The Commission may issue discussion paper and invite comments and after hearing the parties pass appropriate order.
- xi. The Discoms be directed to give necessary clearance for all the projects which are registered before publication of Gujarat Power Policy 2021. Necessary time should also be given to complete the formalities of such projects. They shall not be governed by the Solar Power Policy, 2021.
- xii. The objectors have contended that clause 9.4.1 of the Policy provides that surplus energy generated from residential consumers will be purchased by the distribution licensee at Rs. 2.25 per unit for the first five years from the date of commissioning of the project and after that at 75% of the average rate discovered by DISCOM for non-park based solar projects. The objectors have contended that the distribution licensee shall pay additional 20 paise per unit as per the Government Policy for distributed solar generation projects wherein the additional 20 paise benefit is given to the generators with consideration of saving in transmission and distribution losses and transmission and distribution network. No discrimination be allowed for payment of surplus energy, if any, available and supplied by the generator/consumer. There is no logic behind allowing surplus power purchase at 75% of GUVNL bid rate.
- xiii. Clause 10.5 of the Policy states regarding set-off of energy generated from captive generating plant set up by HT/EHV consumers be carried out between 7 hours to 18 hours of the same day and the surplus energy, if any, available be purchased by the licensee as per the tariff rate stated in the Policy. Clause 10.6 of the Policy

states that the captive generating plant set up by LTP demand based consumers be also given set-off of energy between 7 hours to 18 hours basis in the billing cycle. The surplus energy be purchased at the rate specified in the Policy is against the monthly billing cycle base set-off given in earlier Order/Policy. There are no supporting data, analysis and its financial impact on stakeholders is given. There is no logic for such change. Moreover, no technical parameters of meter are taken into consideration.

- xiv. The banking charges proposed will recover only part of the additional cost implication on distribution licensee for keeping equivalent additional conventional generation capacity available. The Petitioner is required to clarify whether the unrecovered cost will be compensated by way of subsidy under Section 65 of the Act or the same is to be borne by other consumers. It will give rise to new level of cross subsidy which is against the provisions of the Act.
- xv. The objectors have submitted that there is multi-fold increase in levy of various charges like wheeling charge, losses, Cross Subsidy Surcharge, Additional Surcharge, etc. under Solar Power Policy -2021 which would have detrimental effect on the viability of solar power project. The Commission may not allow the same.
- xvi. It is objected that amendment of the Order No.3 dated 08.05.2020 prior to expiry of the control period should not be permitted as control period stated in the Order from the date of order i.e. 8.05.2020 to 31.03.2023. Therefore, the order if any passed in the present petition shall be prospective and not retrospective. The amendment, if any, cannot be made prior to 31.03.2023. The Commission does not have any power of Amendment of its own Order dated 08/05/2020 in this manner.
- xvii. The petition is time barred as it is not submitted within 60 days as per provision of Clause-72 of GERC (Conduct of Business) Regulations, 2004 read with Section 94 of E.A.2003 and as per Rule 1 Order 47 CPC.

- xviii. The Commission may grant any relief keeping in view the spirit of the Act and may pass any order in the interest of justice and consumers.
- xix. The criteria for qualifying as captive generating plant specified in the policy and as desired by the Petitioner as part of the Commission order in amendment of order No. 3 of 2020 dated 8.05.2020 and amendment in net metering regulations is in contravention of provisions of the Electricity Rules, 2005 and provisions of Electricity Act, 2003. Hence, the same may be rejected.
- xx. The existing projects which are registered with GEDA and under construction be allowed to commission under old policy i.e. Gujarat Solar Power Policy 2015 and Order No. 3 of 2020 dated 08.05.2020 and the benefits of the said policy be extended for further 6 months or 1 year.
- xxi. The Solar Rooftop Projects, ground mounted projects affect the network, transformers and other equipment and licensee is required to strengthen the network/transformers/equipment and the cost of the same is burden on general category of consumers which should be avoided and the same may be recovered from such projects developers.
- xxii. It is further contended that the Commission shall carry out investigation under Section 128 of the Electricity Act, 2003 by deputing of GERC senior technical officer/engineer along with GUVNL officials to verify the truth, so that consumers can be saved from paying highest Solar tariff for the illegal excess production by way of CUF by increasing solar power plant capacity by the project developers either by replacing old modules or by increasing module capacity than they are entitled. The details from GEDA are required to be called for so that the truth can be verified, when such solar power plant under Rs. 15/unit or Rs. 12/unit under first tariff orders were commissioned.
- xxiii. The Electricity (Rights of Consumers) Rules, 2020 has been notified by the Ministry of Power under Section 176(2)(z) of the Electricity Act, 2003 on 31st December, 2020 and same has come in force from the date of its notification. The

Consumer Rules notified by the Central Government inter alia contains a provision for restriction of net metering facility upto 10 kW loads and mandates gross metering facility for loads above 10 kW. However, in the present petition, the Petitioner has not given any consideration to the Rights of Consumer Rules. In this background, the Commission is requested to give due consideration to the Consumer Rules while deciding this matter for carrying out any amendment. This will help to avoid multiplicity of proceedings and litigations.

- xxiv. The Commission as a regulator has wide powers. In past also, considering overall interest of all stakeholders, the Commission has taken a view at variance to the Policy notified by the Government.
- xxv. The Solar Power Policy 2021 permits consumers to set up solar projects irrespective of sanctioned load/contract demand. This will result in higher surplus unit generation and issues of transformer overloading etc. It is necessary to bring changes for restriction of capacity upto Sanctioned load for the entire life of the project along with energy accounting on real time basis. Allowing capacity above sanction load/ demand is akin to situation wherein gains are privatized by the developer of Solar installations at the cost of other consumers in terms of benefits/ incentives available under the scheme.
- xxvi. The adoption of intra-state ABT and DSM Mechanism in the State has resulted in tightening of the deviation norms leading to condition that banking facility for a limited period also has financial implication on the distribution licensee. The banking facility may not be provided and energy accounting be carried out in 15 minutes time block basis at par with other open access consumers.
- xxvii. The non-recovery of wheeling charges and losses have implication on other consumers. The Policy provides for 50% of wheeling charges and losses on wheeled energy for Captive consumers and exemption from additional surcharge and in third party sale, 50% concession in cross-subsidy surcharge and additional surcharge. The open access allowed for renewable energy should be restricted

upto contract demand/sanctioned load. The consumers are wheeling the renewable energy for commercial consideration, therefore, they should be treated at par with other open access consumers and no concessional benefit of wheeling charges and losses and benefit in the cross-subsidy surcharge and additional surcharge be given to such consumers.

- xxviii. The Commission should provide discretion to the distribution licensee to purchase surplus power from RE projects set up under captive / third party sale and not mandate to procure such energy.
- xxix. The petitioner has made contradictory submission that the cost of solar power generation is declining due to economies of scale and technological advancement and therefore linked the cost of surplus energy injection with bid discovered tariff and on other end the petitioner has proposed increase in the rate of surplus energy from Rs. 1.50 per unit / Rs. 1.75 per unit to Rs. 2.25 per unit.
- xxx. There have been instances where consumers have installed additional solar capacity without taking prior approval of Distribution licensee. This creates multiple issues in terms of safety etc. Thus, there is a need to create necessary penal mechanism to create deterrence u/s 126 of the Act.

6.1. The petitioner has denied the objections and submitted further as under:

- i. The Petition is admissible and maintainable and the Commission has jurisdiction to amend the order No. 3 of 2020 dated 08.05.2020 and the net-metering regulations as per the provisions of the Act. The same has been held by Hon'ble Supreme Court and APTEL in many cases.
- ii. The pre-publication is required only in case of amendment in the net-metering regulations. As far as amendment in Order No. 3 of 2020 dated 8.05.2020 is concerned, all formality of amendment has been carried out in accordance with provisions of the Act. Therefore, in case of amendment in the Order, there is no requirement for pre-publication. Further, process of

invitation of comments and suggestions, hearing of the objectors and consideration of their submissions etc. have been carried out.

- iii. The banking charge proposed in the policy is with consideration of the variance in the generation available from the solar power projects as it is infirm in nature. Moreover, the banking time, its rates etc. are considered as the promotional aspects like the removal of ceiling to set-up solar power plant as 50% of capacity to unrestricted capacity by removal of cap without consideration of sanction load etc. The impact of banking on licensee and other general category of consumers and relevant detailed justification and data are made available. The banking time, facility and charges are in general public interest.
- iv. The Judgment referred to by the objectors are distinguishable and not applicable in the present case. The facts of the aforesaid cases are different and distinct than the present case. In the aforesaid cases it is held that the banking charge are leviable. The charges decided by the Government in the policy is with consideration of public interest and considering the impact of the solar generation on the tariff of the licensee.
- v. The provisions for 100% equity in the captive generating plant and 100% consumption of such energy by the group captive members are provided in the policy as a beneficial measure. It is incorrect to say that the aforesaid provisions are in contravention to the provisions of the Electricity Act, 2003 and Rules while ignoring the other benefits being passed on to the solar generators. The Policy has to be taken into its entirety and therefore if the solar generators are not governed by the provisions of policy so far as 100% equity and ownership by the project developers and 100% consumption in proportion and are still eligible for other benefits of the Policy cannot go together.
- vi. Regarding the contention of objectors that the projects which are not commissioned under old policy though they have either registered with GEDA or started work be given six months or 1-year time, the Commission may decide with consideration that the Govt. of Gujarat Solar Power Policy

2021 has come in to force on 29.12.2020 and Electricity (Rights of Consumers), Rules 2021 has come in to force from 31.12.2020.

- vii. The Cross subsidy surcharge, Additional Surcharge, transmission charges and wheeling charges and losses are determined by the Commission in its tariff orders and they are applied to the open access customer. When open access benefit is availed by the solar generators/consumers, they are also liable to pay it depending on their status as captive consumer or procurer under third party sale.
- viii. The banking charges are different and distinct from aforesaid charges i.e. Cross Subsidy Surcharge, Additional Surcharges, Transmission charges, wheeling charges. The banking charge is determined by the Commissions and Hon'ble APTEL has also recognized it.
- ix. The solar power projects are set up by the solar project developers for self-consumption of energy or sale to third party as per their commercial interest. The same is not set up for sale to the licensee. There is no PPA with the licensee for sale of surplus power, if any, available after set-off. The price for surplus energy is specified in the policy with consideration of promotional measure at the rate of Rs. 2.25 per unit initially for 5 years of the projects commissioning and thereafter 75% of competitive bidding rate. The aforesaid rate is provided as promotional measure to protect the interest of the solar generators. Similarly, the banking charge provided in the policy is to protect the interest of general consumers against the exploitation from the incremental cost of the power procurement by the licensee due to allowing banking facilities.
- x. The Government Policy has been notified with consideration of the consultative method and also in public interest. Hence, it is required to give effect when any person desires the benefit of the policy and it has also to be considered the applicability of other provisions of the policy.

7. We have considered the submissions of the parties. We note that the present petition is filed by the petitioner for amendments in the Order No.3 of 2020 dated 8.5.2020

and Amendments in the Net – Metering Regulations notified by the Commission on the ground that the Govt. of Gujarat has notified the Gujarat Solar Power Policy 2021 vide G.R. No. SLR/11/2020/77/B1 dated 29.12.2020. The said policy has come into force from the date of its notification, i.e. from 29.12.2020 and shall remain in force upto 31.12.2025. The policy consists of various provisions like removal of ceiling of capacity for installation of solar rooftop projects, allowing third party to set up solar power plant and supply energy to the consumer, applicability of different charges, benefits/ concessions, energy accounting mechanism for different consumers etc. The various provisions of the policy are inconsistent with the provisions of the existing solar order No.3 of 2020 dated 8.5.2020 and Net Metering Regulations. Hence, the present petition is filed by the petitioner to give effect of the Govt. Solar Policy 2021 in the Solar Order No. 3 of 2020 dated 8.05.2020 and net metering regulations, 2016.

7.1. During hearing, the Petitioner has made the following further submissions:

- (i) The order No. 3 of 2020 dated 8.05.2020 is a tariff order under the provisions of the Electricity Act, 2003. It consists of commercial terms and conditions similar to tariff orders. It has implications on tariff. It is not an order passed by the Commission in adjudication proceedings between parties which attains finality and cannot be modified except under Appeal or Review.
- (ii) The Commission has jurisdiction to issue tariff orders and to amend it.
- (iii) Hon'ble Supreme Court has in case of UP Power Corp. Ltd. vs. National Thermal Power Corp. Ltd. reported in (2009) 6 SCC 235 held that the Commission has power to revisit the tariff order and make amendment, alteration and addition in regards to tariff.
- (iv) The order dated 8.05.2020 has been passed with consideration of solar power policy 2015 issued by Govt. of Gujarat and amendments made in it from time to time. Hence, when there is an amendment to policy there is no bar for the Commission to consider the same for amendments and incorporation in the tariff order.
- (v) There cannot be bar on issuance of policy by the Government and issue of order by the Commission. Hence, the amendment of policy by the

Government or issuance of order by the Commission on tariff framework and commercial terms cannot be barred.

7.2. We have heard Ms. Ranjitha Ramachandran, Ld. Advocate for the Petitioner and also heard Ld. Advocates Ms. Deepa Chavan, Ms. Amrita Thakore, Shri Paritosh Gupta, Shri Purohit appearing on behalf of their respective clients and other individuals/representatives appearing on behalf of their respective company or associations or in individual capacity at length and also considered their written submissions.

7.3. It is argued that the present petition is not maintainable on the following grounds:

- That Gujarat Solar Power Policy, 2021 is not binding on the Commission which is a statutory body and amendment in the Order no.3 of 2020 which is tariff order passed by the Commission and Net Metering Regulations notified by the Commission is not permissible. The policy is not statutory policy under the Act and it is not binding to the Commission.
- The Order No. 3 of 2020 dated 8.5.2020 has been passed by the Commission under Sections 61 and 62 of the Act. The procedures for passing tariff order is stated in Section 64 of the Act. While the present petition is filed under Section 86 of the Act and not under Sections 61, 62 and 64 of the Act and the same is not maintainable.
- The prayers sought in Petition are generic and general in nature. The petition does not contain any provisions under which it is filed and there is no substantiation or justification and evidence in support of seeking implementation of certain aspects of the Solar Policy.
- The Petitioner has not mentioned which provisions of Order and Regulations need to be amended.
- The Commission has no power to amend it's own tariff order after passing the order as the Commission becomes functus officio.
- Tariff fixation/determination of tariff is purely function of the Commission and the same be decided by the Commission based on justification, data, evidences etc. The petitioner shall require to provide the data/technical study analysis etc.

in support of the same. Without this, the petition is a vague petition and it cannot be allowed.

- The proposed Amendment does not fulfill the criteria of even Review of the Order as per Rule 1 Order 47 of CPC- 1908 i.e. error apparent, etc. and therefore be dismissed in limine.

7.4. Ld. Advocate appearing on behalf of Torrent Power Ltd. has argued that the present petition is not maintainable as the Petition is filed under the guise of the Gujarat Solar Power Policy 2021. It is further argued that the aforesaid policy is not stating under which provision of law the policy is notified by the Government. Section 3 of the Electricity Act provides for notification of policy by the Central Government under the Act. There is no provision in the Act which empowers the State Government to notify the policy. Even if the Government notifies a policy, it is required to specify the applicable provision of the Act in the policy. Further, even though the Central Government has notified the National Electricity Policy and Tariff Policy under Section 3 of the Act, which are statutory in nature, the policies made under Section 3 of the Act are not binding to the Commission and are only guiding in nature.

7.5. In support of the aforesaid contention, reliance is placed on the decisions of the Hon'ble APTEL in (i) Maruti Suzuki Vs. HERC in Appeal No. 103 of 2012 reported in 2015 (SCC) APTEL 127 and (ii) Polyplex Corporation Ltd. Vs. HERC in Appeal No. 41, 42 and 43 of 2010.

7.6. It is further submitted that the Petitioner has not specified what is the source of Government Policy 2021. The policy needs to be seen with consideration of provisions of Electricity Act, 2003.

7.7. Referring to prayer clause 19 of the Petition it is submitted that the aforesaid prayer is vague and not specific with regard to which parts of the order No. 3 of 2020 dated 08.05.2020 and which clauses of the Net Metering regulations are required to be

amended. In absence of the same, how the Commission will decide which are the provisions of the order and/or regulations that need to be amended.

- 7.8. It is also argued that the solar rooftop projects impact the distribution network, transmission network, transformer etc. The cost of system upgradation would be passed on to other consumers which qualifies as cross subsidization. However, the Petitioner has not responded to the aforesaid questions.
- 7.9. It is argued that the contention of the Petitioner that submission of TPL is beyond the scope of the petition is incorrect because the aforesaid contention of TPL, which is a distribution licensee, is directly connected with the subject matter of the present petition wherein the petitioner has sought an amendment in the Order dated 8.5.2020 and Net Metering Regulations wherein the subject matter is with reference to the cost incurred by the licensee due to various grounds which need to be factored.
- 7.10. It is further argued that the petitioner's contention that the Government has notified Gujarat Policy under its Sovereign Power and it is binding to the Commission is incorrect and not valid. The Sovereign Power is available with Central Government which has notified Tariff Policy and Electricity Policy under Section 3 of the Act which are also guiding factor for the Commission while deciding the matter. In support of the above reliance is placed upon the decision of the Hon'ble Supreme Court in case of *State of U.P. Vs. Jai Bir Singh, (2005) 5 SCC 1*.
- 7.11. In response to above, Learned Advocate Ms. Ranjitha Ramachandran on behalf of the Petitioner has argued that the present Petition is filed by the Petitioner as per the direction of the Government of Gujarat to approach the Commission for amendment in Order No. 3 of 2020 dated 08.05.2020 and net metering regulations, 2016 notified by the Commission with consideration of the provision of Gujarat Solar Power Policy 2021 which has come into effect from 29.12.2020 and shall remain effective upto 31.12.2025. The Commission has power to amend the Order and Regulation as per the provision of law. The petition is admissible and maintainable. She made following submissions:

- i. The Commission has the power to amend the orders providing tariff framework and other aspects and to amend Regulations. The Petition has been filed to seek changes so as to align the Order and the Regulations to the Solar Policy 2021 published by the Government of Gujarat which was issued subsequent to the Order. There cannot be any bar to the Petitioner to file a petition before the Commission to seek amendments.
- ii. The Order No.3 dated 08.05.2020 is a tariff Order issued under the provisions of the Electricity Act, 2003. Any order providing commercial terms would have to be considered similar to tariff orders. The tariff orders are not orders passed in adjudication of disputes between parties which are final and binding and can be modified only in Appeal or Review.
- iii. The Commission has jurisdiction to issue Tariff Orders as well as to amend them. It cannot be that the Commission may issue orders but has no power or jurisdiction to amend the order despite the circumstances necessitating such amendment.
- iv. For amendment of tariff orders, the procedure required to be followed is similar to the procedure followed for notification of tariff order. The Commission has already directed to issue public notice for the proposed amendments and objections/comments have been invited and the Commission has followed the same procedure and therefore the Commission can pass the amendments to the Order No. 3 of 2020 dated 8.05.2020.
- v. The Order dated 08.05.2020 had been passed after consideration of Gujarat Solar Power Policy 2015 as well as amendments notified by the Government of Gujarat as noted in Para 1.1 of the Order. In the said Order, the Commission has further considered the specific amendments for Small Scale Distributed Solar PV Power Projects, MSME Manufacturing Enterprises and SURYA Gujarat. The Commission had considered various provisions of Solar Policy while determining the terms and conditions for the Solar Power Projects. The Gujarat Solar Power

Policy is also a policy decision of the Government of Gujarat issued in public interest.

- vi. The Order dated 08.05.2020 has been passed considering the Solar Power Policy issued by Government of Gujarat. When there is an amendment to the Policy, there is no bar to the Commission to consider the amendments and incorporate the same in the Tariff Order.
- vii. Even otherwise, there cannot be any estoppel against statute/law. The jurisdiction or power of the Government to issue Policy or the Commission to issue orders cannot be barred. Therefore, the issuance or amendment of Policy by Government of Gujarat or issuance of Orders by Regulatory Commission on Tariff framework and commercial terms cannot be barred.
- viii. The Petition has been filed under Section 86 which includes Section 86(1)(a) and 86(1)(b) related to tariff, 86(1)(e) related to promotion of renewable energy as well as “other applicable provisions of the Electricity Act” which would include Section 62 and 64. In any case, non-mentioning of a provision of law or wrong mentioning of provision of law in the Petition does not take away the power of the Courts/Commissions/Tribunal and if the Court otherwise has powers, merely because the provision has not been mentioned in the Petition would not be ground to reject the prayer. In fact, even when the Court has erroneously mentioned the wrong provision of law, the order would not be set aside so long as the Court has power. In support of aforesaid submission, the petitioner relied upon following judgements:
 - a. P.K Palanisamy v N. Arumugham and Anr (2009)9 SCC 173
 - b. PruthvirajsinhNodhubha Jadeja v. Jayeshkumar Chhakaddas Shah (2019) 9 SCC 533

- ix. Further the amendment of Tariff Order is recognized in Sections 62 (4) and 64(6) of the Act.
- x. The Hon'ble Supreme Court has upheld the amendment in tariff orders passed by the Commission in following cases:
- I. UP Power Corporation Limited v. National Thermal Power Corporation Limited [(2009) 6 SCC 235]
 - II. Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited and Another [(2017) 16 SCC 498].
 - III. Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited and others [(2016) 8 SCC 743].
- xi. The Hon'ble APTEL has also in following cases upheld the aforesaid principle and upheld that the amendment in tariff order is permissible:
- I. M/s. Fortune Five Hydel Projects Pvt. Ltd V. Karnataka Electricity Regulatory Commission & Ors. Appeal No. 42 OF 2018 & IA No. 214 of 2018, Judgment Dated 29.03.2019. In the above case, the issue was with regard to the banking terms and conditions and the Hon'ble Tribunal had upheld the right of the State Commission to revise such terms and conditions.
 - II. Balasore Alloys Ltd. v. Odisha Electricity Regulatory Commission, 2014 SCC OnLine APTEL 180.
- xii. Further it is argued that the Hon'ble Supreme Court has in Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited and others (2016) 8 SCC 743, considering Section 86(1)(b) and Section 64 recognized that there must be flexibility and there may be a review of tariff. The Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited and Another reported in (2017) 16 SCC 498 relying on the above held that the power is conferred on the Commission with regard to fixation of tariff for the electricity procured from the generating companies or amendment thereof in the given circumstances.

8. Shri Kirtikumar Shah has re-submitted his objections as stated earlier and reiterated that the petitioner has not disclosed any extraordinary development which has forced the petitioner to ask for the amendments in the Tariff and there is lack of factual matrix, like total number of solar generators, capacity of solar power plants, plant load factor, actual units generated etc. Moreover, the petitioner has come for introducing banking, its method, duration and charges for which discussion papers and factual matrix are necessary. The petitioner seems to be avoiding mentioning the provisions of law as it is not having any ground for filing this petition. Further, by amendment in the solar tariff order, the whole scenario of solar generator will be changed with introduction of banking charges on consumption of solar power and the corporate investments will be shifted to other States. That no documentation regarding consultation is made available in public domain for bringing new Policy. That banking charges on consumed units will create major hurdle in the development of solar generators. Banking charges can only be for the units banked. Banking charge is in fact cross subsidy charge.

Commission's analysis

9. The Commission passed order No. 3 of 2020 dated 8.5.2020 under Sections 3(1) 61(h), 62 (1)(a) and 86 (1)(b) and (e) of the Act read with National Electricity Policy, 2005, Tariff Policy, 2016 and Gujarat Solar Power Policy 2015 and amendments made in it. The said order was passed by the Commission after publishing Discussion Paper and inviting comments and suggestions from the stakeholders and considering the objections and suggestions of the stakeholders.
- 9.1. The Commission has also passed Suo-Motu Order No. 6 of 2020 dated 5.8.2020 in Order No. 3 of 2020 dated 8.5.2020. The said Suo-Motu Order has been passed by the Commission amending certain provisions of Order No. 3 of 2020.
- 9.2. The Commission has also notified GERC (Net Metering Rooftop Solar PV Interactive Systems) Regulations No. 2016 under Sections 61, 66, 86(1)(e) and 181 of the Electricity Act, 2003 and amendment in it from time to time after following

due process of law i.e. pre-publication, inviting comments and suggestions from the stakeholders/objectors, public hearings etc.

The relevant portion of Sec.86 is reproduced below:

“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(a) *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) *regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

(c) *facilitate intra-State transmission and wheeling of electricity;*

(e) *promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;”*

9.3. Section 86 states functions of the State Commission. Section 86(1)(a) provides for determination of tariff of generation, transmission, supply and wheeling of electricity and also for the whole sale, bulk or retail tariff by the Commission. The proviso of said section provides that the Commission shall determine the wheeling

charges and surcharges payable by the consumers in case of procurement of power under open access under Section 42 of the Act.

- 9.4. Section 86(1)(b) states regarding procurement of the distribution licensee consisting of quantum of power, its price and agreement, by the Commission.
- 9.5. Section 86(1)(c) states that the Commission shall provide facilitation of intra-state transmission and wheeling of electricity on transmission/distribution network through open access.
- 9.6. Section 86(1)(e) states about the promotion of co-generation and generation of electricity from renewable energy sources by way of providing connectivity with grid, sale of electricity to any person and specify the procurement of RE as a part of total consumption by the consumer situated in the distribution licensee area.
- 9.7. We note that in the Electricity Act 2003 there are two routes for tariff determination- (1) under Sections 61, 62 and 64 of the Act wherein the Commission determines the tariff of generating company, distribution licensee, transmission company and whole sale and retail tariff, and (2) under Section 63 of the Act wherein the tariff discovered under the Competitive Bidding Process carried out by distribution licensee under the competitive bidding guidelines issued by the Central Government are adopted by the Commission. Thus, the aforesaid provisions empower the Commission to determine the tariff under the Act.
- 9.8. The Order dated 08.05.2020 issued by the Commission for tariff framework for procurement of power by the Distribution Licensees and others from Solar Energy Projects and other commercial issues, which is a Tariff Order issued/passed under Electricity Act, 2003. Further Order No. 6 of 2020 dated 05.08.2020 was also passed by the Commission with certain amendments in Order No. 3 of 2020 dated 8.05.2020. The said tariff order consists of other commercial terms and conditions like transmission, wheeling of energy, its charges and losses, Cross Subsidy Surcharge, Additional Surcharge, security mechanism, energy accounting, project set up under REC, non-REC mode etc. which have implication on tariff. These are

not orders passed in adjudication of disputes between parties which are final and binding and can be modified only in Appeal or Review.

- 9.9. Further the Petitioner has contended that the amendment of Tariff Order is recognized in Section 62 (4) and 64 (6) of the Act. Therefore, the same are necessary to be referred and are reproduced below and dealt by the Commission:

62. (Determination of tariff):

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

In the aforesaid provision, it is provided that the tariff or its part may not ordinarily be amended more frequently than once in any financial year except in respect of fuel surcharge as per the formula specified by the Commission.

.....

64. (Procedure for tariff order):

(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

This section provides that the tariff order shall remain in force till the period specified in it, until such order is amended or revoked.

- 9.10. We further note that the Hon'ble Supreme Court in UP Power Corporation Limited v. National Thermal Power Corporation Limited [(2009) 6 SCC 235] upheld as under:

“21. Power and/or jurisdiction of the Central Commission to frame tariff and/or carry out revision thereof is not in dispute. It is in fact well settled that the Central Commission has the exclusive jurisdiction to frame not only tariff but also any amendment, alterations and additions in regard thereto.

.....

35. Revision of a tariff must be distinguished from review of a tariff order. Whereas Regulation 92 of the 1999 Regulations provides for revision of tariff,

Regulations 110 to 117 also provide for extensive power to be exercised by the Central Commission in regard to the proceedings before it.

.....
40. Regulations 92 and 94, in our opinion, do not restrict the power of the Central Commission to make additions or alterations in the tariff. Making of a tariff is a continuous process. It can be amended or altered by the Central Commission, if any occasion arises therefor. The said power can be exercised not only on an application filed by the generating companies but by the Commission also on its own motion.

.....
46. The concept of regulatory jurisdiction provides for revisit of the tariff. It is now a well-settled principle of law that a subordinate legislation validly made becomes a part of the Act and should be read as such.”

In the aforesaid decision Hon’ble Supreme Court held that the Commission has power to amend the tariff order as the tariff determination is a continuous exercise.

- 9.11. We note that the Hon’ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited and others [(2016) 8 SCC 743] has considering Section 86(1)(b) and Section 64 recognised that there must be flexibility and there may be a review of tariff. The Hon’ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited and Another [(2017) 16 SCC 498] relying on the above held that the Commission has power under Section 62 (4) and Section 64 (6) of the Act to amend the tariff order. The relevant para of the said order is reproduced below:

“31. Having referred to the above decisions, we shall now make an independent endeavor to analyse the present case in the context of factual matrix and the relevant statutory provisions. An amendment to tariff by the Regulatory Commission is permitted under Section 62(4) read with Section 64(6) of the Act. Section 86(1)(a) clothes the Commission with the power to determine the tariff and under Section 86(1)(b), it is for the Commission to regulate the price at which electricity is to be procured from the generating companies. Section 86(1)(e) deals with promoting co-generation and generation of electricity from renewable energy. Therefore, there cannot be any quarrel with regard to the power conferred on the Commission with regard to fixation of tariff for the

electricity procured from the generating companies or amendment thereof in the given circumstances.”

- 9.12. We further note that Hon’ble APTEL in case of Balasore Alloys Ltd. v. Odisha Electricity Regulatory Commission, [2014 SCC Online APTEL 180], has upheld that the Commission has power to amend the tariff under Section 62(4) of the Act. The relevant portion of the said order is reproduced below:

“27. Section 62(4) of the Electricity Act, 2003 provides that no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. In the present case, the State Commission has amended the tariff once during the FY 2012-13 by the impugned order dated 23.8.2012. The State Commission has also given reasons for the amendment.

28. This Tribunal in O.P. No. 1 of 2011 dated 11.11.2011 has also held that the State Commission has power to initiate tariff proceeding suo-motu.

29. We feel that the impugned order is not a review order but an order to amend the tariff during the course of the FY 2012-13. The State Commission has not amended the tariff from the effective date of the original order dated 23.3.2012 i.e. 1.4.2012 but has made the amended tariff applicable subsequently w.e. from 1.7.2012. Thus, as per the impugned order, the ‘Take or Pay’ Tariff as decided by the original order dated 23.3.2012 would remain in vogue from 1.4.2012 to 30.6.2012.

30. In view of above, we hold that the State Commission exercising its power to amend a part of tariff in a suo motu proceeding in the present case is perfectly legal.”

- 9.13. The petitioner has referred to para 10.19 to 10.26 of the judgement dated 29.03.2019 of Hon’ble APTEL in the matter of M/s. Fortune Five Hydel Projects Pvt. Ltd V. Karnataka Electricity Regulatory Commission & Ors. Appeal No. 42 of 2018 & IA No. 214 of 2018, which was the submission of KERC.

- 9.14. We also note that necessary procedure with regard for issuing amendment in tariff order has been duly followed by the Commission by directing the Petitioner to issue public notice and objections/comments have been invited on the Petition and thereafter public hearing was held. During the public hearing, objectors,

respondents and the petitioner were heard by the Commission. Thus, the Commission has followed the procedure and therefore the Commission can pass the amendments to the Order.

- 9.15. We also note that the Order dated 08.05.2020 had been passed after consideration of Gujarat Solar Power Policy 2015 as well as amendments notified by the Government of Gujarat as noted in Para 1.1 of the Order. In the said Order, the Commission had further considered the specific amendments for Small Scale Distributed Solar PV Power Projects, MSME Manufacturing Enterprises and SURYA Gujarat. The Commission had considered various provisions of Solar Power Policy while determining the terms and conditions for the Solar Power Projects. The Gujarat Solar Power Policy 2021 is also the policy in public interest.
- 9.16. We also note that, when the Order dated 08.05.2020 was passed considering the Solar Power Policy issued by Government of Gujarat, when there is an amendment to the Policy, there is no bar for the Commission to consider the amendments and incorporate the same in the Tariff Order.
- 9.17. The jurisdiction or power of the Government to issue Policy or the Commission to issue orders cannot be barred. Therefore, the issuance or amendment of Policy by Government or issuance of Orders by Regulatory Commission on Tariff framework and commercial terms cannot be barred.
- 9.18. We note that the Petition has been filed under Section 86 which includes Section 86(1)(a) and 86(1)(b) related to tariff, 86(1)(e) related to promotion of renewable energy as well as “other applicable provisions of the Electricity Act” which would include Section 62 and 64 of the Act.
- 9.19. The Respondent TPL and some of the other objectors have contended that Government Policy is not binding on the Commission, which is a statutory body constituted under the Act. In support of above submission, the respondent and objectors have relied upon Judgements of Hon’ble Tribunal in the following cases:

- (i) Maruti Suzuki Vs. HERC in Appeal No. 103 of 2012 reported in 2015 (SCC) APTEL 127 and
- (ii) Polyplex Corporation Ltd. Vs. HERC in Appeal No. 41, 42 and 43 of 2010.

- 9.20. In the aforesaid decisions the Hon'ble APTEL has held that the Policy notified by the State Government is not binding to the Commission. It is only a guiding factor on the Commission while determining the tariff or related matters. The Commission is a statutory body constituted under the Act to carry out the functions assigned under the Act in accordance with law. The provisions of the National Electricity Policy and the Tariff Policy notified under Section 3 of the Act, though statutory provisions, are not binding to the Commission and they work as a guiding factor.
- 9.21. Clause 25.1 of the Gujarat Solar Power Policy provides that the Commission shall be guided by the Policy while framing the regulations and order. Thus, even the Solar Power Policy recognizes that it is guiding in nature.
- 9.22. It is also necessary to refer to the provisions of the Electricity Act, 2003 which empowers the Commission to frame the regulations which are subordinate legislation. Electricity Rules 2005 notified under the Act provides that prior to notifying the Regulations, Rules etc. it is necessary to carryout pre-publication. Section 181 of the Act provides power to the Commission to frame the regulations. Further, Section 182 provides that the regulations notified by the Commission are required to be put before the State Legislature for approval. Once the Legislature approves the regulations and they are notified, the regulations come into force as subordinate legislation and become applicable and enforceable.
- 9.23. The power to make the regulations provided to the Commission also consists of power to amend, alter or modify the regulations by following the process specified in the Act read with Rules made under it.
- 9.24. The objectors have contended that there is no mention as to which provisions of the Order No. 3 of 2020 dated 8.05.2020 and Solar Power Policy 2021 need to be amended and there is no justification given by the Petitioner. However, we note that

the Petitioner has specifically mentioned in the Petition about particular provisions of the Policy which are required to be incorporated as part of amendment in Order No. 3 of 2020 dated 8.05.2020 and Net Metering Regulations. The Petitioner has mentioned salient features of the Policy in para 4 of the Petition. In para 6 of the Petition the Petitioner has submitted that various changes/amendments in solar tariff order dated 8.05.2020 and Net Metering Regulations 2016 needs to be carried out with consideration of solar power policy 2021. Hence, the contentions of the Objectors are not correct and the same are rejected.

- 9.25. Considering the above, we are of view that the Commission has power to amend the tariff order under section 62(4) and 64 (6) of the Act, and the regulations notified by it after following the due process of law. The present petition filed by the Petitioner for amendment in the tariff Order No. 3 of 2020 dated 8.05.2020 and Net Metering Regulations, 2016 is permissible under the provisions of the Electricity Act, 2003 after due consideration on merit of the issues and after following due process of law.
- 9.26. In the present case, the process of issuance of the public notice and inviting comments and suggestions and hearing of the objectors/ stakeholders is already done. Therefore, the process of amendment of tariff is already done by the Commission. However, for Amendment in Regulations, separate process of pre-publication & others will have to be followed. Hence, the contention of the objectors & respondents that present petition is not maintainable is not acceptable.

Now we deal with other issues raised by the objectors:

D) Captive Generating Plant

10. The objectors have contended that there are contradictions between Rule 3 of the Electricity Rules, 2005 and the Solar Power Policy 2021 with respect to Captive Generating Plant and the Rules shall prevail.

11. The objectors have further contended that the equity requirement for solar power projects under captive use contained in para 4(f) of the Petition and in para 10.2 and 10.4 of the Solar Power Policy 2021 are required to be disregarded.
- 11.1. It is submitted that the aforesaid provisions provide that the captive generating plant shall qualify only where the consumer are having 100% ownership in such plant and consume 100% generation in proportion to their ownership on annual basis.
- 11.2. In contrast to the aforesaid objections, some of the objectors have submitted that ownership of CGP needs to be kept as 100% ownership and proportional consumption, and such ownership is required to be met by CGP holders. It is further contended that CGP holders shall fulfill the above criteria on annual basis and submit details with Discoms. Failure to fulfill the above criteria as specified in Solar Power Policy, 2021 shall attract Cross Subsidy Surcharge and Additional Surcharge.
- 11.3. The Objectors have contended that in case of failure to achieve captive generating power plant status in terms of ownership and consumption, they shall have huge financial impact of Cross Subsidy Surcharge and Additional Surcharge which needs to be disregarded or to be dropped or modified and aligned with the provision of law on Captive Generating Plant as contained in Rule 3 of the Electricity Rules, 2005.
- 11.4. Ld. Advocates on behalf of the Objectors have argued that there is conflict between proviso to Section 9 (2) of the Electricity Act, 2003 and Rule 3 of the Electricity Rules, 2005 with the provision of Gujarat Solar Power Policy 2021. They have submitted that the conflict arises between the policy as well as the Statutory Rules with regards to the qualifying criteria of CGP. It is also a settled law that in case of conflict between provisions of the Electricity Act, 2003 and Electricity Rules with Government Policy, the provisions of the Electricity Act and Electricity Rules shall prevail over the Policy.

11.5. Ld. Advocates have referred to the Electricity Rules, 2005 and argued that the aforesaid Rules are notified by the Central Government under Section 176 read with Section 179 of the Electricity Act, 2003. The aforesaid Rules are statutory Rules and are binding upon the Commission.

Response of the Petitioner:

11.6. In response to the above, the Petitioner has submitted that considering the representations received from various stakeholders, the Government of Gujarat has allowed for installation of Solar Power Projects with collective ownership of more than one consumer investing / holding 100% equity amount collectively. The provisions are for the benefit of solar power projects and therefore, it is requested that the Commission may allow setting up of solar power project with collective ownership of more than one consumer as provided in the Policy.

11.7. The Solar Policy provides for certain additional benefits and incentives for consumption of power from captive solar power projects and also prescribed eligibility conditions for such additional benefits and incentives under the policy. There is no bar for such prescription of eligibility conditions.

11.8. It is submitted on behalf of the Petitioner that there is not any violation of the provisions Electricity Act, 2003 or Electricity Rules 2005. The consideration of captive generating plant under Rule 3 of Electricity Rules 2005 is different and independent than the eligibility prescribed under Solar Policy and as proposed in the Petition. The Policy is not taking away any right or benefit under Electricity Act, 2003 granted to a captive generating plant within the definition of Rule 3 of Electricity Rules 2005. The Objectors have not pointed out any violations of such right or benefit but merely referred the definitions under Rules and Policy. The policy only provides that the persons who wants to register and participate in the scheme and avail benefits are required to fulfill the eligibility requirements of 100% equity and consumption as specified in policy for availing concession/benefits declared under the policy.

- 11.9. It is further submitted that the reference to Second Proviso to Section 9 is misplaced. The said provision only recognizes that a captive generator (like any other generator) can sell power to a licensee or consumer without any license. In fact, such provision is not restricted to renewable captive generating plant or even captive generating plants. Any generator can sell power to a licensee or consumer without license. However, this does not mean that any licensee or consumer is compelled to procure from such generator. Nothing in the Policy or the Petition in any manner affects the said proviso.

Commission's Analysis

12. The objectors have challenged the provision 10.2 and 10.4 of the Gujarat Solar Power Policy 2021 and para 4(f) of the Petition with regard to captive generating plant. It is necessary to refer to the same which are reproduced below:

“10.2 The use of electricity for self-consumption within the same premises or at different premises by the consumer having 100% ownership of SPS shall be considered as captive use.”

.....

“10.4 Installation of solar projects with collective ownership of more than one consumer investing / holding 100% of equity amount collectively shall be allowed. In such cases of collective ownership, the energy generated shall be allowed to be consumed by each of the consumer based on ratio of their equity in such solar project.”

- 12.1. Para 10.2 of the Gujarat Solar Power Policy 2021 as well as para 4(f) of the petition provide that when the electricity generated from solar power system is used for self-consumption within the same premises or at different premises, it shall have 100% ownership in the SPS.
- 12.2. Similarly, if solar power project is set up by more than one person with collective ownership, it requires the investment/holding of 100% of equity amount by such persons. Further, the energy generated from such project shall be consumed by each of the consumer based on the ratio of their equity/ownership in the solar project.

Thus, it is clear that if the solar power project is set up by the persons collectively, they shall have 100% ownership collectively in such project.

- 12.3. It is necessary to refer Section 9 of the Electricity Act 2003, which is reproduced below:

“Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

¹[Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of section 42.]

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.”

- 12.4. Section 9 of the Electricity Act, 2003 states that any person is entitled to set up captive generating plant for generation of electricity and self-consumption as per the provisions of Electricity Rules, Regulations framed thereunder. It is also provided that such energy generated from the plant be transmitted/wheeled at consumption place by the generator by utilizing transmission and/or distribution network open access on non-discriminatory basis. Therefore, there is no restriction

put up under the Act on CGP to set up plant and transmit and/or wheel the energy. Any restriction provided in the policy such as qualifying criteria through ownerships or minimum consumption of energy on annual basis or any other mechanism to set up captive generating plant by the person and not allowing transmitting/wheeling of energy is against the provision of Act.

- 12.5. The Electricity Rules 2005 are also necessary to be referred in this case. Hence, the same are reproduced below:

“GOVERNMENT OF INDIA MINISTRY OF POWER

New Delhi, the 8th, June, 2005

NOTIFICATION

G.S.R. 379(E). - In exercise of powers conferred by section 176 of the Electricity Act, 2003 (Act 36 of 2003), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-

2. Definitions.-

(1) These rules shall be called the Electricity Rules, 2005.

(2) These Rules shall come into force on the date of their publication in the Official Gazette.”

.....

.....

“3. Requirements of Captive Generating Plant.-

(1) No power plant shall qualify as a ‘captive generating plant’ under section 9 read with clause (8) of section 2 of the Act unless-

(a)

in case of a power plant -

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) not less than fifty one percent of the aggregate electricity generated in

such plant, determined on an annual basis, is consumed for the captive use:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the co- operative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including -

Explanation :-

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is

not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.

Explanation.- (1) For the purpose of this rule.-

a. "Annual Basis" shall be determined based on a financial year;

b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;

c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;

d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity.

12.6. The aforesaid Rules have been notified by the Central Government vide GSR 379(E) dated 8.6.2005. Rule 3(1)(a)(i) providing that the ownership of the captive generating plant under Section 9 read with clause (8) of Section 2 of the Act qualify only when not less than 26% of ownership is held by the captive user(s). Thus, the aforesaid provision provides the minimum ownership of the captive users shall not be less than 26%. Similarly, Rule 3(1)(a)(ii) provides that the captive users shall not consume the electricity not less than 51% of the aggregated electricity generated from such plant on an annual basis.

12.7. The first proviso of the said Rule provides that when the captive generating plant is set up by the Registered Co-operative Societies, the conditions for ownership and consumption shall be satisfied collectively by the members of the Cooperative Society. Thus, in case captive generating plant is set up by the Registered Cooperative Society, the ownership in the captive generating plant and consumption of energy of 51% generated from the captive generating plant shall be consumed on annual basis by the captive users collectively. It is not mandatory for

the members of the Cooperative Society to consume the electricity generated from CGP in proportion to their ownership/equity in the captive generating plant.

- 12.8. The second proviso of the said Rules provides that in case of association of persons, the captive users shall hold not less than 26% of ownership in the plant and shall consume not less than 51% of the electricity generated on annual basis in proportion to their share in ownership of the plant within a variation not exceeding 10%.
- 12.9. Rule 3(1)(b) provides that in case of generating station owned by a company, a company formed as Special Purpose Vehicle a unit or units of such generating station identified for captive use and not the entire generating station satisfy the condition of not less than 26% ownership in the plant and not less than 51% of consumption from the generating units. From the aforesaid, it is clear that the ownership of the plant of captive generating station shall not be less than 26% by the captive users.
- 12.10. Such ownership be owned by the members of Registered Cooperative Society, Association of Persons or Special Purpose Vehicle created as company. The consumption of energy generated from the captive generating plant shall be not less than 51% on annual basis. Moreover, such consumption shall be by the members of cooperative society combinedly and it is not mandated that the consumption is in proportion to their ownership in the plant. In case of Association of persons, the same may be permitted to consume the energy in proportion to their shares in the ownership of the plant, within variation not exceeding 10% in the same. Thus, in cases of such ownership of the plant, the variation in consumption is permitted with 10% with consideration of their ownership holding in the plant on annual basis. In case of Special Purpose Vehicle the aforesaid dual condition needs to be complied by the company subject to that they shall not have other business or activities. Further, if the SPV is having more than one unit, then it is permitted that a unit or units of such generating plant be declared as Captive Generating Plant.
- 12.11. From combined reading of the provisions of the Gujarat Solar Power Policy 2021 and the provisions of the Electricity Rules, 2005 notified by the Ministry of Power,

Government of India under Section 176 read with Section 179 of the Electricity Act, 2003, it transpires that there is inconsistency between the provision of Electricity Rules, 2005 and the provision of Gujarat Solar Power Policy 2021.

- 12.12. The provision for captive generating plant specified in the Gujarat Solar Power Policy 2021 notified by the Government of Gujarat is inconsistent with the provision of Electricity Rules, 2005 notified under the Electricity Act, 2003, as stated above.
- 12.13. As there is inconsistency between the provision of Electricity Act, 2003, Electricity Rules, 2005 made under it and the provision of Gujarat Solar Power Policy 2021 it is already interpreted that in case of repugnance between the Rules made under the Central Act and Electricity Rules 2005 and State Policy, the provisions of the Electricity Act, 2003, and Electricity Rules made under the Central Act i.e. Electricity Act, 2003 shall prevail over the provisions of Gujarat Solar Power Policy 2021.
- 12.14. We may note that the Gujarat Solar Policy, 2021, clause 26 provides for Mid Term Review of the Policy after a period of 2 years or as and when need arises in view of any technological breakthrough or to remove any difficulty or inconsistency with the Electricity Act, 2003 as amended from time to time. It is necessary to refer clause 26 of the Gujarat Solar Power Policy 2021 which reads as under:

“26. MID TERM REVIEW

26.1 The State Government may undertake mid-term review of the policy after a period of 2 years or as and when the need arises in view of any technological breakthrough or to remove own difficulty or inconsistency with the Electricity Act, 2003 as amended from time to time. Hon'ble Gujarat Electricity Regulatory Commission shall be guided by this Policy while framing its rules, regulations and orders.”

- 12.15. The aforesaid provision provides that in case of inconsistency with the Electricity Act, 2003 and amendment made in it from time to time the State Government may undertake the mid-term review of the Policy.
- 12.16. We are of the clear view that considering the provisions of the Electricity Act, 2003 read with the provision of Electricity Rules, 2005, the provisions made in Clauses 10.2 and 10.4 of the Gujarat Solar Power Policy 2021 which are inconsistent with the provision of Electricity Rules, 2005 do not apply so far as they are inconsistent with the provision of Electricity Rules, 2005 and in such case only the provision of Electricity Rules, 2005 shall apply.
- 12.17. Based on the above, we decide that provisions made in Gujarat Solar Power Policy 2021 with regard to ownership and consumption of Captive Generating Plants are not in consonance with the provisions of the Electricity Rules, 2005. Hence, Clauses 10.2 and 10.4 of the Gujarat Solar Power Policy 2021 are in contradiction to the provisions of the Act and the Rules and therefore cannot be accepted or made applicable to Captive Generating Plants set up under the Electricity Act, 2003 and the Electricity Rules, 2005. It is clear that the provisions of Electricity Rules 2005 and Electricity Act, 2003 shall apply to CGP set up under the Gujarat Solar Power Policy, 2021. We also decide that the provision made in Solar Power Policy 2021 with regards to the provision for Captive Generating Plant except the ownership and the consumption on annual basis are required to be kept in line with the provisions of Electricity Act, 2003 and Electricity Rules, 2005, while making amendment in the tariff orders dated 08.05.2020 and Net Metering Regulations.
- 12.18. Keeping in view the new solar policy so far as captive power generation is concerned, the CGP holders shall require to submit necessary documents with regards to fulfilment of above two criteria to the distribution licensee and Chief electrical inspector for proving captive generating station submitted by the captive generation plant to the above two authorities annually (financial year basis). Failure to prove captive generating station on annual basis with supporting documents before the distribution licensee and CEI by the owners of the captive generating

plant it shall construed as supply of electricity from the generating station to the consumer and it shall attracts the cross subsidy surcharge and additional surcharge on consumed units by the captive consumers.

13. Ceiling of Rooftop Power Projects in Net-Metering

- 13.1. The objectors have contended that the Net-Metering Regulations for Rooftop Solar Power Project may be allowed up to 2 MW capacity. The objectors have contended that the Commission has notified the Net-Metering Regulations 2016 and amendments made thereto from time to time wherein the ceiling in capacity for installation of rooftop solar power projects is kept at 1 MW. There are number of consumers whose solar rooftop installations have been kept on hold by the distribution licensees on the ground that the Electricity (Rights of Consumers) Rules, 2020 provides for ceiling of load upto 10 kW on establishment of rooftop solar power projects under Net Metering provisions. For loads above 10 kW, projects are to be considered for Gross Metering.
- 13.2. The objectors have also contended that the Solar Power Projects which are under construction prior to the Gujarat Solar Power Policy 2021 be allowed to install and commission under Solar Power Policy, 2015. Some of the objectors have submitted that the time limit extension of 6(six) months to 1(one) year may be granted for the projects which are registered with GEDA and CEI and allow them to set up and commission the solar power projects. The distribution licensees have denied the installation of rooftop solar power projects above 10 kW load capacity under net metering provision and state to install under gross metering provision is against the solar power policy prevailing at that relevant time.
- 13.3. In contrast to above, some of the objectors have submitted that Central Government have framed Electricity (Rights of Consumers) Rules, 2020 which are having statutory force and which have come in force from 31.12.2020. As per aforesaid rules solar rooftop power projects for load up to 10 kW is permissible under Net Metering. While for load above 10 kW the solar rooftop projects are permissible to be set up only under gross metering. Therefore, rooftop solar projects will be subject to provisions of above Rules & Net Metering which shall apply only to rooftop projects having capacity of

load up to 10 KW. But, for the present it is necessary to align the GERC Net Metering Regulations, 2016 with the Electricity (Rights of Consumers) Rules, 2020. Hence, load upto 10 kW rooftop solar projects to be allowed to set up under Net metering and solar projects above 10 kW load need to be set up under gross metering and accordingly Net Metering Regulations, 2016 are required to be amended by the Commission.

- 13.4. The Respondent TPL has also submitted that in the absence of the clarity or submission made by the Petitioner, if the consumers are allowed to set up the rooftop projects under net metering beyond 10 kW, the statutory Rules notified by the Central Government would become otiose.
- 13.5. TPL also submitted that the Electricity (Rights of Consumers) Rules, 2020 has come into force from the date of publication i.e. 31.12.2020 i.e. after the Order No. 3 of 2020 dated 8.5.2020 passed by the Commission. The provision of Electricity (Rights of Consumers) Rules, 2020 needs to be given effect in GERC (Net Metering Rooftop Solar PV Grid Interactive System) Regulations, 2016 to avoid multiplicity of the proceedings.
- 13.6. In response to aforesaid submissions, Petitioner submitted that the Proviso to Clause-6.2 of GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 provides that the installed capacity shall not be less than 1 kW and shall not exceed 1 MW for Net-Metering arrangement.
- 13.7. As per the aforesaid provision of GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016, the solar power project having capacity of above 1 MW & having same point of generation and consumption, shall not be granted connectivity under the provisions of GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016.
- 13.8. Further, it is submitted that as per clause 3.3 of the Regulations, the solar power project of capacity more than 1 MW having same point of generation and consumption can

only be allowed through alternative mechanism i.e. through open access under wheeling / transmission arrangement.

- 13.9. In case solar rooftop project with more than 1 MW capacity is allowed under Net-metering arrangement, in that case SLDC cannot monitor and forecast the solar generation since generated energy will be first consumed by the consumer and only surplus energy, if any, will be injected into the grid.
- 13.10. Based on aforesaid submissions, Petitioner has submitted that the solar rooftop project above 1 MW should be excluded from the Net Metering arrangement in the Commission's Regulations.
- 13.11. Regarding applicability of Electricity (Rights of Consumers) Rules, 2020, the Petitioner has submitted that the present petition has been filed as per the directive of Government of Gujarat for incorporation of provisions of Solar Power Policy, 2021 appropriately in the Order and Regulations of Commission. Therefore, the submission in relation to provision for Gross metering for load above 10 KW, as per Electricity (Rights of Consumers), Rules 2020 notified by Ministry of Power, Government of India is not within the scope of present petition.
14. We have considered the submissions made by the parties. We note that the Commission has notified GERC (Net Metering Rooftop Solar PV Grid Interactive System) Regulations, 2016 and amendments made thereto from time to time. The Clause 3.3 and proviso to Clause 6.2 and of GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016, which are relevant in this case is reproduced below:

“3.3 These Regulations do not preclude the right of relevant Distribution licensee or State Government Department/authorities to undertake Rooftop Solar PV projects above 1 MW capacity through alternative mechanisms.”

Clause 3.3 of the Regulations provides that rooftop solar project having same point of generation and consumption having capacity more than 1 MW can only be allowed

through alternative mechanism i.e. through open access under wheeling / transmission arrangement.

- 14.1. It is also necessary to refer Regulations 6.2 of aforesaid Regulations, which is reproduced below:

“6.2 The maximum Rooftop Solar PV System capacity to be installed at any Eligible Consumer’s premises shall be upto a maximum of 50% of consumer’s sanctioned load/contract demand;

Provided that the installed capacity shall not be less than 1 kW and shall not exceed 1 MW;

Provided also that the installed capacity is aligned with the provisions for permitting consumer connections as stated in the Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2015 as amended from time to time, read with the provisions of GERC (Terms and Conditions of the Intra-State Open Access) Regulations, 2011 as amended from time to time.”

- 14.2. First Proviso to Clause 6.2 provides that the installed capacity of rooftop solar project shall not be less than 1 kW and shall not exceed 1 MW for Net-Metering arrangement.
- 14.3. The GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016, notified by the Commission provides ceiling for rooftop solar power projects as 1 MW.
- 14.4. We also note that Solar Power Projects above 1 MW are governed by the GERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019. Thus, the solar projects above 1 MW are required to carry out scheduling and forecasting under aforesaid regulations and deviation settlement/energy accounting is also been carried out for such projects. We note that the solar rooftop projects are not having facilities for communicating real time data to licensee and SLDC. Therefore, the rooftop projects upto 1 MW are not governed under GERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019. The contention of

the objectors to enhance the capacity of rooftop solar project upto 2 MW is therefore rejected.

- 14.5. The Ministry of Power, GoI, upon consideration of submissions from various stakeholders has notified Electricity (Rights of Consumers) Rules, 2020 vide G.S.R. No. 818E on 31.12.2020 under Section 176 (2) (z) of the Electricity Act, 2003. The said rules have come in to force from 31.12.2020 i.e. the date of notification itself. The relevant provisions of said electricity rules are reproduced below:

“NOTIFICATION

New Delhi, the 31st December, 2020

G.S.R. 818(E).—In exercise of the powers conferred by sub-section (1) read with clause (z) of sub-section (2) of section 176 of the Electricity Act, 2003 (Act 36 of 2003), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Electricity (Rights of Consumers) Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.”

.....

...11. Consumer as prosumer.....

.....(3) The Commission shall lay down regulations on Grid Interactive Roof top Solar PV system and its related matters with timelines of not exceeding six months from the date of notification of these rules, in case the same has not been notified.

.....(4) The regulations on Grid Interactive Roof top Solar PV system and its related matters shall provide for net metering for loads up to ten kW and for gross metering for loads above ten kW.

- 14.6. Rule 11 (3) provides that the State Commission shall lay down regulations on Grid Interactive Rooftop Solar PV system and its related matters with timelines not exceeding six months from the date of notification of the rules. As such, the Commission has already notified GERC (Net Metering) Regulations, 2016.

- 14.7. Rule 11 (4) of the Electricity Rules, 2020, provides that the ceiling for the Grid Interactive Rooftop Solar PV system having ceiling of load upto 10 kW be permissible to set up under net metering and for loads above 10 kW it is under gross metering.
- 14.8. The provisions of Rules are framed by the Central Government under the Electricity Act, 2003. In view of various aspects as stated above, we decide that it is necessary to permit to set up Solar Rooftop Power projects having sanctioned load up to 10 kW under net-metering and for consumers having sanctioned load above 10 kW under gross metering in order to bring in alignment with the provision of ceiling of Rooftop Solar power projects under Net Metering Regulations for which the Commission shall undertake necessary procedure separately.
- 14.9. We also note that some of the objectors have contended that the Ministry of Power, GoI has proposed amendment in the Electricity (Rights of Consumer) Rules, 2020 by draft Rules in April, 2021 and enhanced the installed capacity of the Rooftop Solar Power Project under net metering regulations to 500 kW or above as decided by the State Electricity Regulatory Commission. Further, it is contended that the aforesaid rules states that it is the right of State Electricity Regulatory Commission to notify the regulations with regards to Net Metering and Gross Metering provisions applicable to rooftop power projects and therefore, the restriction put up by the licensee at 10 kW and above size of projects and not allowing installation and commissioning of such projects under Net Metering is illegal and arbitrary and also against the provisions of the Electricity (Rights of Consumers) Rules, 2020.
- 14.10. Per contra, the Petitioner, licensees, TPL and objector UUWA have submitted that the draft Rules of April, 2021 are merely Draft rules and they are not notified by the Central Government. Hence, provisions of the draft rules do not put any bar upon the applicability of the notified Rules.
- 14.11. We note that the aforesaid draft rules states that the Government has proposed to make amendments in Rules 11 (4) of the Electricity (Rights of Consumers) Rules, 2020 by substituting the aforesaid provisions in place of notified rules, 2020. The Ministry of Power has issued public notice and invited comments and suggestions from the

stakeholders/persons on the aforesaid proposed amendments. Since this draft rules have yet not finalised, the contentions of the objectors cannot be accepted.

- 14.12. There is no question to consider the request of the objector to enhance the rooftop solar power projects capacity to 2 MW under GERC Net Metering Regulations.
- 14.13. We decide to amend the GERC Net Metering Regulations, 2016 separately so as to be in conformity with the aforesaid issue.

Banking Charge:

15. Now we deal with the issue raised by the Objectors with regard to banking charges. We note that the Gujarat Solar Power Policy, 2021 provides that the banking charges are leviable at different rates to different categories of consumers. For MSME manufacturing units and LT Industries other than demand based consumers, the banking charges are leviable at the rate of Rs. 1.10 per unit on energy consumed. While in case of LT demand based and HT/EHV consumers, the banking charge is leviable at the rate of Rs. 1.50 per unit on energy consumed. In case of residential and solar power projects set up on Government buildings, banking charges are not applicable.
16. It is argued that the objectives of the Electricity Act, 2003, National Electricity Policy and National Action Plan on Climate Change are for promotion of renewable energy based generation, whereas the banking charges stated in the policy as well as Petition are against the provisions made in the aforesaid Act and Policies. The banking facility is allowed to consumers to consume the energy against the lower generation during lean period of solar energy generation. The banking charge requested by the Petitioner as per policy will commercially make solar projects unviable. The banking is not sole commercial transaction but it is physical support to RE generation which is infirm in nature. Banking is an essential feature to enable commercial viability of the generator supply to a consumer, captive or otherwise through open access. In absence of meaningful banking facility and charges, captive use of solar energy is not viable and it affects fundamentals of its functioning. The banking charges are restrictive in nature for installation of solar projects. The banking charge are analogues with deposit submitted

by the customer with bank where the bank provides interest on such amount. The banking charge should be nominal and the same should be on banked units.

- 16.1. TPL has submitted that the Petitioner has acknowledged that banking charges will recover part of the additional cost incurred by the distribution licensee. However, the Petitioner is required to clarify as to how will balance part of the additional cost borne by distribution company for providing banking facility be recovered. It needs to be clarified by the Petitioner that whether the unrecovered cost will be compensated by way of subsidy under Section 65 of the Act or same is to be borne by other consumers. It may further be noted if the cost is to be borne by the small retail consumers of the distribution licensee, it will give rise to new level of cross subsidy which is against the provisions of the Electricity Act, 2003. Further, intra-state ABT and DSM mechanism have been adopted in the state alongwith significant tightening of the deviation norms. Hence, banking of energy even for limited period has financial implication on the distribution licensee. Torrent Power has proposed to do away with banking and permit energy accounting on 15minute time block basis.
- 16.2. Some of the other objectors have submitted that the banking charges proposed in policy are required to be levied on all the consumers due to burden arising out of such installation being passed on to other consumers. Further, banking affects the power procurement price and quality of licensee due to infirm nature of the solar energy. It affects consumers due to incremental cost of power procurement by the licensee.
- 16.3. Some of the objectors have submitted that banking charges should be recovered from such consumers who are responsible for additional cost to licensee. Banking charges needs to be linked with FPPPA and the same is to be recovered from the consumers as banking charge.
- 16.4. The consumer interest needs to be protected by way of imposition of banking charges balancing the interest of the licensees, different group of consumers, specifically industrial and commercial consumers and other consumers having higher consumption

and who cross subsidize the group of consumers, i.e. BPL, Residential and Agriculture consumers.

- 16.5. Based on aforesaid submissions, the objectors have submitted that the proposal for levy of banking charge may be dropped/withdrawn/not considered till the Commission determine the banking charges.
- 16.6. The objector, UUWA has submitted that Banking facility would force a slum dweller to pay for the benefit of solar project developers due to under-recovery of cost. Per contra, some objectors and Respondents have supported levy of banking charges.
- 16.7. Shri Kirtikumar Shah, has in its written submission contended that the petitioner is trying to avoid submission of technical facts because considering average plant load factor of 20%, practically 1 MW plant will give 17,00,000 units per year or nearly 4600 units per day and dividing the same between solar generation hours of 7:00 to 18:00, hours, the average works out to approximately 420 units. Considering peak generation and lean generation period during the day, maximum 500 units per hour need to be consumed by the consumer, who has invested an amount of Rs. 3.50 – 3.75 crore per MW so that there should not be any unit left for banking.
- 16.8. It is further contended with regard to the submission by the petitioner that the banking facility is being provided at the cost of Distribution Licensees as the procurement of high cost / marginally high cost conventional power of higher variable charges is essentially for repatriating the return of banked energy. However, the energy given for banking is used immediately by the distribution licensee in the same area without any transmission or distribution loss as the same is immediately sold by the distribution licensee to some other consumers.
- 16.9. It is also contended that as per the petition, HT connection will have banking facility for few hours only but which mechanism can conclude cost difference of power within 11 hours.

- 16.10. It is further contended that details regarding technical capability of the energy meter at generation end and consuming end to record the generation and consumption between 7.00 hours to 18.00 hours need to be provided by the petitioner.
- 16.11. It is contended that considering capital cost for 25 KW solar plant which can generate 120 units a day of Rs.9 – 10 lac and assuming that 120 units are consumed during 11 hours per day at the rate of nearly 11 units/hour but with new proposed banking charge, the consumer has to shell out daily Rs.132 as banking charge and monthly payment will be Rs. 3,960. The normal monthly bill for 120 units/day will be nearly Rs.25,000 and considering interest cost and banking charge, the repayment cost will take more than 7-8 years making the whole project non-viable.
- 16.12. The Petitioner has in its arguments and written submissions submitted that the Solar Power Policy 2021 has provided various benefits/concessions subject to certain terms and conditions including payment of banking charges. The Government of Gujarat has notified the Policy in the public interest, after due consideration and balancing of interests. It is not open to the solar power developers to claim the application of parts of the Policy as beneficial to them and ignore the other parts.
- 16.13. The Policy has removed the cap of solar capacity which is in the benefit of the consumers/solar power project developers. However, the same would create burden on the licensees and general body of consumers and therefore it is necessary to have banking charges to compensate for the same.
- 16.14. The decision of the Hon'ble Appellate Tribunal for Electricity in case of Tamil Nadu Spinning Mills Association case, being Appeal No. 191 of 2018 and Ors., is on completely different facts. The present case is of amendment to the scheme wherein there are various concessions and benefits as well as imposition of the banking charges which overall balance the interest of the solar power project as well as licensees and consumers. In fact, even in the said case in Tamil Nadu State, there was existing banking charges and the Hon'ble Tribunal has not held the very imposition of banking charges as arbitrary or erroneous. There is no specific analysis on the banking charges though the judgment has set aside increase in banking charges along with other issues.

There is no finding that the banking charges itself is erroneous. Even in the said Order, it is noted that the Rajasthan Commission also provides for banking charges. Similarly, various other State Commission provide for banking charges.

- 16.15. There can be no dispute that the provision of banking facility has a financial impact on the distribution company and imposition of banking charges is neither unprecedented nor arbitrary. The contention that the banking helps the distribution companies are unsubstantiated and incorrect. The generation of solar power under the scheme is not for sale to the distribution licensee and such solar capacity is not dedicated to the distribution licensee under any firm PPA. The power is of infirm nature and without any consideration of the actual demand needs of the distribution licensee. The distribution licensees have no control for such power when injected into the system as surplus power on real time basis and further then be ready to provide additional supply when the consumption occurs without any corresponding generation by the solar projects. This cannot be equated in any manner of sale of dedicated solar power to the distribution licensees under PPA with solar generators.
- 16.16. The objectors themselves have referred the requirement of banking facility for their sustainability and have relied upon decisions of the Hon'ble APTEL about the same being physical support to the solar/wind generation. It cannot then be considered unreasonable.
- 16.17. Apart from the financial implication for the distribution companies, there are issues related to system operation and load/generation balancing for providing banking facility. Moreover, the benefit of banking facility is provided for entire 25 years of the project life which has substantial financial implications on the distribution companies, considering the quantum of solar capacity utilization, particularly when the cap on capacity is removed. Therefore, to balance the interest of solar power project and power system operation and general body of consumers, it is provided to allow banking facility for 7.00 hours to 18.00 hours (daily basis) for HT consumers and 7.00 hours to 18.00 hours (monthly basis) for other demand based consumers.

- 16.18. Further, under the Solar Policy, the installed solar capacity ceiling is removed allowing consumers to install solar capacity as per their consumption requirement irrespective of their sanctioned load/ contracted load. Moreover, consumers are allowed to consume generated solar energy any time during 7.00 hours to 18.00 hours basis. These are significant benefits being available under the Solar Policy enabling considerable banking qua energy consumption at 15 minutes time block.
- 16.19. The Distribution companies are required to keep equivalent generation capacity ready from conventional sources to meet the power requirement of such consumers at the time when solar generation is not available and even based on 15 minutes block. This will have additional financial implication on Distribution Companies towards keeping equivalent additional conventional generation capacity available which is having fixed cost payment liability. In addition, there is also cost implication on Distribution Companies due to backing down of conventional generation capacity to accommodate surplus solar generation when there is no/less consumption by respective consumers wheeling solar power.
- 16.20. Considering the same, in order to balance the interest of solar power projects and general body of consumers specifically when solar capacity ceiling is removed in the Policy, it is provided to levy banking charges so that part of additional cost implication can be recovered from solar power consumption and burden on the general body of consumers can be reduced to that extent.
- 16.21. The Gujarat Solar Power Policy classifies the Solar developers for incentives and promotion based on the purpose for which the Energy generated from solar projects are used. The projects for cross subsidized residential consumers have been exempted from payment of Banking Charges. The policy considers such projects to be promoted without payment of Banking Charges. Subject to the above, Solar Power projects for use of the Industrial, Commercial Institution for captive use and for third party sale are subjected to Banking Charges. These categories of consumers have significant commercial advantage in getting the Electricity from Solar Projects with banking facility in view of the price of Solar Power being significantly lower as at present and

further they get the benefit of using such Solar Power quantum throughout the day/month with banking facility without requirement of matching consumption with solar generation on real time basis. The banking facility gives the user important flexibility in planning and use of intermittent and unpredictable Solar Power as if it is consistent power reaping the benefit of the low cost solar power in the same manner as the other costlier power because of the banking facility availed.

16.22. The banking facility is being provided at the cost of Distribution Licenses as the procurement of high cost / marginally high cost conventional power of higher variable charges is essentially for repatriating the return of banked energy. Without banking facilities, the Solar Projects would have sold the economical Solar Power to the Distribution licensee and would not have been able to effectively use such solar Power for captive use or third party sale. The consideration of the extent of Banking Charges has been by reason of the salient aspects as mentioned above. Similarly, the sub classification of the industrial commercial and institution consumers for captive use or third party sale including MSME units are based on the extent of tariff applicable if the power has been taken from the distribution Licenses.

16.23. The Gujarat Solar Power Policy, 2021, unlike the situation prevalent in many other States, is not restricting banking facilities to Solar Power Projects but has provided the banking facility in a pragmatic sense by not relating to contract demand etc., enabling the increased hours of consumption and thereby use of Solar Power in a consistent basis during the time period of 07 hours to 18.00 hours. If the installed capacity ceiling is in force, then there will be no flexibility to install Solar Power Capacity of higher quantum which could generate electricity of much higher quantum during the period whereas solar generation is feasible during the day and have a flattened consumption during the period of 7.00 hours to 18.00 hours namely even during the period when there is no Solar Generation. For example, if the consumption requirement between 7.00 hours to 18.00 hours is say 120 units during the 11 hours or 44 time blocks of a day, the solar generation is for six hours only, the installed capacity of the solar power projects could be arranged in such a manner that it generates 120 units in six hours so as to consume 2.73 units of constant consumption during 44 time blocks. Thus the

Solar Policy allows such important feature which enables much better planning on the use of solar power with lesser contract demand with the distribution Licensee and offers a significant advantage to the industrial units as compared to the previous system restricting the generation capacity. The above results in considerable savings to the Industrial Units. Correspondingly, the above involves much higher banking facility being given to the industrial units to meet the above flexibility and obviously the banking charges need to be commensurate with the facility availed.

16.24. There is no discrimination and there is in fact valid classification of different categories and such classification has been based on intelligible differentia. The Hon'ble Supreme Court has recognized the valid classification for which following judgments are relied upon:

- a. State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75;
- b. Kallakurichi Taluk Retired Officials Association, Tamil Nadu and others v. State of Tamil Nadu (2013) 2 SCC 772;
- c. Murthy Match Works v. CCE, (1974) 4 SCC 428.

16.25. The Electricity Act, 2003 itself under Section 64(3) which relates to tariff of distribution licensee recognizes that there can be a differentiation on various grounds including the nature and purpose of for which supply is required.

16.26. The banking facility is only provided to certain renewable projects due to their infirm nature. This is a benefit provided to the renewable projects and recognizing the necessity of the same in case of captive or third party sale from solar projects. Such banking facility is not provided to any kind of generator except wind and solar power projects.

16.27. It is submitted that as per the provisions of the Electricity Act 2003, consumption of renewable energy is to be promoted. In the Commission's Order dated 08.05.2020 and Net-metering Regulations, there is no provision for levy of Banking Charges as a promotional measure and DISCOMs are mandated to provide banking facility on billing cycle basis. In the Solar Power Policy, 2021, in order to balance the interest of solar power projects and general body of consumers specifically when solar capacity

ceiling is removed in the Policy, it is provided to levy banking charges so that part of additional cost implication can be recovered from solar power consumption and burden on the general body of consumers can be reduced to that extent. Therefore, the issue of provision of subsidy under Section 65 of the Act does not arise.

16.28. The Intra-State ABT mechanism has been implemented in the State with effect from 01.04.2010. As per the provisions of Intra-State ABT mechanism, the energy accounting is carried out on 15 minute time block basis. However, considering the infirm nature of the solar generation, the banking facility has been provided for consumption of solar power in the policy under which the consumer is allowed to consume generated solar energy anytime during 7.00 hours to 18.00 hours for demand based consumers and billing cycle basis for other consumers instead of 15 minute time block basis as required under ABT mechanism. Thus, energy accounting provisions other than 15 minutes time block basis is considered as Banking of energy and therefore Banking Charges are levied on solar energy consumed. The solar generation curve is parabolic in nature namely, lower generation during morning and evening peak hours and higher generation during mid-day hours. The surplus energy injected into the grid is allowed to set off against consumer's consumption during period when solar generation is lower / not available. Due to banking facility, the consumer is not required to match their consumption corresponding to quantum of solar generation on real time basis. Considering this aspect, levy of banking charges provided on the solar energy consumed by consumer during energy accounting period.

16.29. The banking charges have been provided in the Solar Power Policy 2021 by the Government of Gujarat after due consideration in public interest balancing the interest of consumers as well as solar power developers.

16.30. It is not disputed that there is cost implication on the distribution licensee for providing banking facility. The cost implication is in terms of (i) keeping ready the equivalent conventional capacity having fixed cost liability to meet consumers demand during the time of day when corresponding solar generation is lower / not available, (ii) supply of

power through marginally costlier generating station during the period when less / no solar generation is available and (iii) the cost implication for absorbing excess solar generation into the grid by backing down conventional generation when corresponding demand is lower and solar generation is higher. The fixed cost payment liability towards conventional generation capacity and the cost of marginal generating stations to meet the demand are the facts available in the public domain as a part of True up / tariff determination proceedings of distribution licensees.

16.31. It is estimated that during the period of high/peak solar generation (around 4 hours a day), the 50% of total solar generation will remain excess which will be utilized by consumer during lean solar generation period during 7.00 to 18.00 hrs of the day. The cost elements to be considered for banking charges on basis of following aspects:

- i. To accommodate the variation in solar generation vis-à-vis consumption, the thermal generating capacity is required to be maintained and operated. The generated solar energy is allowed to adjust against consumption during 7.00 - 18.00 hrs basis, this implies that adjustment is on unit to unit basis. Therefore, the fixed cost of thermal generating station utilized for the purpose of load – solar generation balancing need to be factored as one of the cost element for working of banking charges for consumption of solar power. For FY 2019-20, the fixed cost of thermal generating stations is Rs. 1.39 per Unit on generation side which works out to Rs. 1.63 per Unit on consumption side considering approved T&D loss of 14.77%. Thus, the cost of Rs. 1.63 per Unit need to be considered as one of the cost element for providing banking facility.
- ii. To meet the consumption requirement during lean solar generation period from 7.00 to 18.00 hrs of the day, the thermal generation, specifically gas based generation, is required to be operated to replace solar power. Considering the availability of Spot-RLNG at \$ 7 per MMBTU at ex-terminal price, the variable cost for gas

generation would be Rs. 4.20 per Unit as against average variable cost of Rs. 2.82 per Unit as per FY 2019-20. Thus, the marginal cost of generation i.e. replacement cost of solar power is Rs. 1.38 per Unit (Rs. 4.20 –Rs. 2.82 per Unit) and Rs. 1.62 per Unit at consumption side considering approved T&D loss. It is considered that the 50% of total solar generation which is remained excess during higher/peak solar generation period will be utilized by consumer during lean solar generation period during 7.00 to 18.00 hrs of the day. That means 50% of solar generation will be replaced with gas based generation. Thus, the replacement cost of solar power works out to Rs. 0.81 per Unit which need to be factored for working of banking charge.

- iii. At the time when solar generation is higher than consumption, the excess solar generation is to be accommodated in the grid by backing down thermal generation. As per the CERC norms of degradation in generation efficiency i.e. in the Station Heat Rate and Auxiliary consumption, the impact due to frequent backing down of thermal generating station would be at least Rs. 0.28 per Unit. With consideration that 50% of total solar generation will remain excess and to be accommodated in the grid, the backing down cost works out to Rs. 0.14 per Unit on generation side and Rs. 0.16 per Unit on consumption side considering T&D loss. Even in case the load/ solar generation is balanced by operation of gas based generating stations, the cost implication would be on higher side as such gas based generating stations would require open cycle operation having lower efficiency to mitigate variation in solar generation during the day. Therefore, the cost implication of at least Rs. 0.16 per Unit is to be considered as a part of banking charge for providing banking facility.

- iv. The total cost implication of all above three cost elements for providing banking facility is Rs. 2.58 per Unit. The Transmission Charges and Losses incurred by Distribution Licensee is higher than demand charges recovered from consumers and therefore there is no requirement to give adjustment of demand charges while working out the banking charges.

16.32. Apart from cost implications explained as above for providing banking facility, there is cost implication on Distribution Companies towards payment liability of Deviation Settlement Mechanism charges and additional DSM charges arising out of deviation at State periphery due to infirm solar generation. Such implication of DSM charges and additional deviation charges on Distribution Companies due to variation in solar generation is difficult to quantify for the purpose of levying banking charges. Similarly, there will be increase in repair and maintenance cost of conventional generating stations due to frequent backing down to accommodate the variations in solar generation. This cost implication is not considered for working of banking charges.

16.33. In order to balance the interest of solar power projects and general body of consumers specifically when solar capacity ceiling is removed in the Policy, it is provided to levy banking charges of Rs. 1.10/1.50 per unit, so that part of additional cost implication can be recovered from solar power consumption and burden on the general body of consumers can be reduced to that extent. Therefore, these charges cannot be considered arbitrary or unreasonable considering the fact that only part of fixed cost liability towards conventional generation capacity for providing banking facility is sought to be recovered as banking charges.

16.34. The other charges, such as cross subsidy surcharge, additional surcharge, wheeling charges, transmission charges, electricity duty etc., are not relevant. Each of these charges are applicable for a particular purpose and are determined by the Commission. The objectors cannot raise a general ground that the other charges are too high and therefore there should not be a banking charge. The banking charges are payable for

banking facility and are independent of all other charges. There cannot be any dispute that the banking facility entails impact on the distribution licensee.

- 16.35. There is sufficient justification and rationale in the provisions of the Solar Power Policy 2021 issued by Government of Gujarat in public interest. Further the Policy aims to balance the interests of solar power projects and distribution companies/general body of consumers.
- 16.36. The equation of banking charges to demand charges is facetious. The demand charges are payable for contract demand maintained by a consumer with the distribution licensee and are payable by all consumers, irrespective of whether they are only consumers or seek open access, purchase conventional power or renewable power etc. Therefore, clearly the provision of banking facility is not related to such demand charges.

View of the Commission on provisions of Banking Facility:

17. We have considered the submissions made by the parties. We note that the banking charge proposed to be imposed by the Petitioner based on policy, it is stated for the demand based LT consumers during 7:00 hours to 18:00 hours on billing cycle basis and for HT/EHV consumers during 7:00 hours to 18:00 hours of the day on daily basis. The banking charge applicable to above consumers is at the rate of Rs. 1.50 per unit. While in case of non-demand based LT consumers and MSME (Manufacturing) units the energy accounting will be carried out on billing cycle basis. The banking charge applicable to aforesaid consumers is at the rate of Rs.1.10 per unit. The policy also provides that the banking charges are not leviable on the residential consumers and Government buildings. It is also provided that the energy accounting in case of the solar projects commissioned under REC mechanism the banking facility is not provided as the energy settlement be carried out in 15 minutes time blocks. The surplus energy if any available after set-off be compensated at the rate specified in the policy.

- 17.1. The banking charges stated in the policy are different and distinct for different consumers who set up the solar power projects under the policy.
- 17.2. The banking timing is also different and distinct for different consumers.
- 17.3. The energy available after banking, i.e. surplus energy injection to be procured by the distribution licensee is also at different rates of compensation.
- 17.4. In contrast to aforesaid submissions, the Respondent TPL and some of the objectors have contended that no banking facility be provided to the consumers. If the banking facility is provided in that case the impact of the utilisation of solar energy by the generators/consumers should not be passed on to the other consumers who are not responsible for the incremental cost of the licensee for procurement of power, grid management, DSM penalty with sign change notified by the CERC. The impact of banking facility to the solar energy need not be passed on to the consumers who are not utilising such energy and impact of the same be passed on the solar generators/consumers who utilise such energy.
- 17.5. We note that the Petitioner has stated that the solar power policy 2021 has been notified by the Government of Gujarat after considering the various suggestions from the consumers/project developers.
- 17.6. We also note that the inception of solar policy was in 2009 and thereafter, it was subsequently revised in 2015 and 2021 by the State Government. The Commission had also passed first order for determination of solar tariff and associated commercial issues by way of Order No. 2 of 2010 dated 29.01.2010. Subsequently, the Commission has passed Order No. 1 of 2012 dated 27.01.2012, and Order No. 3 of 2015 dated 17.08.2015 and Order No. 3 of 2020 dated 8.05.2020. We note that the aforesaid orders of the Commission as well as policies notified by the Government with consideration of different stage of the evolution of solar projects technology. The various commercial provisions with regards to the solar projects were provided in the aforesaid policies and orders of the Commission with consideration of the technology of the solar generation, installation in the State, benefits to consumers setting up solar, impact on

licensee and State as a whole. The various benefits have been granted to the solar generating projects in the Orders/Policies with consideration of the development of the technology, impact on the licensees and consumers etc.

- 17.7. We note that as solar power generation technology was in nascent stage in the initial years, i.e. 2009-10 onwards, and various benefits like banking facility, waiver of banking charge, concessional wheeling charges and losses were granted by the Commission in its orders and the Government also has been keeping the same in its policy. The commercial provisions which are provided as promotional measures to the project developers/consumers to set up solar power projects may vary from time to time with consideration of the development of technology and impact of such projects on the licensee and other consumers and State as well as nation.
- 17.8. We note that the Order No. 3 of 2020 dated 8.05.2020 was passed by the Commission when the Solar Power Policy 2015 was in force. The Solar power projects set up under the aforesaid policy are permitted upto 50% of contract demand/sanctioned load of the consumers. While in case of residential and MSME manufacturing, the same is permitted irrespective of contract demand for own consumption.
- 17.9. The Solar Power Policy 2021 has come into force from 29.12.2020 till 31.03.2025. In the said policy it is provided that the ceiling on the solar power projects set up by the consumers specifically LT industrial, HT/EHV consumers and non-residential/commercial consumers is removed. Further, it is provided that the consumer can set up the solar power projects to meet its consumption requirement. We also note that the consumption of the aforesaid category i.e. LT industries, HT/EHV consumers and commercial consumers are utilising energy is substantial and their tariff is also at higher rate. They are cross subsidizing the other consumers to some extent as part of tariff designed by the Commission.
- 17.10. It is undisputed that solar energy is infirm in nature and the same is granted must-run status as promotional measures. Further, it is also essential to note that the real time grid management in prescribed limit is essential. Any variance in the schedule generation/consumption impact grid frequency and attract penalty on the State under

DSM mechanism notified by the CERC in its Regulations. It is a fact that the solar/wind energy are infirm in nature and the generation available from it varies from time to time and affects the grid operation/management which requires to be balanced by ramp up/ramp down by providing oil support to the thermal generation station with consideration of the technical parameters of the plant. It affects the cost of generation of the thermal generating stations. Sometimes to meet out the deviations arising due to infirm nature of the RE generation, the gas based power plants or such other power plants need to be operated for grid management. The aforesaid aspect affects the cost of generation of the conventional power procured by the distribution licensee.

- 17.11. It is a fact that the solar energy generation is available during the day only. In Gujarat the same is available between about 7:00 hours to 18:00 hours of the day. Moreover, the life of the solar projects is envisaged as 25 years. As the RE generation consists of the solar generation which is infirm in nature, the distribution licensees have no control on the solar power generated and injected into the grid on real time basis. The distribution licensees require to keep generation capacity from conventional power plant to meet the demand of the consumers when such energy is not available from solar generation.
- 17.12. We note that the policy provides certain benefits to the solar project developers subjects to certain provisions so that the overall benefits available to licensee, generators and consumers is balanced.
- 17.13. Some respondents/objectors have requested to do away with banking and implement energy accounting on 15 minute time block basis as banking has financial impact on the distribution licensee and other general consumers who are not availing such benefits. The banking charges are neither unprecedented nor arbitrary.
- 17.14. The banking is a mechanism created to provide the facility to some RE generators like solar/wind power producers who generate the solar /wind energy for self-consumption. However, such energy is infirm in nature and also such plants are designated as must

run status. The aforesaid aspect affects the distribution licensees and its other consumers who are not availing such benefits due to incremental cost.

17.15. The banking facility gives the user important flexibility in planning and use of intermittent and unpredictable Solar Power as if it is consistent power reaping the benefit of the low cost solar power in the same manner as the other costlier power because of the banking facility availed.

17.16. It is noted that the banking charges as proposed by the Petitioner recovers only part of additional cost implication from solar power generators and burden on the general body of consumers can be reduced to that extent. Hence, we are of the view that as a promotional measure banking charges proposed in the policy and prayed by the Petitioner is only a part of the total cost of providing banking, therefore, levy of banking charges on units consumed by the consumers supplied from the solar power projects does not appear improper and it will help to reduce the burden on the general body of consumers to some extent. For solar project set up under REC mechanism, the same being a commercial consideration, banking facility shall be provided on 15 minute time block basis.

17.17. The objectors have contended that there is discrimination in banking charges proposed. In this regard, we note that there is no discrimination and that there is in fact valid classification of different categories and such classification has been based on intelligible differentia. Further, we note that under Section 62(3) of the Electricity Act, 2003 which relates to tariff of distribution licensee recognizes that there can be a differentiation on various grounds including the nature and purpose for which supply is required. Hence, we do not find it discriminatory.

Commission's view on Levy of banking charges on solar energy consumed

17.18. We note that it is undisputed that the Intra-State ABT mechanism has been implemented in the State with effect from 01.04.2010. In Intra-State ABT mechanism, the energy accounting is carried out on 15-minute time block basis. However, considering the infirm nature of the solar generation the banking facility has been

provided for consumption of solar power in the policy under which the consumer is allowed to consume generated solar energy anytime during 7.00 hrs to 18.00 hrs for demand based consumers and billing cycle basis for other consumers instead of 15 minutes time block basis as required under ABT mechanism. Thus, energy accounting provisions other than 15 minutes time block basis is considered as Banking of energy and therefore levy of Banking Charges on solar energy consumed cannot be said to be improper.

17.19. The solar generation is lower during morning and evening peak hours and higher during mid-day hours. The surplus energy injected into the grid is allowed to set off against consumer's consumption during period when solar generation is lower / not available. Due to banking facility, the consumer is not required to match their consumption corresponding to quantum of solar generation on real time basis, whereas the distribution licensee is required to keep its power supply readily available all time. Thus, levy of banking charges provided on the solar energy consumed by consumer during energy accounting period seems valid.

View of the Commission on Banking Charges:

17.20. Now we deal with the issue of levy of banking charges prayed in the petition based on solar power policy 2021 with consideration of benefits of the licensee, consumers and generators.

17.21. The banking facility affect the distribution licensees on various aspects and there is cost implication for such facility. The cost implication to the distribution licensees is in terms of -

- (i) keeping ready the equivalent conventional capacity having fixed cost liability to meet consumers demand during the time of day when corresponding solar generation is lower / not available,
- (ii) supply of power through marginally costlier generating stations during the period when less / no solar generation is available and,

- (iii) the cost implication for absorbing excess solar generation into the grid by backing down conventional generation when corresponding demand is lower and solar generation is higher. The fixed cost payment liability towards conventional generation capacity and the cost of marginal generating stations to meet the demand are the facts available in the public domain as a part of True up / tariff determination proceedings of distribution licensees.

17.22. The solar generation available is high during mid-period of a day around 2 hours and lower generation during balance period of a day. It is estimated that during the period of high/peak solar generation, the surplus solar generation available during above period will remain excess and the same will be utilized by consumer during lean solar generation period during 7.00 to 18.00 hrs of the day as per banking facility prayed in the petition.

The various factors affected by the banking facilities provide to the solar generators it is necessary to consider the cost elements for banking charge are stated below:

i. **Fixed Cost of Thermal generating station:**

The generated solar energy is allowed to adjust against consumption during 7.00 - 18.00 hrs basis, this implies that adjustment is on unit to unit basis. The variation in solar generation vis-à-vis consumption, the thermal generating capacity is required to be maintained and operated. Hence, the fixed cost of thermal generating station utilized for the purpose of load – solar generation balancing need to be factored as one of the cost element for working of banking charges for consumption of solar power. The Commission passed the tariff orders of the distribution licensees, generating companies of the state on 31.3.2021, where in true-up for FY 2019-20, carried out by the Commission. As per the aforesaid orders the fixed cost of thermal generating stations is Rs. 1.39 per Unit on generation side at plant level. While working the same at consumption side, it requires to add T&D losses of

14.77% as per tariff orders which works out to Rs. 1.63 per Unit on consumption side. Thus, the cost of Rs. 1.63 per Unit is needs to be considered as one of the cost element for providing banking facility.

ii. **Solar power replacement cost:**

To meet the consumption requirement during lean solar generation period from 7.00 to 18.00 hrs of the day, the peaking power projects of thermal generation specifically gas based generation is required to be operated to meet the short fall in solar energy. The gas availability and price during the above period is to be met through Spot -RLNG, which vary from time to time. Considering the availability of Spot-RLNG at \$ 7 per MMBTU at ex-terminal price, the variable cost for gas generation works out to be Rs. 4.20 per unit with consideration of the SHR of the plant as 1850 kcal/kWh, Aux. consumption of 3%, Gas transportation charge, Exchange Rate of Rs. 74.3 per USD as against average variable cost of Rs. 2.82 per unit as per FY 2019-20. Thus, the marginal cost of generation i.e. replacement cost of solar power is Rs. 1.38 per Unit (Rs. 4.20 –Rs. 2.82 per Unit). The aforesaid price considering approved T&D loss of 14.77%, works out to Rs. 1.62 per Unit at consumption side. If 50% of total solar generation is considered remained excess during higher/peak solar generation period will be utilized by consumer during lean solar generation period during 7.00 to 18.00 hrs of the day. That means 50% of solar generation will be replaced with gas based generation. Thus, the replacement cost of solar power works out to Rs. 0.81 per Unit which need to be factored for working of banking charge.

iii. **Backing down Cost of thermal generating stations in order to accommodate excess solar generation:**

We note that it is a fact that when solar generation is higher than consumption, the excess RE generation is to be accommodated in the grid by backing down thermal generation. We also note that the CERC has specified the norms of degradation in generation efficiency i.e. in the Station Heat Rate and Auxiliary consumption due to frequent backing down of thermal generating station. As stated above if we consider 50% of total solar generation will remain excess for accommodation in the grid, the backing down cost works out to Rs. 0.14 per Unit on generation side and considering T&D loss on it works out to Rs. 0.16 per Unit on consumption side. Even in case the load/ solar generation is balanced by operation of gas based generating stations, the cost implication would be on higher side as such gas based generating stations would require open cycle operation having lower efficiency to mitigate variation in solar generation during the day. Therefore, the cost implication of at least Rs. 0.16 per Unit is to be considered as a part of banking charge for providing banking facility.

17.23. Considering the above three cost elements, the total cost implication for providing banking facility is Rs. 2.60 per Unit.

17.24. Further, in addition to aforesaid cost implications for providing banking facility, there is cost implication on Distribution Companies towards payment liability of Deviation Settlement Mechanism charges and additional DSM charges arising out of deviation at State periphery due to infirm solar generation. Only part of DSM charge recovered under RE DSM mechanism. Thus, such recovery is not full but only in part.

17.25. Such implication of DSM charges and additional deviation charges on Distribution licensees due to variation in solar generation is difficult to quantify for the purpose of levy banking charges. Similarly, there will be increased in repair and maintenance cost of conventional generating stations due to frequent backing down to accommodate the

variations in solar generation. This cost implication is not considered for working of banking charges.

17.26. The banking charges cannot be equated with demand charges. The demand charges are payable for contract demand maintained by a consumer with the distribution licensee and are payable by all consumers, irrespective of whether they are only consumers or seek open access, purchase conventional power or renewable power etc. Thus, the contentions of the objectors linking demand charges with banking facility is not valid and the same is rejected.

17.27. The contention of the objectors linking the other charges such as cross subsidy surcharge, additional surcharge, wheeling charges, transmission charges, electricity duty etc. which are applicable for a particular purpose and are determined by the Commission and comparison with banking charges is not relevant. The objectors cannot raise a general ground that the other charges are too high and therefore there should not be a banking charge. The banking charges are payable for banking facility and are independent of all other charges. There cannot be any dispute that the banking facility entails impact on the distribution licensee.

17.28. However, it is to be noted that the banking charges as proposed by the Petitioner recovers only part of additional cost implication from solar power generators and burden on the general body of consumers can be reduced to that extent. Hence, the Commission decides that as a promotional measure banking charges (which is only a part of the total cost of providing banking) shall be levied on the units consumed as proposed in the petition. This will help to reduce burden on general body of consumers to some extent. For solar project set up under REC mechanism, the same being a commercial consideration, banking facility shall be provided on 15 minutes time block basis.

17.29. In so far as the contention raised by the objectors that the banking charge proposed on the consumed units by the Petitioner will create hurdles for development of solar generation is concerned, we note that it is a fact that the solar and wind energy

generation are infirm in nature and given must run status. Further, the consumption of such energy affects the distribution licensees and its consumers on various aspects as stated above. As there is continuous variance between generation and supply from the solar plant and the consumption at consumer place, the benefit of continuous banking facility from 7 hours to 18 hours will provide flexibility to the consumers whereby the energy supplied from the Solar plant will be getting full set off against the consumption during the peak and non-peak hours of the day.

17.30. Further, relaxation is given to certain category of consumers i.e. LT industries, HT/EHV, MSME manufacturing etc. whereby they shall set up the solar power projects irrespective of their contract demand/sanctioned load and accordingly, these consumers will be eligible to set up a higher capacity of the solar power project to meet out their demand during 7 to 18 hours of the day i.e. 11 hours of the day and avoid to pay the higher cost of the tariff otherwise payable by them for the energy supplied by the distribution licensees. In aforesaid situation, the removal of ceiling capacity in setting up the solar projects by the consumers and allowing continuous banking facility will be helpful to them including avoiding the payment of higher tariff of the distribution licensee. The objector, Shri Kirti Kumar Shah has admitted that after considering the proposed charges towards banking facility and interest cost, the project cost repayment will take 7 to 8 years more. It is an admitted fact by the objectors that the life of the solar power projects is 25 years and thus, the project cost may be recovered prior to life of the project. Therefore, the contentions of the objectors with regards to banking facilities as a part of energy accounting are not accepted and rejected.

17.31. The objectors have relied upon following judgments in support of their arguments.

- 1) Hon'ble APTEL in Tamil Nadu Spinning Mills Association Vs. TNERC & Others in Appeal No. 191 of 2018, Judgment dated 28.1.2021.

In the aforesaid decision the Hon'ble Tribunal has held that the reduction and restriction of banking facility from existing banking facility by the State Commission is without any

reason and sufficient data, evidence. Further, denial of banking facility to third party sale is contrary to the specific provisions and scheme and objective of the Act. There is no scrutiny undertaken by the Commission to infer the banking facility is proving to be too onerous for the distribution licensee making it financially unviable for it to operate or sustain. Further, the applicability of open access charges to all wind energy generator irrespective of their commissioning is illegal.

The decision of the Hon'ble Appellate Tribunal in Tamil Nadu Spinning Mills Association case being Appeal No. 191 of 2018 and batch dated 28.01.2021 is on completely different facts. The present case is of amendment to the scheme wherein there are various concessions and benefits as well as imposition of the banking charges which overall balance the interest of the solar power projects as well as licensees and consumers. Even in the said Order, it is noted that the Rajasthan Commission also provides for banking charges. Similarly, various other State Commission provide for banking charges.

2) Hon'ble APTEL in Fortune Five Hydel Projects Pvt. Ltd. Vs KERC in Appeal No. 42 of 2018 Judgment dated 29.3.2019

In the aforesaid decision Hon'ble Tribunal has decided that the impugned order passed by the KERC modifying the terms and conditions of banking arrangement and concluded contract retrospectively by imposing certain restrictions during the currency of validity of period of the agreement is not sustainable. Thus, the order passed by the KERC in aforesaid appeal where the order made effective retrospectively is held illegal by the Hon'ble Tribunal as the Commission reduced the banking period and imposed certain restriction during the period of the agreement.

The Hon'ble Tribunal has held that the order dated 9.01.2018 passed by the KERC in Petition No. 90 of 2016 and allied matters is in (i) violation of the principle of natural justice, (ii) doctrine of promissory estoppel and legitimate expectations. The Hon'ble Tribunal has also held that the modification of earlier order is not permissible as it qualifies as review of the same order and the facts of the present petition are different.

3) Hon'ble APTEL in MSEDCL Vs MERC & Others reported in 2014 SCC Online APTEL 166. Hon'ble APTEL has decided that the consumer availing the wind energy generation has an option to reduce or terminate the contract demand with the distribution licensee.

The law provides remedy for recovery of the stranded cost of the distribution licensee on account of its obligation to supply to an open access consumer by way of additional surcharge.

In the case on hand, this Commission has directed the Petitioner to issue public notice for inviting comments/suggestions on the Petition. The Commission has heard the distribution licensees and objectors and considered the issues cropped up while deciding the matter. The Petitioner has submitted the details of the banking facility, charges etc. and considering the overall facts the Commission is of the opinion that the proposed banking charges are essential to partly offset the impact on general body of consumers.

Upon careful perusal of the facts of the aforesaid judgments relied upon by the objectors it appears to the Commission that they are on different facts and do not support the contentions of the objectors.

Considering the above, the Commission is of the view that Banking Charges, Energy Accounting proposed by the Petitioner is valid and the same appears to be in overall interest of the consumers, solar generators and licensees and hence, the same is approved and accordingly the Order No. 3 of 2020 dated 8.05.2020 is required to be amended from the date of order in this Petition for the project commission on or after this Order.

Commission's views on Banking Period

18. Now we deal with the objections, that the provisions of banking period and energy accounting should be permitted on billing cycle basis stating that the solar energy generation is infirm in nature and it is not possible to generate and consume simultaneously because the power generated from the solar power projects during day times i.e. 11 to 14 hours is higher while generation during lean hours i.e. 7 to 11 hours

and 14 to 18 hours are lower generation. Moreover, consumption of energy during the day also vary from time to time. The consumption at evening peak time i.e. 18 hours to 21 hours is higher.

- 18.1. The Petitioner has submitted that the objectors have admitted that the solar energy generation may not be available at the time of consumption. The aforesaid condition creates financial implication on distribution licensees. It also creates issues related to system operation and load / generation balancing for providing banking facility.
- 18.2. The ceiling provided on solar power projects capacity installation is removed in the Solar Power Policy-2021. The benefit of banking facility is applicable for the entire project life of 25 years which has huge financial implications on DISCOMs considering large quantum of solar capacity installation. Therefore, in order to balance the interest of the solar power project, distribution licensees and general body of consumers as well as for safe and secured power system operation on real time basis, the banking facility is provided from 7.00 hrs to 18.00 hrs daily basis for HT/EHV and on billing cycle basis for LT demand based consumers whereas for MSME and other LT consumers who are not governed by demand based tariff and residential consumers, the energy accounting is to be carried out on billing cycle basis; with consideration that the ceiling limit of capacity is removed to enable consumers to meet their consumption from solar generation.
19. We have considered the submissions made by the parties. We note that in the policy the energy accounting is provided from 7.00 hrs to 18.00 hrs (daily basis) for HT/EHV and LT demand based 7:00 hours to 18:00 hours (on billing cycle basis) and for MSME and non-demand based LT consumers on billing cycle basis. The change in banking facilities provided in the policy is with consideration of increase in the penetration of the solar energy generation in the grid, removal of ceiling provided in capacity set up by the consumers/third party sale solar generator and it will have impact on the licensee as well as the general consumers at large. Further, we note that the consumption of the consumers also varies from time to time depending on their load and requirement of power. It also varies from season to season, month to month and day to day depending

on the various factors like the season, temperature, economical conditions etc. having impact on load factor and diversity factor of consumer. Such variance compels the licensee to meet the demand of the consumers as and when there is variance in the generation and consumption. Moreover, it also affects grid system operation management on real time basis. The load/generation variance requires the licensee to keep balancing system as stated in earlier paragraphs. The impact of lower quantum of energy procurement and impact of set-off of energy affects the licensee and its consumers. The banking facility provided during 7:00 hours to 18:00 hours on daily basis enable to meet the consumption requirement of the consumer by way of setting up higher capacity of solar power plant and utilising the surplus energy available at different time period of 7:00 hours to 18:00 hours to meet shortfall of energy when lower solar generation is available. Thus, consumer is able to avail the benefit of the promotional measures of policy due to removal of ceiling of solar power project capacity. With consideration of above, we are of view that the banking facility allowed from 7.00 hrs to 18.00 hrs daily basis) for HT/EHV and billing cycle basis for LT demand based consumers while for other LT consumers on billing cycle basis seems valid. The banking facility provided to such consumers is a promotional measure. However, for solar projects set up under REC mechanism with commercial consideration and RPO compliance, energy accounting shall be carried out on 15 minute time block basis.

- 19.1. From the above discussion, it appears to the Commission that the provisions regarding banking timing as laid down in the Policy 2021 and prayed in the Petition do not appear improper and wrong. We approve it.

Cross Subsidy Surcharge & Additional Surcharge

20. The objectors have contended that levy of Cross Subsidy Surcharge & Additional Surcharge for third party sale is quite higher than the rate decided by the Commission in its order dated 8.05.2020. Moreover, it is restrictive in nature. Hence, the

Commission may not allow or enhance the cross subsidy surcharge and additional surcharge to 100% from 50% provided in the order and/or regulations.

- 20.1. Some of the objectors and respondent TPL have contended that cross subsidy surcharge, additional surcharge as determined by the Commission & specified in the policy be applied to the consumers who avail open access and procure solar power. UUWA has also contended that there should be gradual reduction in the cross subsidy as specified in the policy. Any concession in the cross subsidy surcharge and additional surcharge shall create burden on general group of consumers who are not utilising solar energy generation under third party sale as any concession in cross subsidy surcharge or additional surcharge results in under recovery and it is passed on to other consumers is against the spirit of the Act. It is the function of the Commission to protect the interest of all consumers.
- 20.2. In response to aforesaid submissions, the Petitioner submitted that in Solar Power Policy-2021, it is provided to levy Cross Subsidy Surcharge and Additional Surcharge for Third Party Sale in order to compensate distribution licensees towards loss of Cross subsidy revenue and avoid other consumers from cross subsidizing and to compensate DISCOMs towards stranded generation capacity respectively.
- 20.3. There is no exemption under Electricity Act, 2003 for renewable projects from liability of cross subsidy surcharge and additional surcharge. The cross subsidy surcharge and additional surcharge are compensatory in nature i.e. to compensate the distribution companies towards loss of cross subsidy revenue from cross subsidizing consumers and to compensate distribution companies towards stranded generation capacity respectively.
- 20.4. The claim for exemption in these charges means loss of revenue from cross subsidizing consumers is not compensated to the distribution licensees as intended from the Cross Subsidy Surcharge and this would affect the ability of the distribution companies to

supply power at cheaper and economical rate to other subsidized consumers including BPL and AG Category. Similar is the case with respect to Additional Surcharge.

- 20.5. Further, since the solar tariff prices have fallen substantially, there is no need for such continued exemption at the cost of other consumers for the period of 25 years. Even after applicability of cross subsidy and additional surcharge, there is adequate benefit to third party consumer as compared to the distribution company tariff. This benefit would be over and above the return available to the solar power project developers/investor for investment in solar power project.
- 20.6. The cross subsidy surcharge and additional surcharge are already determined by the Commission. There is no right for exemption, particularly when the Electricity Act, 2003 does not provide for any such exemption.
21. We note that the levy of cross subsidy surcharge is provided under Section 42 (2) read with Section 38, 39 and 40 of the Act. While the applicability of additional surcharge on the open access customer is provided in Sub section (4) of the Section 42 of the Act. The purpose of levy of cross subsidy surcharge provided in the Act is to protect financial implication on the distribution licensee from the migration of the consumers from power supply received from the distribution licensee in whose area of supply such consumers are situated.
 - 21.1. Similarly, the additional surcharge is levied on the open access customer to meet the loss incurred by the licensee on stranded capacity of the licensees for supply of energy to the consumers whenever such consumer procures power under open access.
 - 21.2. The aforesaid provisions are provided in the Act with the intent to protect the interest of distribution licensees and its consumers who do not avail the benefit of the open access.
 - 21.3. It is also a fact that the Commission is determining the transmission charges, wheeling charges, losses, cross subsidy surcharge payable under Section 42 (2) and Additional

Surcharge payable under Section 42 (4) of the Act where any consumers avail open access.

- 21.4. The cross subsidy surcharge determined by the Commission in its tariff order for every financial year as per the formula provided in the tariff policy after considering the objections and suggestions from the stakeholders. The Commission is also determining additional surcharge as per the approved formula on half yearly basis with verification of data and also declared the same. Further, we also note that levy of 50% cross subsidy surcharge and additional surcharge or any concession therein for promotion of RE generation, is neither provided in the Act nor in the policy. In fact, cross subsidy surcharge and additional surcharge are essential to compensate the distribution licensee.
- 21.5. Any concession in above charges if allowed would affect other consumers who are not availing the benefit of solar energy available at cheaper rate as under recovery of above charges are passed onto them.
- 21.6. These charges will be helpful to reduce the burden of cross subsidization which will increase due to migration of such consumers on general category of consumers who are not availing above benefits. Hence, the contention of the objectors are not acceptable.
- 21.7. We also note that as compared to earlier policy, the new policy has removed ceiling of the solar plant capacity. The same will impact the other consumers who are not availing such benefits as incremental cost will be passed on to them. Therefore, the contention of the objectors that the consumers who are receiving power supply from third party sale be either exempted from payment of cross subsidy surcharge or additional surcharge or 50% exemption may be granted, is not accepted and accordingly, the same is rejected. We have considered the provision of Solar Power Policy, 2021 and granted the prayer of the Petitioner that in third party sale the solar energy procurer shall be liable to pay cross subsidy surcharge and additional surcharge as payable by normal

open access consumer. We accordingly decide to amend the Order No. 3 of 2020 dated 8.5.2020 and GERC (Net Metering) Regulations, 2016.

Increase in levy of various charges like wheeling charges and losses, etc.

22. Now we deal with the issue raised by the objectors that there is multi-fold increase in levy of various charges like wheeling charge, losses, etc. under Solar Power Policy - 2021. The Objectors have contended that it would have detrimental effect on the viability of solar power project and the Commission may not allow the same.
- 22.1. Some of the objectors have objected that no concession be given in transmission and wheeling charges and losses to captive/third party sale. These Objectors have contended that the provision of Solar Power Policy, 2021 be applied on such consumer by taking full charges. Any concession in above charges are against the provisions of the Electricity Act, 2003. No burden of concessional benefits be passed on to the general category of consumers, who are not responsible for it.
- 22.2. The Respondent Torrent Power Limited has submitted that the various charges stated in the policy are also applicable to the residential and other consumers who are at present not governed by such charges.
- 22.3. The Petitioner has submitted that the transmission and wheeling charges are determined by the Commission in the Tariff orders for the licensees and are applicable on the entities who are granted access to the transmission system and distribution system of licensees. Where there is no use of transmission/distribution network for conveyance of power, no transmission and wheeling charges are applicable.
- 22.4. It is further submitted that there is no contradiction between the Policy and the Petition. Where there is no transmission and wheeling charges applicable, the Policy states so specifically (Clause 9.6 read with 9.10). The Objectors are misinterpreting the summary portion of the benefits. In other portions, it states “transmission and wheeling charges and losses as determined by the Commission shall be levied as applicable depending on the location of the plant and the point of consumption” (Clause 10.11). Therefore, the reference to “as decided by the GERC from time to time” refers to

determination of transmission charges and wheeling charges under Section 62 and not the exemption under solar tariff framework. The policy recognizes that such charges would be applicable depending on location. In case transmission / distribution network is not used for conveyance of power, the transmission and wheeling charges are not applicable.

22.5. It is also submitted that where the transmission and distribution system are being utilized, the charges are applicable. Any under-recovery of transmission and wheeling charges and losses would have implication on general body of consumers as the burden of such charges and losses would fall on them.

22.6. On the other hand, on account of economy of scale and technological advancement, there is a significant reduction in cost of solar power generation. In addition, the solar capacity restriction has been removed under the Policy. In view of the changed scenario, there cannot be any justification to allow any relaxation or concession in wheeling charges or losses and allow such amounts to be loaded on to the tariff of general body of consumers. Further, exemption in the wheeling charges would adversely affect the ability of the distribution companies in regard to overall development of distribution network.

23. We have considered the submissions made by the parties. We note that the petitioner has proposed the levy of Wheeling Charges, losses etc. to different consumers like demand & non-demand based LT Industry, HT/EHV consumers, solar power projects set up under third party sale, MSME units, solar power projects set up under REC mechanism, as the case may be, as specified in the Solar Power Policy, 2021. The aforesaid charges and losses have been changed with consideration of various factors like the removal of ceiling capacity of solar power project, and also provision to set up solar project by third party to sell energy to any consumer. Moreover, the cost of solar power projects has declined leading to reduction in cost of solar energy. Further, the benefit granted in the policy to set up solar power projects for self-consumption as well as procuring the same from third party sale is beneficial to the consumers. It is also a fact that the Commission is determining the transmission charges, wheeling

charges, losses, cross subsidy surcharge and Additional Surcharge whenever any consumer avails open access. Any concession in above charges, if allowed, will affect other consumers who are not availing benefit of solar energy. Hence, the change in the charges, i.e. wheeling charge, Cross Subsidy Surcharge, Additional Surcharge, wheeling loss stated in the policy and prayed to be introduced by way of amendment in Order No. 3 of 2020 dated 8.5.2020 and Net Metering Regulations are justified. These charges will be helpful to reduce the burden of cross subsidization on the consumer. Hence, the contentions of the objectors are not acceptable.

23.1. We also note that the transmission/wheeling charge and losses levied to the open access consumer either captive or under third party sale be based on the capacity booked by them. The transmission/wheeling charge and losses which are leviable on the capacity of the transmission/distribution system booked by them and utilisation of same by the beneficiaries make them liable to pay the charges determined by the Commission from time to time. Any under-utilisation of capacity or inefficient utilisation of such network by the open access user is not a ground to grant relief on it. Any under recovery of network utilisation charges and losses occurred in the transmission/distribution system gets passed on to other consumers who are not availing such open access of solar energy for their use is not permissible. The concessional benefit earlier granted as a part of policy if withdrawn by the Government or the Commission in its earlier order is not a permissible ground to dispute the present petition.

23.2. Based on the above observations, we decide that the contention of the objectors that the wheeling charges and losses be kept at 50% of the rates as determined earlier by the Commission is not accepted and the same is rejected. We decide that the prayer of the Petitioner to amend the wheeling charges and losses on actual 100% basis as determined by the Commission is accepted and accordingly decide to make an amendment in Order No. 3 of 2020 dated 8.5.2020 and Net Metering Regulations.

Treatment for pipelined projects -the projects which are envisaged under previous Solar Power Policy:

24. Some objectors have requested to allow their pipelined projects to be governed by the previous Solar Power Policy, 2015 whereas certain objectors have opposed to allow the benefits of old Solar Power Policy, 2015 on the ground that the new policy i.e. Gujarat Solar Power Policy 2021 has already come in to effect from 29.12.2020 and Solar Power Policy 2015 has ended on 28.12.2020.

24.1. Petitioner has submitted that the Petition has been filed for incorporation of provisions from the date of notification of Policy and therefore the projects commissioned after notification of Policy would be governed by such provisions. It is submitted that whenever a new policy or order is issued, there are projects which are in pipeline and therefore there is always a cut-off date.

24.2. As per the Policy 2021, the Operative Period of the Policy is from the date of its notification i.e. 29.12.2020 and shall remain in operation upto 31.12.2025. Therefore, solar power projects commissioned after the notification of solar power Policy 2021 shall be governed by provisions of Solar Power Policy 2021.

25. We have considered the submissions made by the parties. We note that the present petition has been filed for implementation of the provisions of Solar Power Policy 2021, which has come into force from the date of Notification as per Clause 6.1 of the policy, i.e. 29.12.2020, and will remain in operation upto 31.12.2025. Further, as per clause 6.2 of the Policy, the project commissioned during the operative period shall become eligible for the benefits and incentives declared under the Policy for a period of 25 years from the date of commissioning or the life span of the solar power projects, whichever is earlier. Clauses 6.1 and 6.2 of the Solar Power Policy 2021 are reproduced below:

“6.1 This policy will come into effect from the date of its notification and shall remain in operation for a period up to 31st December 2025.

6.2 The Solar Power Systems (SPS) installed and commissioned during the Operative Period shall become eligible for the benefits and incentives declared under this Policy, for a period of 25 years from their date of commissioning or for the life span of the SPS, whichever is earlier.”

- 25.1. We also note that some of the objectors have contended that there are some rooftop projects registered with GEDA under the Gujarat Solar Power Policy 2015 and CEI and they have not been permitted to set up and commission by the distribution licensees on the ground of the aforesaid Rules. The objectors have requested that the Commission may grant six months to one-year period to set up and commission such rooftop projects. At the outset, it is seen that the referred projects are registered under the Gujarat Solar Power Policy 2015 which was applicable to Solar Power Generators (SPGs) installed and commissioned during the operative period of the Policy from 13th August, 2015 and expired on 28th December, 2020 as Gujarat Solar Power Policy 2021 was declared on 29th December, 2020. Hence, the request of the Objectors to permit to set up the projects under old Policy is not sustainable. Further, the aforesaid other objections are not acceptable in the present proceedings as it is not subject matter of the present proceedings.
- 25.2. We decide that the projects which are commissioned on or after the date of the order in this petition shall be governed by the order in this Petition. Further, we also note that the other contentions of the objectors are beyond the scope of the present petition as the present petition is limited to amendment in the Order No. 3 of 2020 dated 8.05.2020 and in the Net-Metering Regulations, 2016 and therefore, the same are not accepted.

Compensation for surplus power injection.

26. Some of the objectors contended that the compensation for surplus energy injection rates provided are quite low and do not make solar power projects viable. They submitted that the rate of compensation for surplus power injection are linked with the power procurement carried out by the distribution licensee rates from small scale distributed solar power projects where a premium of 20 paisa per unit provided on the discovered competitive bidding rates of solar power projects in the bidding process carried out by GUVNL.
- 26.1. TPL has contended that the petitioner has made contradictory submission that the cost of solar power generation is declining due to economic of scale and technological

advancement and has proposed to increase the rate of surplus energy from Rs. 1.50 per unit / Rs. 1.75 per unit to Rs. 2.25 per unit.

- 26.2. Third party sale by captive generating plant is the commercial decision of the generator. Any risk or return arising from the project would be attributable to the generator. The energy generated from solar power project is cheaper than the energy available from conventional power project. Therefore, the consumers opt to source power from the solar power project. The distribution licensee is mandated to procure renewable energy for fulfilment of its RPO. The mismatch between infirm RE generation and captive generation/third party sale is an additional burden on the distribution licensee. Therefore, its consumers should not be mandated to bear the cost of commercial decision taken by RE generator for captive/third party sale. The Commission should provide discretion to the distribution licensees to purchase surplus power from RE projects set up under captive/third party sale.
- 26.3. The Petitioner has contended that since the cost of solar generation is declining due to the economies of scale and technological advancement, the compensation for infirm surplus energy is to be linked with bid discovered tariff and the same may be considered at 75%. The linking of SIC to bid discovered tariff ensures procurement of economic power for distribution licensee and prevents higher burden on the consumers.
- 26.4. It is not prudent or justified to pay a higher tariff or at the same rate as for the solar projects exclusively set up for sale to distribution licensee on firm capacity basis as the projects referred by Objector are set up preliminarily for captive use/third party sale and are selling only surplus power on infirm capacity basis to distribution licensee. The Commission in Order dated 22.11.2019 in Petition No. 1727 of 2018 has also recognized the same.
- 26.5. The rate for Surplus Injection Compensation should be linked as certain percentage of the rate discovered through competitive bidding process so as to minimize the burden on the general body of consumer and at the same time equity can be maintained between the project set up exclusively for sale to distribution licensee on firm capacity

basis and the projects set up primarily for captive use/third party sale and selling only surplus power on infirm capacity basis to distribution licensee.

27. We have considered the submissions made by the parties. The objectors' contention that the compensation rate for surplus energy, if any, available from the solar power projects be procured by the distribution licensee at the tariff rate provided to the small scale distributed solar generators with premium of 20 paise per unit on discovered tariff rate in competitive bidding is not permissible on the ground that the surplus energy available from the solar power projects under captive use or third party sale is different and distinct from the procurement of power by the distribution licensee under PPA. The compensation for surplus energy injection provided is as a promotional measure to the RE generator, i.e. solar generator in this case. Hence, the aforesaid contention of the objectors is not accepted.

27.1. With respect to the contention of the respondent that the tariff rate for surplus energy proposed in the petition is higher is concerned, the Solar Power Policy 2021 proposes to increase the rate of surplus energy available from MSME Manufacturing Enterprises by the licensee from the rate of Rs. 1.50 per unit / Rs. 1.75 per unit to Rs. 2.25 per unit only for initial five years from the date of commissioning of the project and thereafter, the same shall be reduced to 75% of simple average of tariff discovered in GUVNL bidding for non-solar park projects in the preceding six months' period i.e. either April to September or October to March as the case may be from the COD of the project and the same shall remain fixed for the entire terms of the Agreement.

27.2. Further, in case of other than MSME Manufacturing Enterprise, the surplus energy to be procured by the licensee shall be compensated by the distribution licensee at 75% of the simple average of tariff discovered in GUVNL bidding for non-solar park projects in the preceding six months period i.e. either April to September or October to March of the financial year as the case may be from the COD of the project and the same shall remain fixed for the entire terms of the Agreement.

27.3. While determining the power procurement cost by the distribution licensee for surplus

energy, if any, it is to be noted that such surplus energy is available to the distribution licensee at the place of consumption but being infirm in nature involves additional cost. However, the compensation is provided for surplus energy available at consumption place as promotional measure to RE generator. We also note that it is linked with the tariff discovered in competitive bidding process, will provide the licensee to receive the benefit of tariff linked/discovered in the competitive bidding process.

27.4. Further, this Commission has also affirmed the above position in its Order dated 22.11.2019 in Petition No: 1727 of 2018. The relevant para no: 15.44 of the order dated 22.11.2019 read as under:

15.44 , we are of the view that the solar power projects set up for captive use/third party sale and solar rooftop set up primarily for self-consumption and therefore should not be compared with solar or other generating plants set up exclusively for sale of electricity to the distribution licensee. Accordingly, the procurement rate for surplus energy injected into the licensee's grid from such plants after self-consumption should be treated differently.

(Emphasis supplied)

27.5. Therefore, the Commission is of the view to allow the rate for Surplus Injection Compensation as prayed in the Petition for different category of consumer at different rates is required to be approved. Accordingly, the Commission decide to amend the Order No. 3 of 2020 dated 8.05.2020 and GERC Net Metering Regulations, 2016.

28. Now we deal with the issue raised by the objectors with regard to amendment of the Order dated 08.05.2020 prior to expiry of its control period. The Objectors have contended that amendment cannot be permitted as the Order No. 3 of 2020 dated 8.05.2020 passed by the Commission has control period from the date of order i.e. 8.05.2020 to 31.03.2023. Therefore, the order, if any is passed in the present petition it shall be prospective and not retrospective.

28.1. Some of the objectors have also contended that the Order No. 3 of 2020 dated 8.05.2020 and Net Metering Regulations be amended prospectively and not

retrospectively. They also contended that the retrospective effect if any given is against the provision of the Act and shall also lead to multiplicity of the proceedings.

28.2. Per contra, the Petitioner submitted that the Order No. 3 of 2020 dated 8.05.2020 was passed by the Commission with consideration of earlier Gujarat Solar Power Policy, 2015 and amendments made in it and other policies notified by the Government from time to time to give effect to them. The Commission has power to amend its own order as stated in earlier para, therefore, the contention of the objectors that it is not permissible to amend Order No. 3 of 2020 dated 8.05.2020 is not legal and valid. The Petitioner further contended that the Hon'ble Tribunal had in Fortune Five Hydel Projects Case (supra) in the case of revision of the banking terms and conditions, upheld the revision and rejected the contention on promissory estoppel, res judicata, review of order etc. and held that the State Commissions as regulatory authority can revise or amend the tariff and other terms and conditions considering future developments in the matter.

29. We have considered the submissions made by the parties. We note that the Commission has power to amend its tariff order as decided in earlier para.

29.1. We also note that the Gujarat Solar Power Policy 2021, came into force from 29.12.2020 i.e. from the date of notification to 31.12.2025. We also note that the policy consists of various provisions which are having commercial aspects affecting the solar power projects set up during the control period of the said policy. The said policy also provides that the Commission shall be guided by the aforesaid policy while passing the orders or regulations. Therefore, the provisions of the policy need to be verified by the Commission as per law and to give effect while passing the order or framing the regulations. We note that the Petitioner has sought that the provisions of the policy be given effect by amending the order No. 3 of 2020 dated 8.05.2020 and amendment in Net Metering Regulations. Hence, it is necessary to decide the aforesaid issue with consideration of the provisions of policy as well as law prevailing in this regard.

29.2. We note that the Order No. 3 of 2020 dated 8.05.2020 was passed by the Commission when the provisions of Solar Power Policy 2015 were prevailing and the order was

passed with effect from its date to 31.03.2023. There are various projects which have been established/commissioned and availing the benefit of the Order. If the order is given retrospective effect, these projects shall be affected as the benefits earlier granted would stand withdrawn with retrospective effect which is against the provisions of law. There are also projects which are neither established and commissioned nor availing the benefit provided under Order No. 3 of 2020 dated 8.05.2020 and are not affected in any manner if any amendment is passed in Order No. 3 of 2020 dated 8.05.2020.

29.3. Further, we note that the projects which have not yet been commissioned under the policy 2015, are not eligible for extension under the present petition.

29.4. We note that the power conferred to the Commission is to pass the tariff order and to amend it prospectively and not retrospectively. Moreover, the Solar Power Policy, 2021 notified by the Government of Gujarat has come into force from 29.12.2020. Hence, prior to it, the provisions of the Solar Power Policy, 2021 are not applicable.

29.5. We also note that the following Judgments are relevant in this regard.

- a) *State of M.P. vs Tikamdas* 1975 (2) SCC 100.
- b) *Reliance Industries Limited vs Petroleum & Natural Gas Regulatory Board* in Appeal no. 222 of 2012 decided on 06.01.2014 and;
- c) *Tamil Nadu Spinning Mills Association vs Tamil Nadu Electricity Board* in Appeal no. 111 of 2010 decided on 11.01.2011.
- d) Judgement dated 29.03.2019 in Appeal No. 42 of 201 and IA No. 214 of 2018 in case of *M/s Fortune Five Hydel Projects Pvt. Ltd. V/s KERC & Ors.*

In the aforesaid judgements it is held that the amendment modification in rules/regulations/ or order/Judgement be prospectively and not retrospectively.

29.6. Based on the above, we decide that the Order No. 3 of 2020 dated 8.05.2020 read with *Suo-Motu* Order No. 6 of 2020 dated 05.08.2020 stands amended from the date of order

of this petition. The solar power projects which are commissioned prior to the date of order shall be governed by the provisions of earlier Order No. 3 of 2020 dated 8.05.2020.

30. **Review of Order/regulation time barred:**

So far as contention regarding non-maintainability of petition on the ground that review cannot lie and it is time barred is concerned, we are of the view that this is not a review petition of our earlier order and hence, we do not go further into this issue.

31. Some of the objectors have contended that provisions of security deposit provided in Order No. 3 of 2020 dated 8.05.2020 needs to be amended with consideration of clause 24 of the Solar Power Policy 2021 as it is inconsistent with Solar Power Policy 2021. There are no submissions of the Petitioner on it. The relevant provisions are reproduced below:

“.....

3.5. Security Deposit: In order to assure GETCO/DISCOMs about seriousness of project developer towards commissioning of the Solar Power Projects, the Solar Power Project Developers have to furnish a Bank Guarantee of Rs 5 Lakh/MW to GETCO/DISCOMs based on allotment of evacuation capacity, and in case the Solar Power Project Developer fails to commission the entire evacuation line along with bays and metering system, within the time period mentioned hereunder, GETCO/DISCOMs shall encash the Bank Guarantee.

Table 3-1: Capacity and Commissioning Period for the Solar Projects.

<i>Solar Project capacity (MW)</i>	<i>Period of Commissioning</i>
<i>1 MW to 100 MW</i>	<i>1.5 years from the date of allotment of evacuation capacity</i>
<i>101 MW to 200 MW</i>	<i>2 years from the date of allotment of evacuation capacity</i>

201 MW to 400 MW	2.5 years from the date of allotment of evacuation capacity
401 MW to 600 MW	3.5 years from the date of allotment of evacuation capacity

Provided that GETCO may issue extension on case to case basis to the Developers if they fail to commission the entire evacuation line along with bays and metering system within the stipulated time period due to unforeseen reasons. The Solar Power Project Developer shall commission the Solar Power Project of at least 10% of the allotted capacity within one month of charging of evacuation line, failing which, the Developer shall be liable to pay long-term Transmission Charges for 10% of allotted capacity till such 10% of allotted capacity is commissioned.”

.....

- 31.1. The provision made for security deposit in clause 24 of Solar Power Policy 2021 reads as under:

“24 SECURITY DEPOSIT

24.1 In case, DisCom decides to procure solar power from the Solar Project Developers and sign Power Purchase Agreement, the Developer shall be required to provide Bank Guarantee as per terms and conditions of bid documents / Govt Scheme / MNRE Guidelines.

24.2 In case of projects not falling under Clause 24.1 above, the Project Developers shall be required to provide Bank Guarantee towards Security Deposit @ 5 Lakh / MW at the time of signing of PPA with obligated entities.

24.3 The bank guarantee shall be refunded, if the developers achieve commercial operation within time period mentioned in Power Purchase Agreement. In case the Developer fails to achieve commercial operation as specified in the Power Purchase Agreement, the bank guarantee shall be forfeited.

24.4 Where projects are set up for captive / third party sale, SPGS shall submit Bank Guarantee towards Security Deposit of INR 5 lakhs per MW to STU/DisCom for ensuring speedy and timely completion of evacuation facility by SPG, In case, the SPG fails to commission the entire evacuation line along with bays and metering system

within the time period mentioned hereunder, STU / DisCom shall encash the Bank Guarantee.

<i>Solar Project capacity (MW)</i>	<i>Period of Commissioning</i>
<i>1 MW to 100 MW</i>	<i>1.5 years from the date of allotment of transmission capacity</i>
<i>101 MW to 200 MW</i>	<i>2 years from the date of allotment of transmission capacity</i>
<i>201 MW to 400 MW</i>	<i>2.5 years from the date of allotment of transmission capacity</i>
<i>401 MW to 600 MW</i>	<i>3.5 years from the date of allotment of transmission capacity</i>

24.5 The Solar Power Project Developer shall commission the Solar Power Project of at least 10% of the allotted capacity within one month of charging of evacuation line, failing which; the Developer shall be liable to pay long-term Transmission Charges for 10% of allotted capacity till such 10% of allotted capacity is commissioned. Balance 90% capacity shall be required to be commissioned within two years failing which GETCO shall cancel the capacity allotment to the extent of capacity not commissioned and the developer shall have no claim on such capacity. Further, GETCO shall include such cancelled capacity in the list of spare capacity for RE integration to be published on their website for prospective consumers.”

31.2. From the above it is clear that there is inconsistency between the provisions of the Order No. 3 of 2020 dated 8.05.2020 and Solar Power Policy 2021. The Solar Power Projects developers are also required to pay the security deposit. Failure to complete the solar projects fully or partly, as provided in the policy, shall result in the security deposit being forfeited by the licensees. The solar power projects developers shall be required to pay the transmission charges in case they fail to complete the projects and commission the project in stipulated period for allocated capacity. Further, the allocated capacity shall be cancelled in case there is delay in commissioning of the project by the project developers beyond stipulated period. The aforesaid provisions seems necessary to ensure the seriousness of the project developers and they shall be penalised for non-completion of the project. Hence, we decide that Clause 24 of the Solar Power Policy 2021 is to be incorporated in Order No. 3 of 2020 dated 8.05.2020 by amendment in

Clause 3.5 of the Order. Hence, para 3.5 of the Order No. 3 of 2020 dated 8.05.2020 is amended as under:

Amendment of para 3.5 of Order No. 3 of 2020 dated 8.05.2020.

“3.5 SECURITY DEPOSIT

(i) In case, DisCom decides to procure solar power from the Solar Project Developers and sign Power Purchase Agreement, the Developer shall be required to provide Bank Guarantee as per terms and conditions of bid documents / Govt Scheme / MNRE Guidelines.

In case of projects not falling under Clause (i) above, the Project Developers shall be required to provide Bank Guarantee towards Security Deposit @ 5 Lakh / MW at the time of signing of PPA with obligated entities.

The bank guarantee shall be refunded, if the developers achieve commercial operation within time period mentioned in Power Purchase Agreement. In case the Developer fails to achieve commercial operation as specified in the Power Purchase Agreement, the bank guarantee shall be forfeited.

Where projects are set up for captive / third party sale, SPGS shall submit Bank Guarantee towards Security Deposit of INR 5 lakhs per MW to STU/DisCom for ensuring speedy and timely completion of evacuation facility by SPG, In case, the SPG fails to commission the entire evacuation line along with bays and metering system within the time period mentioned hereunder, STU / DisCom shall encash the Bank Guarantee.

<i>Solar Project capacity (MW)</i>	<i>Period of Commissioning</i>
<i>1 MW to 100 MW</i>	<i>1.5 years from the date of allotment of transmission capacity</i>
<i>101 MW to 200 MW</i>	<i>2 years from the date of allotment of transmission capacity</i>
<i>201 MW to 400 MW</i>	<i>2.5 years from the date of allotment of transmission capacity</i>
<i>401 MW to 600 MW</i>	<i>3.5 years from the date of allotment of transmission capacity</i>

The Solar Power Project Developer shall commission the Solar Power Project of at least 10% of the allotted capacity within one month of charging of evacuation line, failing which; the Developer shall be liable to pay long-term Transmission Charges

for 10% of allotted capacity till such 10% of allotted capacity is commissioned. Balance 90% capacity shall be required to be commissioned within two years failing which GETCO shall cancel the capacity allotment to the extent of capacity not commissioned and the developer shall have no claim on such capacity. Further, GETCO shall include such cancelled capacity in the list of spare capacity for RE integration to be published on their website for prospective consumers.”

- 31.3. Some objectors have raised dispute that some solar power developers have illegally increased the sanctioned capacity after commissioning of the project and certificate issued by the GEDA or licensee. Moreover, some solar project developers who had commissioned the project under the earlier order No. 2 of 2010 and 1 of 2012 and getting higher tariff as per the order of the Commission, they have also changed modules/invertors from the original installed modules/invertors as per the certificate of GEDA/CEI/licensee and also increased their capacity than originally approved as per the certificate and order of the Commission and enhanced their CUF from 15% - 19% to higher levels of 22% to 25% and thus, enhanced their revenue at the cost of licensee and the consumers. It is also demanded to depute officials from the Commission for inspection of such projects with GEDA officials. We feel that such issues cannot be made part of this Petition as amendment of Order but needs to be dealt with separately, if necessary.
32. Considering the aforesaid facts, we decide to permit amendments sought in Order No. 3 of 2020 dated 8.05.2020 read with Suo-Motu Order No. 6 of 2020 dated 5.08.2020 partially as per the discussions herein above effective from the date of this order. The staff of the Commission is directed to process for the amendment as above in GERC (Net Metering) Regulations, 2016.
- 32.1. We would like to clarify that the decision taken by the Commission for amendment of the Order No. 3 of 2020 dated 8.05.2020 read with Suo-Motu Order No. 6 of 2020 dated 5.08.2020 with regards to various provisions of the said Order shall be effective from the date of this order. The solar power projects set up prior to order in this Petition shall be governed by the provision of the Order No. 3 of 2020 dated 8.05.2020 and Suo-Motu

Order No. 6 of 2020 dated 5.08.2020 i.e. pre-amendment of the Order. The solar projects that may be set up and commissioned on or after the date of this order shall be governed by present order. The provisions of Order No. 3 of 2020 dated 8.05.2020 and Suo-Motu Order No. 6 of 2020 dated 5.08.2020 which are amended by this order are with regards to capacity of the project & commercial aspects i.e. wheeling charge and losses, banking charges, cross subsidy surcharge and additional surcharge, energy accounting, banking period, surplus energy injection rate payable by distribution licensee etc. The relevant portion of Order No. 3 of 2020 dated 8.05.2020 and Suo-Motu order No. 6 of 2020 dated 5.08.2020 which stand amended are reproduced in Table - A below:

Table - A

Sr. No.	Original clause of Order No. 3 of 2020 dated 8.05.2020	Clause of Suo-Motu order No. 6 of 2020 dated 5.08.2020	Amendment in the Order no. 3 of 2020 dated 8.05.2020 and Suo-Motu order No. 6 of 2020 dated 5.08.2020 by the Commission in this Order.
1	<p>2.5 & 3.3 with regard to Capacity</p> <p>2.5</p> <p>As far as Capacity of Solar PV plant installation is concerned, the Commission has already defined the “Plant Capacity” in the Order no. 3 of 2015 issued on 17th August, 2015, it is reproduced as under; “..... The Commission therefore decides to retain the definition of the capacity of the solar plant as the cumulated rated capacity of the photovoltaic modules at Standard Testing Conditions (STC). Moreover a tolerance of $\pm 3\%$ is retained due to design and module constraints.”</p> <p>Hence, no modification has been made to this Clause.</p>	-	<p>3.3 Capacity</p> <p>There is no capacity restriction for the solar projects set up by residential consumers, captive consumers, projects under third party sale.</p> <p>Provided that in case of solar project set up under REC mechanism for captive/third party sale the installation of solar project is permissible up to sanctioned load /contract demand of the consumer.</p> <p>Provided further that whenever the solar projects set up for RPO compliance the consumers shall be allowed to set up projects to fulfil their RPO requirement regardless of their contract demand.</p>

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	<p><i>3.3 The maximum capacity for solar power projects shall be up to a maximum of 50% of consumer's sanctioned load for captive use, Third-party sale, power projects set up under NSM with sale of power to consumers within the State.</i></p> <p><i>However, MSME (Manufacturing) Enterprise are allowed to set up Solar Power project of any capacity irrespective of their sanctioned load/contract demand.</i></p>		
2	<p>(i) 2.7 and 3.8 – Energy Accounting and RPO</p> <p>(ii) Surplus Energy Compensation</p> <p>(iii) Banking Charges</p> <p><u>3.8 Energy Accounting and RPO and Surplus Energy Compensation</u></p> <p>i. Solar Power Projects not registered under REC Mechanism and the consumer does not take benefit of the renewable attribute:</p> <p>For such projects, the adjustment of the Solar energy generation shall be allowed within the consumer's billing cycle. The entire Solar energy generation of such consumer shall be utilized for meeting the RPO of that Distribution Licensee. Banking of energy shall be allowed within one billing cycle of the consumer, wherein set off may be given against energy consumed at any time of the billing cycle. However, peak charges shall be applicable for consumption during peak hours. In the event of any surplus Solar energy not consumed as per energy accounting, such excess electricity shall be compensated by the concerned Distribution Licensee at the rate Rs. 1.75 per unit or the rate, if any,</p>	-	<p>(i) Energy Accounting and RPO</p> <p>(ii) Surplus Energy Compensation</p> <p>(iii) Banking Charges</p> <p>3.8 (I) FOR RESIDENTIAL CONSUMERS</p> <p>(i) In case of Residential Consumers, the Energy Accounting shall be carried out on Billing Cycle basis.</p> <p>(ii) Surplus Energy generated from the solar project after set off on billing cycle basis shall be purchased by respective distribution licensee at the following rates.</p> <p>(a) In case of self-owned systems and SURYA Gujarat scheme consumers:</p> <p>- At Rs.2.25 / unit for the first 5 years from commissioning of project and thereafter for the remaining term of the project at 75% of the simple average of tariff discovered and</p>

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	<p>specified by the Commission for Surplus Injection Compensation (SIC) from time to time for whole life of the Solar Power Projects. For the Solar Power Projects set up by MSME (Manufacturing) Enterprise above 50% of its contracted demand, energy account settlement shall be carried out on 15 minute time block basis.</p> <p>ii. Solar Power Projects not registered under REC Mechanism and the consumer takes the benefit of the renewable attribute to meet their own RPO:</p> <p>The energy accounting shall be carried out on 15 minutes time block basis. In the event of any surplus solar energy not consumed as per energy accounting based on 15-minute time block, such excess electricity shall be compensated by the concerned Distribution Licensee at the rate Rs.1.75 per unit or the rate, if any, specified by the Commission for Surplus Injection Compensation (SIC) from time to time for whole life of the Solar power projects. Such surplus energy compensated by the Distribution Licensee shall be utilized for meeting the RPO of that Distribution Licensee.</p> <p>iii. Solar Power Projects registered under REC Mechanism and the Solar Power Projects not registered under REC Mechanism but benefit of the renewable attribute is not given to distribution licensee:</p> <p>The energy accounting shall be carried out on 15 minutes time block basis. In the event of any surplus Solar energy not consumed as per energy accounting based on 15-minute time</p>		<p>contracted under competitive bidding process conducted by GUVNL for non-park based solar projects in the preceding 6-month period, i.e. either April to September or October to March as the case may be, from the commercial operation date (COD) of the project.</p> <p>(b) In case of Third-Party Sale covered under Clause (ii) above:</p> <p>- At 75% of the simple average of tariff discovered and contracted under competitive bidding process conducted by GUVNL for Non-park based solar projects in the preceding 6-month period, i.e., either April to September or October to March as the case may be, from the commercial operation date (COD) of the project.</p> <p>Such rates shall be declared by GUVNL on six monthly basis and shall be applicable under the connectivity agreement to be executed by distribution licensee.</p> <p>(iii) Excess drawl by consumer from the grid, if any, after giving set off shall be charged by distribution licensee at applicable tariff of respective category of consumer as determined by the Commission from time to time.</p> <p>(iv) No Banking charges shall be applicable on solar power</p>

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	<p>block, such excess electricity shall be compensated by the concerned Distribution Licensee at the rate Rs.1.50 per unit or the rate, if any, specified by the Commission for Surplus Injection Compensation (SIC) from time to time for whole life of the Solar Power Projects.</p> <p><u>Banking Charges</u></p> <p>No banking charge.</p>		<p>consumed by Residential Consumers.</p> <p>3.8 (II) PROJECTS UNDER CAPTIVE USE</p> <p>(i) In case of solar projects set up by HT / EHV consumers for captive use, the energy set-off shall be allowed between 07.00 hours to 18.00 hours of the same day. That means, the generated solar energy during a day shall be consumed by HT or EHV consumer during 07.00 hours to 18.00 hours on the same day.</p> <p>(ii) In case of solar projects set up by LT demand-based consumers for captive use, the energy set-off shall be allowed between 07:00 hours to 18:00 hours basis of the same billing cycle. That means, the generated solar energy during 07:00 hours to 18:00 hours a billing cycle shall be consumed by the consumer during the specified period of 07:00 hours to 18:00 hours in the same billing cycle.</p> <p>(iii) The energy accounting for all other LT consumers i.e., other than demand based LT consumers shall be on billing cycle basis.</p> <p>(iv) The surplus energy, not consumed by the consumer during the above mentioned set-off period shall be compensated by distribution licensee at following rates (SIC).</p>

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			<p>(a) In case of MSME Manufacturing Enterprises:</p> <p>At Rs 2.25 / unit for first 5 years from commissioning of project and thereafter for the remaining term of the project at 75% of the simple average of tariff discovered and contracted under competitive bidding process conducted by GUVNL for Non-park based solar projects in the preceding 6-month period, i.e., either April to September or October to March as the case may be, from the commercial operation date (COD) of the project. The same shall remain fixed for the entire term of the agreement.</p> <p>(b) In case of other than MSME Manufacturing Enterprises:</p> <p>At 75% of the simple average of tariff discovered and contracted through competitive bidding process conducted by GUVNL for Non-park based solar projects in the preceding 6-month period, i.e., either April to September or October to March as the case may be, from the commercial operation date (COD) of the project. The same shall remain fixed for the entire term of the agreement.</p> <p>(iii) Excess drawl by consumer from the grid, if any, after giving set off shall be charged by the distribution licensee at the applicable tariff of the respective category of</p>

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			<p>consumer as determined by the Commission from time to time.</p> <p>(iv) Banking charges of Rs. 1.50/unit on solar energy consumed in case of Demand Based Consumers. In case of MSME units and other than Demand Based Consumers, Banking Charges of Rs. 1.10 per unit shall be applicable on Solar Energy Consumed. Banking Charges shall not be applicable to government buildings.</p> <p>3.8 (III) PROJECTS UNDER THIRD PARTY SALE</p> <p>(i) In case of solar projects set up by HT / EHV consumers, the energy set-off shall be allowed between 07:00 hours to 18:00 hours of the same day. That means, the generated solar energy during a day shall be consumed by HT or EHV consumer during 07:00 hours to 18:00 hours on the same day.</p> <p>(ii) In case of solar projects set up by LT demand-based consumers, the energy set-off shall be allowed between 07:00 hours to 18:00 hours basis of the same billing cycle. That means, the generated solar energy during 07:00 hours to 18:00 hours in a billing cycle shall be consumed by the consumer</p>

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			<p>during the specified period of 07:00 hours to 18:00 hours in the same billing cycle.</p> <p>(iii) The surplus energy, not consumed during the above mentioned set-off period by the consumer after set off shall be compensated by distribution licensee at 75% of the simple average of tariff discovered and contracted through competitive bidding process conducted by GUVNL for Non-park based Solar Projects in the preceding 6-month period, i.e., either April to September or October to March as the case may be, from the commercial operation date (COD) of the project. The same shall be remain fixed for the entire term of the Agreement.</p> <p>(iv) Excess drawl by consumer from the grid, if any, after giving set off shall be charged by distribution licensee at applicable tariff of respective category of consumer as determined by the Commission from time to time.</p> <p>(v) Banking charges of Rs. 1.50/unit shall be applicable on solar energy consumed in case of Demand Based Consumers. In case of MSME Manufacturing units and other than Demand Based Consumers, Banking Charge</p>

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			<p>of Rs.1.10 per unit shall be applicable on Solar Energy Consumed. Banking Charges shall not be applicable to government buildings.</p> <p>3.8 (IV) PROJECTS UNDER REC MECHANISM</p> <p>(i) The energy accounting for the projects set up under REC Mechanism shall be carried out on 15-minute time block basis.</p> <p>(ii) In case of projects set up for captive / third party sale under REC Mechanism, surplus energy after giving set-off on 15 min time block basis, shall be compensated by distribution licensee at 65% of the simple average of tariff discovered and contracted by GUVNL through competitive bidding process for Non-park based solar projects in the preceding 6-month period, i.e., either April to September or October to March as the case may be, from the commercial operation date (COD) of the project. The same shall remain fixed for the entire term of the agreement.</p> <p>(iii) Excess drawl by consumer from the grid, if any, after giving set off shall be charged by distribution licensee at applicable tariff of respective category of consumer as determined by</p>

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			<p>the Commission from time to time.</p> <p>(iv) In case distribution licensee agrees to purchase the electricity component of power from a project under REC Mechanism, the applicable tariff payable by distribution licensee shall be, 65% of the simple average of tariff discovered and contracted by GUVNL through competitive bidding process for Non-Park based solar projects in the preceding 6-month period, i.e., either April to September or October to March as the case may be, from the date on which the PPA is executed. The same shall remain fixed for the entire term of the agreement.</p> <p>(v) No banking charges shall be applicable.</p> <p>3.8 (V) SOLAR PROJECTS SET UP FOR RPO COMPLIANCE</p> <p>(i) The surplus solar energy purchased by Distribution Company from captive / third party solar projects shall be considered for fulfilling RPO of Distribution Company.</p> <p>(ii) The surplus energy injected into the Grid shall be compensated by distribution</p>

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			<p>licensee at 75% of the simple average of tariff discovered and contracted by GUVNL through competitive bidding process for Non-park based solar projects in the preceding 6-month period, i.e., either April to September or October to March as the case may be, from the commercial operation date (COD) of the project. The same shall remain fixed for the entire term of the agreement.</p> <p>(iii) Excess drawl by consumer from the grid, if any, after giving set off shall be charged by distribution licensee at applicable tariff of respective category of consumer as determined by the Commission from time to time.</p> <p>(iv) No banking charges shall be applicable.</p>
3	<p>Clauses 2.8 & 3.9 -Wheeling Charges and Losses</p> <p>i. General: Whenever the entire Solar generation is sold to distribution licensee, the generator will supply the power at the interconnection point. Thereafter, the transmission/ wheeling charges will be borne by the distribution licensee.</p> <p>ii. Transmission Charges and Losses Solar Power Project setup for captive use /Third party sale/Registered under REC, transmission charges and losses</p>	<p>Clause 3.9 (iv)</p> <p>“iv. Wheeling at Two or More Locations If a Solar Power Generator owner desires to wheel electricity to two or more locations, he shall pay INR 0.05 per unit on energy fed into the grid to distribution licensee in whose area power is consumed in addition to the abovementioned transmission charges and losses, as applicable.”</p>	<p>Clause 3.9 of the Order No. 3 of 2020 dated 8.05.2020 read with Suo-Motu Order No. 6 of 2020 dated 5.08.2020 amended as under:</p> <p>3.9 Wheeling and Transmission of electricity:</p> <p>(i) Wheeling of power for captive consumption / third party sale shall be allowed on payment of transmission charges, transmission losses, wheeling Charges and wheeling losses, as applicable to normal open access</p>

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	<p>as applicable to normal Open-Access Consumers shall be applicable.</p> <p>iii. Wheeling Charges and Losses</p> <p>i. Solar Power Projects for captive consumption and not registered under REC Mechanism, 50% of Wheeling charges and losses as applicable to normal Open- Access Consumers shall be applicable.</p> <p>ii. For Solar Power Projects set up for third-party sale/National Solar Mission and registered under REC Mechanism, 100% of the Wheeling Charges & Losses as applicable to normal Open-Access Consumers shall be applicable.</p> <p>iv. Wheeling at Two or More Locations If a Solar Power Generator owner desires to wheel electricity to more than two locations, he shall pay INR 0.05 per unit on energy fed into the grid to distribution licensee in whose area power is consumed in addition to the abovementioned transmission charges and losses, as applicable.</p>		<p>consumers. If the generated solar energy is consumed within the same premises without use of grid, no transmission / wheeling charges & losses shall be applicable.</p> <p>(ii) If a Solar Power Generator owner desires to wheel electricity to more than one location, he shall pay Rs 0.05 / kWh on energy fed into the grid to distribution licensee in whose area power is consumed in addition to the above-mentioned transmission charges and losses, as applicable.</p>
4	<p>Clauses 2.9 and 3.10 - Cross Subsidy Surcharge and Additional Surcharge</p> <p>i. For the Solar Power Project registered under REC Mechanism with sale of power to third party (including sale of power under NSM) within the State, 100% of Cross-Subsidy Surcharge and Additional Surcharge as applicable to normal Open-Access Consumers shall be applicable. ii. For the Solar Power Projects set up by MSME (Manufacturing) Enterprise above 50% of its contracted demand, 100%</p>	-	<p>Clause 2.9 and 3.10 of the Order no. 3 of 2020 dated 08.05.2020 amended as under:</p> <p>3.10 Cross Subsidy Surcharge and Additional Surcharge</p> <p>Cross Subsidy Surcharge and Additional Surcharge shall not be applicable in case of Captive Projects. In case of projects set up for Third Party Sale, Cross Subsidy Surcharge and Additional Surcharge shall be equal to charges for normal open access consumers. These</p>

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	<p>of Cross-Subsidy Surcharge and Additional Surcharge as applicable to normal Open-Access Consumers shall be applicable.</p> <p>iii. For the Solar Power Project not registered under REC Mechanism with sale of power to third party (including sale of power under NSM) within the State, 50% of Cross-Subsidy Surcharge and Additional Surcharge as applicable to normal Open-Access Consumer shall be applicable. iv. For the Solar Power Projects set up for captive consumption, for sale to distribution licensee and for sale outside the State, Cross-Subsidy Surcharge and Additional Surcharge shall not be applicable.</p>		charges shall be as determined by the Commission from time to time.
5	Clauses 2.6 and 3.5 -Security Deposit	-	<p>Clauses 2.6 and 3.5 of Security Deposit of Order no. 3 of 2020 is amended as under:</p> <p>(**)</p>
	<p>(**)</p> <p>3.5 SECURITY DEPOSIT</p> <p>(a) In case, distribution licensee decides to procure solar power from the Solar Project Developers and sign Power Purchase Agreement, the Developer shall be required to provide Bank Guarantee as per terms and conditions of bid documents / Govt. Scheme / MNRE Guidelines.</p> <p>(b) In case of projects not falling under Clause (a) above, the Project Developers shall be required to provide Bank Guarantee towards Security Deposit @ 5 Lakh / MW at the time of signing of PPA with obligated entities.</p> <p>(c) The bank guarantee shall be refunded, if the developers achieve commercial operation within time period mentioned in Power Purchase Agreement. In case the Developer fails to achieve commercial operation as specified in the Power Purchase Agreement, the bank guarantee shall be forfeited.</p> <p>(d) Where projects are set up for captive / third party sale, SPGs shall submit Bank Guarantee towards Security Deposit of INR 5 lakhs per MW to GETCO-STU/ distribution licensee for ensuring speedy</p>		

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<p>and timely completion of evacuation facility by SPG, In case, the SPG fails to commission the entire evacuation line along with bays and metering system within the time period mentioned hereunder, GETCO-STU / distribution licensee shall encash the Bank Guarantee.</p> <table border="1" data-bbox="323 548 1445 909"> <thead> <tr> <th data-bbox="323 548 624 645">Solar Project capacity (MW)</th> <th data-bbox="632 548 1445 645">Period of Commissioning</th> </tr> </thead> <tbody> <tr> <td data-bbox="323 645 624 712">1 MW to 100 MW</td> <td data-bbox="632 645 1445 712">1.5 years from the date of allotment of transmission capacity</td> </tr> <tr> <td data-bbox="323 712 624 779">101 MW to 200 MW</td> <td data-bbox="632 712 1445 779">2 years from the date of allotment of transmission capacity</td> </tr> <tr> <td data-bbox="323 779 624 846">201 MW to 400 MW</td> <td data-bbox="632 779 1445 846">2.5 years from the date of allotment of transmission capacity</td> </tr> <tr> <td data-bbox="323 846 624 909">401 MW to 600 MW</td> <td data-bbox="632 846 1445 909">3.5 years from the date of allotment of transmission capacity</td> </tr> </tbody> </table> <p>(e) The Solar Power Project Developer shall commission the Solar Power Project of at least 10% of the allotted capacity within one month of charging of evacuation line, failing which; the Developer shall be liable to pay long-term Transmission Charges for 10% of allotted capacity till such 10% of allotted capacity is commissioned. Balance 90% capacity shall be required to be commissioned within two years failing which GETCO shall cancel the capacity allotment to the extent of capacity not commissioned and the developer shall have no claim on such capacity. Further, GETCO shall include such cancelled capacity in the list of spare capacity for RE integration to be published on their website for prospective consumers.</p>				Solar Project capacity (MW)	Period of Commissioning	1 MW to 100 MW	1.5 years from the date of allotment of transmission capacity	101 MW to 200 MW	2 years from the date of allotment of transmission capacity	201 MW to 400 MW	2.5 years from the date of allotment of transmission capacity	401 MW to 600 MW	3.5 years from the date of allotment of transmission capacity
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401 MW to 600 MW	3.5 years from the date of allotment of transmission capacity												

32.2. Based on the aforesaid decision, the amendment in Order No. 3 of 2020 dated 8.05.2020 and Suo-Motu Order No. 6 of 2020 dated 5.08.2020 are carried out in the relevant para as mentioned above. The other provisions of the aforesaid orders will remain in force without any amendment.

32.3. Now we deal with the issue raised by the Petitioner for amendment to be made in Net Metering Regulations. With consideration of aforesaid decisions in earlier para, we are of the view that the GERC (Net Metering) Regulations, 2016 shall be amended as per our decision in above paras.

- 32.4. We decide to amend the GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 (Principal Regulations) and amendments therein as per the above discussion and we order accordingly.
- 32.5. The staff of the Commission is directed to process for amendment in GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 based on decision made in this Petition.

ORDER

33. In view of the above, the present petition partly succeeds and order to the following effect is passed:
- 1) The Order No. 3 of 2020 dated 8.05.2020 read with Suo-Motu Order No. 6 of 2020 dated 05.08.2020 stands amended from the date of order of this petition as decided above. The solar power projects which are commissioned prior to the date of order shall be governed by the provisions of earlier Order No. 3 of 2020 dated 8.05.2020 read with Suo-Motu Order No. 6 of 2020 dated 05.08.2020.
 - 2) The prayer made in the Petition regarding qualifying group captive generating plant based on Gujarat Solar Power Policy, 2021 is rejected. The captive generating plants fulfilling criteria of ownership and consumption on annual basis as specified in Electricity Rules, 2005 qualify as Captive Generating Plant.
 - 3) The capacity of plant, banking facilities, energy accounting and surplus energy injection for the residential consumers, captive consumption, third party sale, REC based projects, and RPO compliance based projects for different consumers i.e. (i) Residential, (ii) MSME manufacturing, (iii) LT non demand based, (iv) LT demand based, and (v) HT/EHV consumers, as prayed for in the Petition are accepted and allowed. (see Table-A at para 32.1)

- 4) The amendments sought for in provisions regarding Cross subsidy surcharge, additional surcharge, wheeling charge and wheeling losses as prayed for in the Petition are accepted and allowed.
- 5) The Commission shall under take separate procedure for amendment in the GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 and amendments thereto.
- 6) The staff of the Commission is directed to process for amendment in the GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 based on the decision made in present petition with consideration of the provisions of the Electricity Act, 2003 and Gujarat Solar Power Policy 2021 and Electricity (Rights of Consumers) Rules, 2020 and follow the procedure specified for pre-publication etc. prior to notification of the regulations.

34. This Petition stands disposed of accordingly.

Sd/-

[S. R. Pandey]

Member

Sd/-

[Mehul M. Gandhi]

Member

Date: 11/06/2021

Place: Gandhinagar.