

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 1821 of 2019**

**In the Matter of:**

**Petition under Section 86 and other applicable provisions of the Electricity Act, 2003 for approval of rate of Rs. 2.25/ unit for purchase of surplus power from Solar Rooftop Projects by Distribution Licensees set up under Surya Urja Rooftop Yojana (SURYA – Gujarat) notified by Government of Gujarat vide GR No. SLR-11/2015/401/B1 dated 05.08.2019 and GR dated 07.09.2019.**

Petitioner: Gujarat Urja Vikas Nigam Limited  
Represented by: Shri K. P. Jangid with 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: Nobody was present

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 J. S. Kedaria

Respondent No. 5: Torrent Power Limited, Ahmedabad  
Represented by: Shri Chetan Bundela with Ms. Luna Pal

Respondent No. 6: Torrent Power Limited, Surat  
Represented by: Shri Chetan Bundela with Ms. Luna Pal

Respondent No. 7: Torrent Power Limited, Dahej  
Represented by: Shri Chetan Bundela with Ms. Luna Pal

Respondent No. 8: Deendayal Port Trust  
Represented by: Nobody was present

Respondent No. 9: Aspen Infrastructure Limited  
Represented by: Nobody was present

Respondent No. 10: Jubilant Infrastructure Limited

Represented by:	Nobody was present
Respondent No. 11:	GIFT Power Co. Limited
Represented by:	Nobody was present
Respondent No. 12:	MPSEZ Utilities Private Limited
Represented by:	Nobody was present
Objector No. 1:	Shri Kirtikumar N. Shah
Represented by:	Shri Kirtikumar N. Shah
Objector No. 2:	JJ PV Solar Pvt. Ltd.
Represented by:	Nobody was present
Objector No. 3:	Shri Hirpara A. Jivanbhai
Represented by:	Nobody was present
Objector No. 4:	Shri Rakholia K. Hasasukhbhai
Represented by:	Nobody was present
Objector No. 5:	Shri Nirav H. Dhanani
Represented by:	Nobody was present
Objector No. 6:	Shri G.R. Darji
Represented by:	Nobody was present
Objector No. 7:	Shri Rohit S. Mehta
Represented by:	Nobody was present
Objector No. 8:	Shri Kamlesh P. Gandhi
Represented by:	Nobody was present
Objector No. 9:	Shri Paras B. Jariwala
Represented by:	Nobody was present
Objector No. 10:	Shri Ajitkumar C. Shah
Represented by:	Nobody was present
Objector No. 11:	Shri Rakesh J. Vaidya
Represented by:	Nobody was present
Objector No. 12:	Shri Ankit L. Borana
Represented by:	Nobody was present

Objector No. 13: Shri Rajeshumar R. Patel  
Represented by: Nobody was present

Objector No. 14: Shri Vasantlal B. Solanki  
Represented by: Nobody was present

Objector No. 15: Mrs. Rashmiben H. Mehta  
Represented by: Nobody was present

Objector No. 16: Pashava Energy Pvt. Ltd.  
Represented by: Nobody was present

Objector No. 17: Jan Kalyan Foundation  
Represented by: Nobody was present

**CORAM:**

**Shri Anand Kumar, Chairman**  
**Shri P.J. Thakkar, Member**

**Date: 16/12/2019**

**ORDER**

1. The petitioner has filed the present petition alongwith its four subsidiary distribution licensees namely Madhya Gujarat Vij Co. Ltd, Uttar Gujarat Vij Co. Ltd, Paschim Gujarat Vij Co. Ltd and Dakshin Gujarat Vij Co. Ltd as co-petitioners. This petition was filed with an objective to give further boost to promote solar roof-top in the State of Gujarat and in order to achieve the solar capacity target of 8024 MW by FY 2021-22 given by the Central Government. The Gujarat government vide GR No. SLR-11/2015/401/B1 dated 5-8-19 and amendment No GR No. SLR-11/2015/401/B1 dated 7-9-19 notified a scheme Surya Urja Rooftop Yojana (SURYA).

- 1.1. All residential consumers of all Discoms in the State having service connection shall be eligible for installing solar rooftop using net metering subject to provisions as per policy. The petitioner, GUVNL has been designated as nodal agency by the State Government for implementation of this scheme. Accordingly, GUVNL has filed this petition for approval of the Commission for the rate of Rs.2.25 per unit for surplus power generated from solar rooftop scheme recorded in net-metering within the billing cycle. GUVNL has submitted, that the rate of Rs. 2.25 is based on the average tariff of solar power discovered in the competitive bidding recently undertaken by them. They have further pleaded that since solar rooftop project set up under this scheme is primarily for self-consumption and it will sale only surplus power which is infirm in nature to distribution licensee, it is therefore necessary to allow tariff of Rs. 2.25 which is 85% of Rs. 2.65 so as to maintain an equity between the project setup exclusively for sale to distribution licensee on firm capacity basis and the project with rooftop selling only surplus power on infirm capacity basis and also availing subsidy support for capital cost from the State Government. The petitioner submitted that GERC (Net Metering Rooftop Solar PV Grid Interactive System) Regulations 2016 provide for surplus power to be purchased by the distribution licensee at the Average Power Purchase Cost (APPC) rate from residential consumers (Regulation 9.2) which they now seek, to be replaced by competitive bidding rate and that petition is pending before the Commission. The petitioner prayed for approval of Rs. 2.25 per unit to be paid for purchase of surplus electricity by Discoms from solar rooftop project setup under the scheme Surya Urja Rooftop Yojana (Surya) notified by the State Government.
- 1.2. The petitioner has also made other distribution licensees of the Gujarat State as respondents to this petition.

- 1.3. The Commission held hearing on 5/10/2019 and admitted the petition with a direction to the licensees to invite suggestions/objections from all stakeholders on the subject matter of the petition by issuing a public notice in daily newspapers having wide circulation in the State. The petitioner was also directed to upload the present petition with all documents on their website and invite comments and suggestions from stakeholders within 21 days from the publication of the notice.
  
2. In response to the public notice, the Commission has received 5 objections/suggestions from different parties. Objections/suggestions received were considered by the Commission and the relevant issues raised by objectors on the subject matter are being dealt with in this order as under.

**Issue - I**

Admissibility of the petition:

- (i) Objectors has submitted that the licensee has already filed a petition No. 1727 of 2018 in the matter of amendment to net-metering regulations and therefore this petition cannot be admitted unless and until petition No.1727 of 2018 is disposed of.
  
- (ii) The objectors have submitted to the Commission that the Petitioner required approval of power purchase rate which can be done by amending the present net metering Regulations, 2016. Therefore, the Commission should consider Act and Regulations with regard to amendment of Regulations for net-metering, rooftop solar in accordance with the Regulation 19 of Net Metering Regulation and Conduct of Business Regulations.

- (iii) The order and Regulations issued by the Commission under the provisions of the Act is a statute which cannot be changed unilaterally by the distribution licensee and therefore the Commission is requested to pass an interim order to restore Regulation 9.2 of the Net Metering Regulations till any amendment is issued.

## **Issue-II**

Power purchase rate to earn reasonable margin of profit:

- (i) The objectors have pleaded that the proposal of the licensee of rate of Rs. 2.25 per unit should not be allowed as this does not give sufficient returns. They submitted that the consumers who opt for solar rooftop is L.T (Low Voltages) consumers and are placed at the tail end of the power system. Therefore, the losses incurred in catering power at L.T system which is almost 18 to 20 percentage is saved by the licensee, as the consumers generate power from solar rooftop at their consumption point. Accordingly, they should be given better rates.
- (ii) The objectors submitted that unused power of such generation is received by Discoms during peak hours and off-peak hours and not during night hours from 10 p.m to 6 a.m where concessional tariff is allowed. Therefore, licensee should give fair treatment to rooftop consumer from other consumers as per tariff schedule. Similarly, the part of power received by Discoms from solar rooftop generation also gives licensee time of use charges. Therefore, the tariff for purchase of power from excess generation should be comparable with power purchase from other sources. Similarly, Discoms get Rs. 2.10 per unit FPPPA surcharge from consumers over and above the

retail tariff. Therefore Rs. 2.25 per unit as proposed in the scheme seems very unfair as 80% investment is made by consumers themselves after deducting subsidy are not getting a share in the benefit. They have also mentioned that the licensee is benefitted by solar rooftop generation in fulfilling their RPO. On the basis of their submissions, the objectors requested the Commission not to allow Rs. 2.25 per unit and fresh petition with factual records should be reinvited by the Commission.

### **Issue-III**

Rate of purchase to be determined under section 62 of the Electricity Act 2003.

- (i) Objectors have submitted that the tariff proposed by the licensee of Rs.2.25 per unit is on the basis of price discovered through competitive bidding process under section 63 of the Electricity Act 2003. The construction of section 63 when read with the other provisions of the Act, it is to be noted that section 63 begins with a non obstante clause covering section 62. Unlike section 62, the Commission does not determine the tariff but adopts the tariff determined under section 63. Therefore, in the case of bidding nothing is looked upon except the bid itself which must be in accordance with the guidelines issued by the Central Government. Therefore, the Commission should not act as a mere post-office but should adopt the tariff which has been determined through a transparent bidding process u/s 63 of the Act. Therefore, the Commission should determine the tariff under section 62 as per the cost or adopt the tariff already determined by the bidding process under section 63 of the Act.

- (ii) Looking at the provisions of the National Electricity Policy, National Tariff Policy, CERC Tariff Regulations, Commission's Regulation on power procurement from new and renewable energy, the Commission has to determine the tariff for the purchase of surplus energy as applicable to renewable generating companies i.e. feed-in-tariff in accordance with financial and operational norms stipulated by the Central Commission in this regard in its Regulations.

2.1. In view of above objections/suggestions, the objectors have prayed the Commission:

- (i) To pass an interim order and restore Regulation 9.2 of Net Metering Regulation 2016 and direct all licensees to execute the agreement accordingly.
- (ii) To pass a final order in petition No. 1727 of 2018 before proceeding with this petition.
- (iii) To not admit this petition and if Commission admit this petition, then feed-in-tariff should be determined according to financial and operational norms for purchase of surplus power from solar rooftop.
- (iv) To issue draft amendment Regulation on GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016.

3. In response to the objections received from various objectors, GUVNL vide its reply dated 30.11.2019 submitted as under.

**Issue - I**

Admissibility of the petition:

- (i) As regards the objections not to admit the present petition, the Petitioner has submitted that the prayer in present petition and the prayer made by the Petitioner in its Petition No. 1727 of 2018 are different and distinct. Present Petition has to be considered separately as they are arising under “Surya Gujrat Rooftop Yojana” notified by the State Government vide G.R.No. SLR-11/2015/401/B1 dated 5.08.2019 & amendment GR No. SLR-11/2015/401/B1 dated 7.09.2019. Petitioner, is a nodal agency for this scheme, the present petition has been filed for approval of rate of Rs. 2.25 per unit for purchase of surplus energy from rooftop solar projects to be set up under the Surya-Gujarat Scheme and the benefits of the scheme shall be availed by only those projects which are set up under this scheme.
- (ii) The Commission has the power to relax/remove difficulty and power to issue direction considering the additional benefit given on the specific condition of consumers agreeing to accept the rate of Rs. 2.25.

## **Issue-II**

Power purchase rate to earn reasonable margin of profit:

- (i) Petitioner submitted that it may be appreciated that the Commission may allow the residential solar rooftop projects set up under the SURYA – GUJARAT scheme is primarily meant for the captive consumption requirement of residential consumers. The rate of Rs. 2.25/Unit as provided in the Scheme is applicable for the purchase of only net surplus solar energy worked on billing cycle basis. It is not proper to compare the projects which are set up for captive use and

selling only surplus energy on infirm basis with solar project set up exclusively for sale of energy to Distribution Licensee on committed capacity basis. It is submitted that the suggestions for purchase of surplus power by DISCOMs at the rate of Rs. 2.25/Unit in the scheme notified by the State Government, is based on the fact that (a) the average tariff of around Rs. 2.65/Unit is discovered through competitive bidding process recently undertaken by GUVNL for purchase of solar power on committed capacity basis from the solar project to be set up outside solar park, (b) State Government is providing subsidy support for the capital cost of the project set up under the scheme. Therefore, the rate of Rs 2.25/Unit for purchase of surplus energy cannot be said to be unreasonable or arbitrary or otherwise.

- (ii) It is further submitted by the Petitioner that with an objective of giving further boost for promotion of solar rooftops in the State of Gujarat, Government of Gujarat vide GR No: SLR-11/2015/401/B1 dated 5.8.2019 & amendment GR No. SLR-11/2015/401/B1 dated 7.09.2019 has implemented the SURYA – Gujarat Scheme. Under the scheme, various promotional benefits to the residential consumers who desire to set up solar rooftop project such as financial assistance in terms of Government subsidy in capital cost, billing on net-metering basis, purchase of surplus infirm energy, etc. The above benefits are applicable on the fact that the projects agree to sell surplus power at the suggested tariff of Rs. 2.25 per unit as provided in the scheme.
- (iii) It is humbly submitted that as per the provisions of Section 86 of the Electricity Act, 2003, Hon'ble Commission has authority to approve the rate of Rs. 2.25/Unit for purchase of surplus electricity by DISCOMs from solar rooftop projects set up under the scheme. It is

humbly submitted that in terms of provision of the Electricity Act, 2003, the Commission has jurisdiction to entertain the present petition and to decide on the prayer made therein accordingly.

### **Issue-III**

Rate of purchase to be determined under section 62 of the Electricity Act 2003.

- (i) As regards the objections raised by the objectors regarding the rate for purchase of surplus power is to be determined by the Commission following the provisions of Section 62 of the Electricity Act, 2003 the Petitioner has submitted that under the scheme pronounced by the Government of Gujarat vide G.R. dated 5.08.2019 and 7.09.2019 various promotional benefits in terms of Government subsidy in capital cost, billing on net-metering basis, purchase of surplus infirm energy, etc. are applicable on the fact that the projects agree to sell surplus power at the tariff of Rs. 2.25 per unit as provided in the scheme. Under Section 86 of the Electricity Act, 2003 the Commission has authority to approve the rate of Rs. 2.25 per unit for purchase of surplus electricity by DISCOMs from solar rooftop projects set up under the scheme. Therefore, in terms of the provisions of the Electricity Act, 2003 the Commission has jurisdiction to entertain the present petition.
- (ii) As regards the objections raised by the objectors regarding the proposed tariff for purchase of surplus energy in different petitions the Petitioner has submitted that the different petitions filed for approval of the Commission for rate for purchase of surplus energy and other charges for solar energy projects set up under various schemes/policies notified by the State Government providing various concessional and

promotional benefits to the solar projects set up under the respective schemes. Present Petition is filed by the Petitioner pursuant to Surya-Gujarat Scheme notified by the Government of Gujarat with proper explanation and justification wherein additional benefits in the form of subsidy support of capital cost and other benefits are provided to the residential solar rooftop projects. The said benefits are applicable on the fact that the projects agree to sell surplus power at Rs. 2.25 per unit as provided in the scheme.

4. The Commission heard the matter on 09.12.2019. During the hearing, the Petitioners and objectors have presented their point of views. The petitioner, GUVNL has submitted before the Commission that the present matter is pertaining to a scheme notified by the Government of Gujarat where benefits of the subsidy is given to those persons who want to avail this and install solar rooftop. On a query from the Commission whether this category of consumers will have a separate identity than those residential consumers who do not take subsidy. To this GUVNL replied that this scheme is open to all and is optional, but all consumers who install solar rooftop will come under the Net Metering Regulations and accordingly the Regulation need to be amended. Shri Kirtikumar N Shah submitted that it is legislative function and hence the Commission should publish a draft order first inviting comments and then finalize the draft accordingly. The Commission also received an email on the date of hearing i.e. on 09.12.2019 from Shri Jayveersinh A Chavda wherein he has asked for a period of 15 days' time to file the reply to the Petition.
5. We have considered the submissions made by all the parties concerned and the following issues have emerged for the decision of the Commission.

### **Issue - I**

5.1. Whether the petition is admissible or not?

5.1.1. The Commission after considering the objections / suggestions of the objectors in Petition No. 1727/2018 wherein the petitioner has requested for amendment in the Regulation with respect to number of issues including tariff payable to consumers for injection of surplus power generated from solar rooftop has disposed of vide order dated 22.11.2019. Since Commission has already passed a detailed order in petition No. 1727 /2018 the contention of the objectors are not sustainable and rejected.

### **Issue - II**

5.2. Whether the present Net Metering Regulation needs to be amended for addressing the subject matter of this petition?

5.2.1. The petitioner has submitted that the present petition is to be considered separately as they are arising under solar power project setup under government GR. They have submitted that the Commission has authority to relax / remove difficulty and issue directions.

5.2.2. After examining the contents of the petition and objections/suggestions received, petitioners and objectors' submissions and arguments, the Commission is of the view that setting up of solar rooftop by any consumer in the State shall require net metering for energy accounting and sale of surplus power to Discoms. Therefore, to prescribe any rate to a consumer category and other terms and conditions, it is necessary to incorporate such provision and make any amendment in the Regulation and it has to be done after following due process of law. The Commission do not agree with the plea of the petitioner that provisions of the State government policy can be implemented

without considering the provisions of the Net Metering Regulations prescribed under the Electricity Act, 2003. The procedure of making the amendment in the Regulations has already been dealt with in Commission's order in petition No. 1727 of 2018 and therefore there is a need to amend the present regulation.

### **Issue - III**

- 5.3. Whether the tariff of surplus power should reflect adequate return on investment and should be determined under section 62 of Electricity Act 2003.?
  - 5.3.1. The Commission has noted the concerns of the objectors that there should be similar treatment of solar rooftop owners with Generators who produce energy exclusively for sale to the licensee and therefore their tariff should be decided on the basis of total cost of installation, amount of loan, O&M expenses and other costs etc.
  - 5.3.2. As discussed in the Commission's order dated 22.11.2019 in petition No. 1727 of 2018, we are of the view that the solar rooftop and solar power projects setup for captive use / third party sale primarily use energy for self-consumption and therefore it is not reasonable to compare the captive power projects with other generating stations setup exclusively for sale of electricity to distribution licensee. Accordingly, procurement rate for surplus energy injected into licensee's Grid after self-consumption should be treated differently. The Commission is of the view that solar rooftop needs to be promoted for self-consumption of energy by its owner and the surplus after self-consumption which is of infirm nature should be compensated by the licensee at some reasonable price. The demand of the objector that solar rooftop should get similar treatment and price as other generators are getting seems to be unreasonable.

5.3.3. The Commission cannot overlook that by using solar rooftop, the revenue of the licensee is also affected because the sale of electricity to those consumers who are using solar rooftop is reduced. Therefore, while deciding the compensation to a consumer for injecting infirm solar energy into the licensee's Grid, the above issue needs to be considered.

5.3.4. As regards to publication of draft regulations, it is to be noted that Commission has already dealt with this issue in its order dated 22.11.2019 in petition No. 1727 and decided that without issuing amendment in the Regulation by the Commission it is not permissible for any change in the Regulations by distribution licensee and make that available to affected persons. The Commission has decided that the amendment in the Regulation will be effective from the date of notification after following the due process of law which would be prospective and not retrospective. The Regulations notified by the Commission are sub legislative and hence any change in it is permissible only after making necessary amendment in the Regulation.

5.4. In view of the above observations, we decide as under:

- (i) The prayer of the petitioner to purchase surplus energy available from the solar rooftop installed under the Surya Urja Rooftop Yojana (SURYA-Gujarat) at Rs. 2.25 per unit is considered subject to finalization of amendment in the Net Metering Regulations. The staff of the Commission is directed to initiate the process of publication of draft amendment in Net Metering Regulation incorporating the changes as above and such other terms and conditions as decided by the Commission with respect to Net Metering Regulations. The Commission shall invite objections and

suggestions on the draft as per the standard procedure in accordance with the Regulations and therefore all stakeholders will get a fair chance to place their suggestions/objections on the draft Regulations.

6. We order accordingly

7. With this order the petition stands disposed of.

**Sd/-**

**(P.J. THAKKAR)**  
**MEMBER**

**Sd/-**

**(ANAND KUMAR)**  
**CHAIRMAN**

Place: Gandhinagar

Date: 16/12/2019