

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Suo- Motu Petition No.1654/2017.

In the Matter of:

Suo-Motu proceedings to decide the extension of applicability of Generic Tariff Order No. 04 of 2016 dated 10.11.2016 – Determination of tariff and other terms and conditions for procurement of power by distribution licensees from Municipal Solid Waste to Energy Projects in the State of Gujarat.

Respondent No. 1 : Energy & Petrochemical Dept., GoG.

Represented by : Nobody was present.

Respondent No. 2 : Gujarat Urja Vikas Nigam Limited

Represented by : Shri A. N. Khambhata, Shri V. T. Patel and Shri H. H. Patel

Respondent No. 3 : Dakshin Gujarat Vij Company Limited

Represented by : Shri B. K. Parmar

Respondent No. 4 : Madhya Gujarat Vij Company Limited

Represented by : Nobody was present.

Respondent No. 5 : Paschim Gujarat Vij Company Limited

Represented by : Shri J. J. Gandhi

Respondent No. 6 : Uttar Gujarat Vij Company Limited

Represented by : Shri K. D. Barot

Respondent No. 7 : Torrent Power Limited (Ahmedabad)

Represented by : Shri Chetan Bundela

Respondent No. 8 : Torrent Power Limited (Surat)
Represented by : Shri Chetan Bundela

Respondent No. 9 : Torrent Power Limited Dahej
Represented by : Shri Chetan Bundela

Respondent No. 10 : MPSEZ Utilities Private Limited
Represented by : Shri Gaurav Sharma

Respondent No. 11 : Kandla Port Trust
Represented by : Nobody was present.

Respondent No. 12 : Aspen Infrastructure Limited
Represented by : Nobody was present.

Respondent No. 13 : GIFT Power Company Limited
Represented by : Nobody was present.

Respondent No. 14 : Jubilant Infrastructure Limited
Represented by : Nobody was present.

Respondent No. 15 : Gujarat Energy Development Agency
Represented by : Shri Anil Purohit

Respondent No. 16 : Utility Users' Welfare Association
Represented by : Nobody was present.

Respondent No. 17 : Jindal Urban Waste Management (Ahmedabad)
Limited
Represented by : Shri Ashok Gupta

Respondent No. 18 : Abellon Clean Energy Limited
Represented by : Shri Tarun Rokadiya

Respondent No. 19 : Dynagreen Environmental Protection Group Co. Ltd.
Represented by : Shri Kishan Mavani
Respondent No. 20 : RGE Surat Private Limited
Represented by : Nobody was present.
Respondent No. 21 : Essel Utilities Distribution Company Limited
Represented by : Nobody was present.
Respondent No. 22 : Smart Utilities Private Limited
Represented by : Nobody was present.
Respondent No. 23 : Rochem Green Energy Private Ltd.
Represented by : Nobody was present.
Respondent No. 24 : Rajkot Municipal Corporation
Represented by : Nobody was present.
Respondent No. 25 : Gandhinagar Municipal Corporation
Represented by : Nobody was present.
Respondent No. 26 : Bhavnagar Municipal Corporation
Represented by : Nobody was present.
Respondent No. 27 : Surat Municipal Corporation
Represented by : Nobody was present.
Respondent No. 28 : Ahmedabad Municipal Corporation
Represented by : Nobody was present.
Respondent No. 29 : Jamnagar Municipal Corporation
Represented by : Nobody was present.
Respondent No. 30 : Vadodara Municipal Corporation

Represented by : Nobody was present.
Respondent No. 31 : Junagadh Municipal Corporation
Represented by : Nobody was present.
Respondent No. 32 : Urban Development & Urban Housing Dept.
Represented by : Nobody was present.
Respondent No. 33 : Laghu Udyog Bharti-Gujarat
Represented by : Nobody was present.

CORAM:

Shri Anand Kumar, Chairman

Shri K. M. Shringarpure, Member

Shri P. J. Thakkar, Member

Date:23/10/2017.

ORDER

- 1) The Commission passed Order No. 04 of 2016 dated 10.11.2016 and determined generic tariff for procurement of power by the distribution licensees generated from Municipal Solid Waste (MSW) projects.
- 2) The Commission received a representation from the Energy & Petrochemicals Department, Government of Gujarat, vide Letter No. REN/11/2015/1343/B dated 19.05.2017 with regard to aligning the Control Period for Municipal Solid Waste projects with Gujarat Waste to Energy Policy, 2016 by amending the Commission's Order No. 04 of 2016 dated 10.11.2016. The Control Period as per the aforesaid order of the Commission is from the date of issue of order i.e. 10.11.2016 to 31.03.2019 whereas Government of Gujarat vide Notification dated 28.03.2016 notified the Gujarat Waste to Energy Policy- 2016 wherein it is specified that the

projects set up within 5 years from the date of notification i.e. upto 27.03.2021 are eligible to avail the benefit under the Policy. As per the provisions of the Commission's order, the Project Developers are required to install and commission the project during the aforesaid period to be eligible to receive the tariff determined by the Commission. If the project is not commissioned due to any reason, the project developer is not entitled to receive the tariff determined by the Commission in the aforesaid order.

- 3) The State Government represented through the aforesaid letter that some of the Waste to Energy Project Developers have approached the Government stating that they are facing difficulty to commission the project on or before 31.03.2019 i.e. within the Control Period specified in Order No. 04 of 2016 and raised the issue of uncertainty of the applicability of tariff and also other commercial issues as waste to energy projects take longer time to commission. This uncertainty will impede the development of Waste to Energy projects in the State and might result into non-signing of PPA during the Control Period.
- 4) It is also stated that the Government accords top priority to Waste to Energy Projects for preservation of environment and as a measure which can contribute significantly in implementing Swachh Bharat Abhiyan. Therefore, in order to support such projects and clear the uncertainty, the PPAs signed with the Discoms during the Control Period of the Order be allowed to be governed by the tariff and other parameters of Order, subject to the condition that the project is commissioned by 31.03.2021, or commissioned beyond the last date of the Control Period but within the period from zero date to the date of COD assumed in the Order.
- 5) Order No. 04 of 2016 dated 10.11.2016 has been passed by the Commission for promotion of Waste to Energy based generation as envisaged in the Tariff Policy, 2016 as well as to facilitate the implementation of "Swachh Bharat Abhiyan" launched by the Central Government. The State Government has represented that the project developers are facing difficulty in commissioning the project within the Control Period of the Order i.e. before 31.03.2019 (in less than 2 years) and uncertainty about the applicability of tariff and other commercial matters.

- 6) Order No. 04 of 2016 dated 10.11.2016 states that it shall be applicable to the projects to be installed and commissioned on or after the date of this Order for which PPAs would be signed on or after the date of this Order. Therefore, the period available to the developers for signing the PPAs and commissioning the project would be only 2 years and 4 months. Government of Gujarat represented that the commissioning of such projects need two and half years and with the generic tariff order coming to an end on 31.03.2019, there is uncertainty amongst the project developers and no PPAs have been signed by them with GUVNL and State Discoms. Therefore, the Commission is of the view that the submissions of the Government of Gujarat need consideration with regard to the provisions of Tariff Policy and Swachh Bharat Abhiyan launched by the Government of India, which envisage specifically promotion of Waste to Energy Projects.
- 7) In view of this, the Commission has initiated the Suo-Motu proceedings by issuing public notice to decide the applicability of the said order and the Control Period considering the commissioning time required for setting up the plant by the project developer by inviting comments/suggestions from the original parties to Order No. 04 of 2016 dated 10.11.2016 and project developers, distribution licensees, Municipal Corporations, stakeholders and Government with a limited issue of deciding the installation and commissioning of the project time frame considering nascent technology.
- 8) The Commission is in receipt of the suggestions/comments from various stakeholders in response to Suo-Motu Proceedings as mentioned in para 7 above. The comments/suggestions from various stakeholders are enumerated briefly below:
- 9) GUVNL filed its submission on 21.06.2017 stating that Government of Gujarat through GR No. REN-11-2015-1343-B dated 28.03.2016 has notified Waste to Energy Policy 2016, wherein it is specified that Waste to Energy Project set up within the operative period of 5 years from the date of notification, i.e. 28.03.2016 to 27.03.2021, are eligible to avail the benefit under said policy. The Commission specified the Control Period starting from the date of Order i.e. 10.11.2016 to 31.03.2019. Pursuant to the Notification of Waste to Energy Policy, 2016 and Order No. 04 of 2016 dated 10.11.2016, the project developers of Waste to Energy

Projects have shown interest to set up Waste to Energy Projects in the State by approaching GUVNL being a Government nominated Agency to sign PPA for supply of power from Waste to Energy Project as per the tariff determined by the Commission in Order No. 04 of 2016.

- 9.1. GUVNL also submitted that Waste to Energy Project developers represented before the State Government as well GUVNL that Waste to Energy Projects have longer gestation period and therefore, it would be difficult to commission the projects within the Control Period of the aforesaid order i.e. by 31.03.2019. Since, the tariff and terms of order dated 10.11.2016 shall not be applicable for the projects which would be commissioned after expiry of Control Period, this would create regulatory uncertainty in terms of applicable tariff and other terms and conditions applicable to Waste to Energy Projects after signing of the PPA during the Control Period.
- 9.2. It is also submitted that the proposed amendment in the aforesaid order of allowing the tariff and parameters for the project having SCOD by 31.03.2021 or going to be commissioned after March, 2019 will ensure regulatory certainty for development of Waste to Energy Projects which is crucial for disposal of urban waste in an environment friendly manner and for implementation of Swachh Bharat Abhiyan.
- 9.3. Thus, GUVNL requested the Commission to amend the Order No. 04 of 2016 dated 10.11.2016 for the limited purpose of allowing applicability of tariff and terms for the project to be commissioned by 31.03.2021 or to be commissioned beyond the last date of the Control Period specified in the order but within the period from zero date to the date of COD as assumed by the Commission.
- 10) Ahmedabad Municipal Corporation filed its submission on 27.06.2017 and submitted that under the provisions of the Municipal Solid Waste Management (SWM) Rules of 2016, all Class – I cities have to provide proper treatment and disposal facility for MSW. There has been greater thrust towards scientific Waste disposal through the composting as well as Waste to Energy Policies brought about by the Central Government as well as various State Governments. In order to find a long term solution to the woes of the citizens, the Ahmedabad Municipal

Corporation has awarded two Waste to Energy projects for processing capacity of 1000 TPD each. The concession agreements have been signed by the AMC with the project developers. The developers are in discussion with GUVNL for signing of PPAs. The electricity tariff is the single most determining factor for viability of such projects. Assurance of a reasonable tariff facilitates financial closure of the project. Delay in financial closure will delay the Waste to Energy Projects and will expose the concerned Municipal Corporation to the risk of handling huge quantum of MSW. This will result not only in administrative challenges but an environmental and health hazard for the citizens. To safeguard against such situation, AMC has defined delay in financial closure as non-fulfilment of the conditions precedent in the concession agreement which would lead to penalties on the project developer and even termination of the contract.

- 10.1. The Commission passed Order No. 4/2016 dated 10.11.2016 and determined the tariff for the projects to be commissioned during the Control Period specified in the said order, i.e. from the date of order (10.11.2016) to 31.03.2019.
- 10.2. Though the tariff reflects the viability of waste to energy projects in Gujarat, such projects take at least two years for construction and start of commercial operation. In such case the initial period of the mentioned Control Period would never witness the commissioning of newly conceptualised waste to energy projects and for under construction projects, such tariff was anyway non-existent while taking investment decision. Moreover, the project conceptualised during the Control Period would face the issue of uncertainty of tariff if the scheduled commissioning date falls outside the Control Period. The procurer would hesitate to sign the PPA leading to delay in financial closure of the project and affecting the urban local bodies also. Though the Control Period is defined as 3 years in the order, its effectiveness would shrink to a very narrow period. Therefore, it is requested to reconsider the Control Period defined in the said order and that the Commission should define the Control Period starting 2 years after the issuance of order and its applicability would be at least three years so that the project viability would enhance. Based on above, it is recommended to extend the present Control Period and reconsider the Control Period defined in the said order.

- 11) M/s. Jindal Urban Waste Management (Ahmedabad) Limited (JUWMAL) submitted that they have been selected as successful bidder to process 1000 TPD waste under the tariff based Competitive Bidding Process carried out by AMC during August, 2015 to February 2016 and they have signed the concession agreement for a period of 30 years.
- 11.1. The tariff of Rs. 7.11 per kWh for their project was discovered under competitive bidding process conducted by AMC for the period of concession agreement. The Government of Gujarat notified Waste to Energy Project policy on 28.03.2016. As per the said policy the tariff for all Waste to Energy Projects shall be fixed by GERC but it will not be applicable to Waste to Energy Projects which are already awarded by UDD or ULB, based on the competitive bidding process conducted before notification of the aforesaid policy.
- 11.2. The Commission has determined tariff of Rs. 7.07 per kWh for the projects utilising RDF technology and not availing accelerated depreciation. On insistence of AMC, JUWMAL accepted the reduced tariff of Rs. 7.07 per kWh without charging any tipping fee, though option of tipping fee was given in RFP.
- 11.3. JUWMAL requested that the tariff of Rs. 7.07 per kWh as determined by the Commission vide aforesaid order dated 10.11.2016 is required to be escalated with suitable escalation for entire 30 years of the concession period. Moreover, JUWMAL be exempted from the Control Period requirement specified in Order No. 04 of 2016.
- 12) Ms. Abellon Clean Energy Limited submitted that they have been awarded Waste to Energy Projects by the AMC for setting up 1000 TPD waste processing facility based on Waste to Energy. The concession agreement has been signed on 7.04.2017. Moreover, they have also signed the concession agreement for setting up 250 TPD waste to energy project with Jamnagar Municipal Corporation. They have also bid for processing of 1000 TPD waste of Vadodara Municipal Corporation and have also participated in the bidding process for waste to energy project initiated by SMC.

- 12.1. It is submitted that Waste to Energy Project requires two and half years for construction and commissioning. Some of the critical components of such plant are imported which require a significant lead time. Hence, some grace period is required for development of the project as the technology for such projects is at a nascent stage.
- 12.2. The PPA is one of the important documents to achieve financial closure for Waste to Energy Projects. Abellon Clean Energy Limited has signed the concession agreement with Ahmedabad and Jamnagar Municipal Corporation. However, as far as Baroda Municipal Corporation is concerned, the concession agreement is yet to be signed. In case of SMC, the WTE project is only at an evaluation stage. Commissioning of these WTE Projects may take about two and half years after signing of Concession Agreement and PPA. Thus, the commissioning date of these projects shall be only after 31.03.2019 i.e. after expiry of the Control Period of the current tariff Order No. 04 of 2016. Consequently, the tariff notified by the Commission shall not be applicable. Further, the terms and conditions of tariff in the draft PPA received from GUVNL clearly state that in case of delay in commissioning of the project beyond 31st March, 2019, GUVNL will consider lower of the tariff determined by the Commission in the Order No. 04 of 2016 or the tariff effective on the date of commissioning. In the aforesaid circumstances, the project developers are not able to achieve the financial closure without a firm tariff in the signed PPA.
- 12.3. Since the bids submission and approval of the Urban Local bodies for the aforesaid projects have been made in reference to the tariff determined by the Commission, in the absence of valid tariff on the date of commissioning of the project makes the entire project reference uncertain/questionable and would further delay the development of such projects. The Commission may, therefore, amend the tariff order such that the project developer who signs the PPA during the present Control Period is eligible for the tariff declared in the Control Period for a period not less than three years from the signing of the PPA.
- 13) Utility Users Welfare Association and Laghu Udyog Bharti - Gujarat, submitted that the Commission passed Order No. 04 of 2016 dated 10.11.2016 after following due process and determined the tariff with consideration of various technical, financial

and legal aspects and the views of objectors in the subject matter. The Commission has also considered the Government of Gujarat, Waste to Energy Policy dated 28.03.2016. After considering the views of objectors and Government Policy the Commission decided the Control Period in para 2.4.1 of the order as 10.11.2016 to 31.03.2019.

- 13.1. The Waste to Energy Project developers came to know after 8 months that the period of 2 and half years is not sufficient to set up the plant, which is an afterthought.
- 13.2. It is not permissible to revise the Control Period as it is a review of the Commission's own order by way of Suo-Motu proceedings, which does not fulfil any criteria of review as per Section 94 of the Electricity Act, 2003 read with clause 72 of the GERC (Conduct of Business) Regulations, 2004.
- 13.3. M/s. Abellon Clean Energy Limited is working on MSW project since last five years. They have not raised any objections nor submitted any suggestion during the proceedings of Order No. 04 of 2016 dated 10.11.2016 regarding the Control Period. If any project developer having injustice to them about the Control Period specified from 10.11.2016 to 31.03.2019, then they should approach the Commission for their difficulty as per the provisions of Electricity Act, 2003 and rules/regulations framed under it.
- 13.4. It is clear from the present Suo-Motu Petition that the MSW energy project developers have approached the Government of Gujarat instead of filing the Review Petition before the Commission for extension of Control Period.
- 13.5. The representation of the project developers to the State Government that the Control Period determined by the Commission is not sufficient to commission the project and that there is uncertainty of applicable tariff and other commercial issues, the same are not acceptable without producing any evidence on record. The project developers want to avail the advantage of generic tariff determined by the Commission based on normative parameters. Without submission of sufficient evidence in this regard, no such representation be accepted.

- 13.6. It is the duty of the Commission to protect the consumers interest as provided in the preamble of the Act, and Section 61 (d) of the Electricity Act, 2003.
- 13.7. The project developers are free to enter into PPA during the Control Period with GUVNL and other licensees and they can dictate the terms as to what would be COD based on the commitment of OEM. The project developers are provided land at token rent of Rs. 1 on lease and also provided solid waste at site free of cost by the corporation/local body and they are also receiving various benefits including VGF etc. Thus, there is no reason for delay in commissioning of the project beyond 2 and half years.
- 13.8. The Commission which is a statutory body has to act in accordance with the provisions of the Act. The State Government/Central Government is empowered under Section 108 of the Act to give directive to the Commission on certain subjects as per the provisions of the Act. In the present case, there is no such directive under Section 108 from the State Government. The project developers have approached the Government for the extension of Control Period and not approached to the Commission under the provisions of the Act avoiding the regulatory route.
- 13.9. The Review of its own order by the Commission is illegal, unjust and unfair to favour the project developers which is not permissible.
- 13.10. The project developers have not even started any project and before that it is assumed/presumed the difficulty in applicability of tariff and commercial issues.
- 13.11. The RDF is available in the market at Rs. 800 to Rs. 1000 per tonne. However, the Commission has considered it at Rs. 1600 per tonne. The Commission needs to inquire about the price of RDF and get self-satisfaction to avoid any confusion.
- 13.12. Any new technology is normally costly at demonstration stage. However, it becomes cheaper once usage is spread, which is evident from the example of solar power projects also. The Project developers have not gone to the Government of Gujarat with clean hands and mind to bind the Commission for generic tariff for the plants to be commissioned even after 31.03.2019. It reflects that the project developers want to avail the benefit of cost reduction that may accrue by lapse of

time and also want to avail the tariff determined by the Commission based on the capital cost assumed at nascent stage which is quite higher. It is submitted that the Commission should not favour the project developers whose intentions are not in the public interest and want to burden the society by giving the extension of the Control Period without any basis, evidence, supporting documents, narration of any genuine difficulties from any local body or any other Government Department.

13.13. The Commission has already determined the tariff and Control Period vide its Order No. 04 of 2016 dated 10.11.2016. As per the legal position, the Commission becomes defunct as soon as the Order is pronounced.

13.14. As per Section 94(1)(f) of the Electricity Act, 2003 and as per Clause 72 of GERC (Conduct of Business) Regulations, 2004, the Commission is empowered to review its order on the petition filed by the aggrieved person/party. In this case, the Commission is neither a project developer nor a procurer nor a party as defined for powers of review vested under Order 47 Rule 1 of CPC, 1908. There is no error apparent on the face of order nor there is any mistake in the order which fulfils the requirement of review under Order 1 Rule 47 of CPC, 1908.

13.15. In case of extension of Solar Tariff Control Period, the Commission has not granted the extension of Control Period taking the view that the Commission cannot review its order if it does not fulfil the criteria of review, where petitioners were Solar project developers. The Commission may check its Order in the case of Control Period extension sought by the Solar Power Project Developers in Solar tariff as an evidence.

13.16. It is submitted that no provisions of either the Electricity Act, 2003 or any Regulations or any other provisions of Civil Procedure Code, 1908 empower the Commission to review its own order on Suo Motu basis.

13.17. It also attracts and violates the principle of Res Judicata in view of the facts that the issue of Control Period has been discussed, verified and decided after giving complete opportunity to the project developers to give their views and after due consideration from all the angles, the Commission has determined the Control Period. Now it cannot be agitated by Commission itself without any Review Petition by any aggrieved party or any affected person. In such a case, the

aggrieved party or affected person can approach the Hon'ble APTEL under Section 111 of Electricity Act, 2003 for justice, if they feel that injustice is made by the Commission in determining the Control Period. Here it is not the case.

13.18. UUWA and LUB requested the Commission not to extend Control Period by reviewing its Order No. 04 of 2016 by Suo Motu proceeding which is in total violation of the provisions of the Electricity Act, 2003, Regulations and Rules framed thereunder and CPC 1908.

14) Dynagreen Environmental Protection Group Company Limited submitted that there are about 13 tenders which have been floated for Waste to Energy Projects since year 2007 to 2016 by various Municipal Corporations of Gujarat. Out of the above tenders, work has been allotted to 11 project developers. But no MSW to energy plant has been set up or operationalised till date due to lower tariff for such energy. The aforesaid failure is not due to Control Period or PPA but it is due to lack of funds, experience and technology. It is further submitted that VGF from the tariff should not be only criteria for deciding lowest one amongst the bidders. The comprehensive score system should be established with integrating price, experience, financing capability, technology, emissions standards, equipments, construction period and operation & maintenance solution. It is further submitted that due to initiation of Suo-Motu proceedings the problems will still arise as some project developers who had won the projects with the lowest price have no experience, no proper technology and sufficient funding. This would cause inconvenience to the authority considering the pressure of Swachh Bharat Abhiyan Policy.

14.1. It is further submitted that the life of the project should be at least 25 years. Due to heavy initial investments on emission standard facility, the recovery period for investment might be longer. The project cost of Rs. 160 million per MW is not sufficient and it is too low. It is not enough to establish an environment friendly plant. All incineration facility should match the most recent international emission and surrounding area environmental standards. Due to long life span of the projects, the emission standards should be a key issue to be considered. The developer should at least have one project which has been registered under the United Nations CDM mechanism.

- 14.2. It is further submitted that the objector has no problem regarding the Control Period for commissioning of the project but there should be change in evaluation criteria for any Waste to Energy Projects.
- 15) The matter was kept for hearing on 07.07.2017.
- 16) Shri V.T. Patel, on behalf of GUVNL, reiterated the facts as stated in para 9 above. He further submitted that GUVNL is ready to sign the PPA at the tariff determined by the Commission. However, some of the developers approached them stating that it is not possible to commission the project on or before 31.03.2019 as the installation and commissioning of WTE project requires about two and half years. GUVNL may grant such time for commissioning of the project. However, GUVNL who is required to sign the PPA is governed by the provisions of the Commission's Order No. 04 of 2016 dated 10.11.2016. Therefore, till the Commission amends the Control Period specified in the aforesaid order, GUVNL cannot accept the demand of the project developers in this regard. Further, any reduction in the cost of the plant in future is also required to be factored in the tariff and the benefit of the same needs to be passed on to the consumers. Therefore, the provision of lower tariff, if any, decided by the Commission in future and the project getting commissioned in the new Control Period eligible for lower tariff needs to be kept in the PPA by GUVNL.
- 16.1. He also submitted that GUVNL is agreed to sign the PPAs with all MSW based projects as envisaged in the Government of Gujarat Policy. He also supported the proposed extension in the Suo-Motu proceedings by the Commission.
- 17) Shri Chetan Bundela, on behalf of TPL, submitted that they are agreeable to purchase the electricity generated from MSW as per the order of the Commission and provisions of Government of Gujarat Policy. He further submitted that it is necessary to promote the generation from MSW based Energy Projects for the benefit of the society at large and also for protection of environment as envisaged in Swatch Bharat Mission of Government of India. He submitted that the Control Period specified in Order No. 4 of 2016 dated 10.11.2016 needs to be extended as

the project developers are facing difficulty in setting up the plant in stipulated time period. Hence, the Commission may extend the Control Period.

- 18) Shri Anil Purohit, on behalf of GEDA, submitted that the Control Period specified in Order No. 04 of 2016 dated 10.11.2016 needs to be revised as proposed by the Government of Gujarat so that the project developers are able to set up the plant and have the certainty of tariff. Based on above, he submitted that the Commission may extend the Control Period.
- 19) Shri Ashok Gupta on behalf of Jindal Urban Waste Management (Ahmedabad) Limited reiterated the facts as stated in Para 11 above. He further submitted that Jindal Urban Waste Management (Ahmedabad) Limited has been selected as successful bidder after competitive bidding carried out by the Ahmedabad Municipal Corporation. Further the Tariff proposed by AMC was Rs. 7.11 per kWh which is higher than the tariff of Rs. 7.07 per kWh determined by the Commission. However, on insistence of AMC they have accepted the tariff of Rs.7.07 per kWh. He submitted the aforesaid tariff may be escalated on year to year basis for the life span of the Project. The Concession Agreement signed with AMC is for 30 years for supply of MSW. Hence, the PPA period may also be 30 years.
- 20) Shri Tarun Rokadiya, on behalf of Abellon Clean Energy Limited, reiterated the facts stated in para 12 above. He further submitted that the time period required to set up the plant is about two and half years. The Commission passed Order No. 04 of 2016 on 10.11.2016 and determined the tariff for MSW based energy project. They have been selected as a successful bidder and awarded WTE project by AMC. They have approached GUVNL for signing of PPA, however, GUVNL has insisted that if the project is commissioned during the Control Period then only it is entitled for tariff determined by the Commission. If the commissioning date spills over the date after the Control Period specified in Order No. 04 of 2016 dated 10.11.2016, in that case, lower of the tariff specified in Order No. 04 of 2016 dated 10.11.2016 or the tariff determined by the Commission subsequently for next Control Period shall be applicable. Thus, uncertainty is created about the applicability of the tariff receivable by the Project developers. In such circumstances it is not possible to set up the plant due to uncertainty about the revenue receivable during the lifespan of the projects. Therefore, the Commission may revisit the Control Period and the

same may be kept by considering two and half years needed to set up MSW plants after signing the PPA. He further submitted that the Commission may keep the Control Period as specified in Gujarat Waste to Energy Policy, 2016 notified by the Government of Gujarat.

21) Shri Kishan Mavani, on behalf of the Dynagreen Environmental Protection Group Company Limited, reiterated the facts stated in para 14 above.

22) Based on the submissions made by the parties, following issues emerged for decision of the Commission:

(I) Whether the Commission is empowered to initiate Suo- Motu Proceedings after passing the Order No. 04 of 2016 dated 10.11.2016 or not?

(II) If the answer of above (i) is in affirmative, then whether the change in Control Period proposed in the Suo-Motu Proceedings is qualified as review of Order No. 04 of 2016 dated 10.11.2016 and whether the same is governed by the provisions of Section 94 of Electricity Act, 2003 read with Regulation 72 of the GERC (Conduct of Business) Regulations, 2004.

(III) If the Commission is empowered to revise the Control Period specified in Order No. 04 of 2016 dated 10.11.2016 then what will be the Control Period.

(IV) Whether the tariff specified in Order No. 04 of 2016 dated 10.11.2016 be allowed for 30 years?

23) We have considered the submissions made by the parties. As the first, second and third issues are interwoven, we deal with them together.

23.1. The Suo-Motu proceeding has been initiated by the Commission as the Government of Gujarat vide its letter dated 19.05.2017 intimated the Commission that due to the Control Period specified in Order No. 04 of 2016 as from 10.11.2016 to 31.03.2019, the project developers may have only 2 years and 4 months' time for installation and commissioning of the project. Further, the order also provides that the project developers need to sign the PPA with GUVNL and also install and commission the projects during the Control Period to be eligible to receive the

tariff determined in the said Order. However, the project developers are finding it difficult to install and commission the project in less than two and half years and thus, have an uncertainty about the applicability of tariff and other terms and conditions if the project is commissioned after 31.03.2019.

23.2. The Government Policy provides the applicability of policy for 5 years. In view of the regulatory uncertainty about applicability of tariff and other terms and conditions, there is a need to extend the time limit for commissioning of the project. Further, it is stated that the disposal of waste is a top priority for government to preserve the environment. Hence, the State Government requested that the Commission may extend the Control Period and applicability of the order in line with Government Policy, 2016.

23.3. Government of India has launched the Swachh Bharat Mission and mandated the Municipal Corporations and Urban Local Bodies for disposal of municipal waste. Further, the Municipal Solid Waste Management Rules, 2016 mandated all Class- I cities to provide proper treatment and disposal of MSW. Open dumping of waste has been prohibited by the said Rules. The Central Government as well as various State Governments have framed the Policy for the disposal of waste by setting up Waste to Energy Projects. We note that the Municipal Solid Waste is hazardous to human health and causes environmental degradation. It pollutes the land, water, air etc. GUVNL, Ahmedabad Municipal Corporation and Energy and Petrochemical Department, Government of Gujarat have therefore requested the Commission to extend the Control Period upto March, 2021 as the MSW based energy projects need about two and half years to set up and commission after PPA and financial closure.

23.4. As the issue is pertaining to Control Period specified in Order No. 04 of 2016 dated 10.11.2016, it is necessary to refer the said provision which is reproduced below:

“

2.4 Computation of Tariff

2.4.1 General Principles

a. Control Period

The Commission in the discussion paper has proposed the Control Period from date of issue of order to 31st March, 2019. Suggestions of the Objectors No suggestions were received from the stakeholders on the Control Period.

Commission's Decision

*The Commission decides to retain the Control Period as proposed in the discussion paper i.e. from the date of issue of this order to 31st March, 2019.
.....”*

As per the aforesaid decision of the Commission, the Control Period specified in the Order No. 04 of 2016 is from the date of its issuance i.e. from 10.11.2016 to 31.03.2019.

23.5. The objectors have raised the issue that the Control Period specified by the Commission is inadequate considering the period required for commissioning the project. However, UUWA and LUB have contended that the Commission had issued the discussion paper in which the Control Period has been stated and that no comments were received by the Commission from the stakeholders. Therefore, the project developers who are also the stakeholders can not dispute the Control Period specified by the Commission and that the Commission need not revisit its own order. If any difficulty is faced by the project developers in commissioning the project during the Control Period, the project developers can approach the Commission. It may be noted that the project developers are not restrained from requesting the Commission to revisit the Control Period specified in the order when they find it difficult to start the WTE projects and complete the same during the Control Period specified in the order. However, it is for the Commission to decide whether to accept such submission of the project developers or not as per the provisions of law. Hence, the contentions of the UUWA and LUB are not acceptable and the same are rejected.

23.6. We note that UUWA and LUB have raised the preliminary objection for admissibility and maintainability of the present proceedings on the following grounds:

- 1) The Commission is neither an aggrieved nor an affected person as specified in the Regulation 72 of the GERC (Conduct of Business) Regulations, 2004, read with Order 47 Rule 1 of the Civil Procedure Code, 1908.
- 2) After passing the Order No. 04 of 2016 dated 10.11.2016, the Commission has become functus officio and the Commission is not empowered to review its own order.
- 3) There is no error or sufficient reasons or mistake in the Order No. 04 of 2016 dated 10.11.2016, which fulfils the requirement of review under Order 47 Rule 1 of CPC, 1908.
- 4) Neither Section 94 (1) (f) nor Regulation 72 of the GERC (Conduct of Business) Regulations, 2004 empower the Commission to review its own decision on Suo-Motu basis.

In solar tariff orders the Commission has not granted extension of the Control Period taking the view that Commission cannot review its own order, if it does not fulfill the criteria for review.

- 23.7. To deal with the aforesaid contentions of the objectors, we need to refer the provisions of Section 94 (1) (f) of the Electricity Act, 2003, which reads as under:

“.....

94. Powers of Appropriate Commission. -

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: -

.....

(f) reviewing its decisions, directions and orders;

.....”

The aforesaid provision specifies that the Commission has the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 to review its' own decisions, directions and orders. Thus, the Commission has power to review its' own order or decision.

The Petitioner also referred Regulation 72 of the GERC (Conduct of Business) Regulations, 2004 which reads as under:

“

Review of the decisions, directions, and orders

72(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent from the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/order to the Commission.

(2) The provision as to the forms and procedure with regard to such review application shall apply mutatis mutandis as in case of filing the petition.

(3) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.

(4) When the Commission is of the opinion that the review application should be granted, it shall grant the same, provided that no such application shall be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of decision or order, the review of which is applied for.

.....”

As per the aforesaid Regulation, any person who is aggrieved by the decision of the Commission and from which no appeal is preferred is eligible to file a Review proceeding before the Commission within sixty days from the date of the decision/order. The review is permissible when (i) there is an error on the face of record, and/or (ii) discovery of new and important matter or evidence, which was

not in the knowledge of the aggrieved person, and/or (iii) for any other sufficient reason.

The aforesaid provision is similar to the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908. However, the issue as to whether the present proceedings are review proceedings or not is dealt in later part of this order after deciding the issue whether the Commission can carry out the Suo-Moto proceedings or not.

23.8. As regards the objection of UUWA and LUB that the Commission is not empowered to carry out Suo-Motu proceedings to review its' own order, we note that Regulation 23 of the GERC (Conduct of Business) Regulations, 2004 which deals with the power of the Commission to initiate the proceedings is relevant in this case and is reproduced below:

“

23. The Commission may initiate any proceedings Suo-Motu or on a Petition filed by any affected person.

.....”

The aforesaid provision empowers the Commission to initiate proceedings on Suo-Motu basis. Therefore, the contention of the UUWA and LUB that the Commission is not empowered to initiate Suo-Motu proceedings is not legal and valid and the same is rejected.

23.9. UUWA and LUB have contended that the aforesaid Suo-Motu proceedings initiated by the Commission is review of Order No. 04 of 2016 dated 10.11.2016 under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 72 (1) of GERC (Conduct of Business) Regulations, 2004. The Commission is not empowered to review its own Order without any Petition filed by the affected party which includes the distribution licensee or generators who want to set up the plant. Moreover, the Government of Gujarat has also not filed any Petition for review of Order nor there is any directive from the Government of Gujarat under Section 108 of the Electricity Act, 2003 in this regard. The aforesaid contention of the objectors/Respondents UUWA and LUB are not acceptable for following reasons:

(i) Order No. 04 of 2016 dated 10.11.2016 was passed by the Commission under Section 86 (1) (e) of the Electricity Act, 2003. The said Section confers powers upon the Commission to promote energy generation from the renewable sources. This power of promotion of renewable energy generation carries an obligation to ensure addressing the issues of Waste to Energy Plants which are to be set up to solve the problem of disposal of MSW. In the present case, the Commission observed that MSW generated due to rapid urbanisation poses grave threat to environment affecting the society at large with land, air pollution etc. Disposal of such waste is also a challenge before the urban local bodies. Therefore, the provisions made in Municipal Solid Waste Rules, 2000 and subsequent amendments therein by Rules, 2016 mandate the Urban bodies with responsibility to dispose of such waste. We also note that the Hon'ble Supreme Court of India in various judgments fixed the responsibility of disposal of waste on the Urban bodies which include the Judgment of Hon'ble Supreme Court in Writ Petition (Civil) No. 888 of 1996 in case of Almitra H. Patel Vs. Union of India. Moreover, the Government of India has launched the Swachh Bharat Mission with focus on disposal of municipal waste. Government of Gujarat has also framed the Gujarat Waste to Energy Policy, 2016 which will remain in force upto 27.3.2021 i.e. five years from the date of its notification. The Policy provides for disposal of waste. Thus, the statutory provisions highlighted the disposal of waste as one of the important aspects which need to be dealt with in accordance with the provisions of applicable law. The Commission has passed Order No. 04 of 2016 dated 10.11.2016 with Control Period as specified in the discussion paper since no comments were received from the stakeholders. Later on, a representation from Government of Gujarat was received bringing out the difficulties being faced by the project developers about the uncertainty of tariff and non-signing of PPAs as it is not possible to commission the project during the Control Period specified in the Order as it takes at least 2.5 years to commission the projects and such commissioning would happen only after the expiry of the Control Period. Thus, there is uncertainty about the tariff applicable to the project developers if the project is commissioned after the expiry of the present Control Period. Therefore, no project developers have come forward to sign the PPAs though the land as well as MSW needed for projects are to be provided by Urban bodies as per the concession agreement between the

project developers and the Urban bodies. The objectives of the Electricity Act, 2003 and Policies framed by the Appropriate Governments cannot be lost sight of. Hence, the State Government has requested to revisit the Control Period and amend the Order so that the project developers get adequate time and certainty of tariff and other commercial terms and conditions.

- (ii) The Commission considers that the Project Developers need reasonable time for identifying location of the project, obtaining construction permissions, sanctions and approvals from various statutory authorities, compliance with stringent environmental standards, installation and commissioning of the project, financing arrangement, power evacuation arrangement, etc. All these activities need to be provided reasonable time to ensure that Order No. 04 of 2016 and Gujarat Waste to Energy Policy–2016 are implemented in true letter and spirit and the Waste to Energy projects get materialised to address the problem of waste disposal which has assumed alarming proposition due to rapid urbanisation. The Control Period of Order No. 04 of 2016 (2 Years and 4 months) would prove to be hindrance in setting up the Waste to Energy plant and would defeat the Gujarat Waste to Energy Policy–2016 and Swachh Bharat Abhiyan mission. Regulatory certainty and a defined legal framework is required to ensure that the projects are actually set up. Under these circumstances and with consideration that the Commission is mandated to promote the Waste to Energy projects, the Control Period can be extended to align it with the period specified in Gujarat Waste to Energy Policy, 2016.
- (iii) With regard to the issues as to whether the Commission has the power to extend the Control Period or not, it is necessary to refer Regulation 80 and 85 of the GERC (Conduct of Business) Regulations, 2004 which are reproduced below:

.....

Regulation 80:

Saving of inherent power of the Commission

80. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as

may be necessary for ends of justice or to prevent the abuse of the process of the Commission

.....

Thus, the Commission has inherent power to make/pass such order for ends of justice or to prevent abuse of process of the Commission.

.....

Regulation 85:

Extension or abridgement of time prescribed

85. Subject to the provisions of the Acts, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission.

.....

The aforesaid Regulation expressly confers the power on the Commission to extend or abridge the time prescribed by an Order of the Commission for sufficient reasons.

From the combined reading of the aforesaid Regulations, it is clear that the Commission has inherent power to pass any order and also abridge or extend the time prescribed in the Regulations or the Order passed by the Commission by recording the reasons for the same.

(iv) We also note that the aforesaid Order of the Commission related to determination of MSW tariff is also covered under the GERC (MYT) Regulations, 2016. Some of the Regulations of GERC (MYT) Regulations, 2016 which are relevant in the present case, are reproduced below:

.....

Regulation 6: General Framework

These Regulations are in the nature of general framework on which the tariff determination exercise will be based. However, the Commission reserves the right to vary as and when the facts and

circumstances so warrant, from the procedures and parameters specified in these Regulations.

Regulation 7: Saving of Inherent Power of the Commission

7.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

7.2 Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

7.3 Nothing in these Regulations shall, expressly or by implication, bar the Commission to deal with any matter or exercise any power under the Acts for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

The aforesaid Regulation confers the inherent power on the Commission to pass such Orders which may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

From the combined readings of the GERC (Conduct of Business) Regulations, 2004 and the GERC (MYT) Regulations, 2016, it is clear that the Commission has powers to pass appropriate Order in any case before it for meeting the ends of justice and also to abridge or extend the period of time limit prescribed in the Regulations or Orders by recording the reasons.

- (v) The present proceedings are not initiated as review of Order but are initiated in exercise of the inherent power of the Commission as per Regulations 80 and

85 of the GERC (Conduct of Business) Regulations, 2004 to extend the period of the Order.

23.10. It is necessary to refer the judgment dated 11.05.2016 passed by Hon'ble APTEL in Appeal No. 170 of 2014 in case of GUVNL V/s. GERC and Others, which is reproduced below:

“.....

10.11. We have gone through the Conduct of Business Regulations, 2004 and the provisions provided under Section 86 of the Electricity Act, 2003 and find that the learned State Commission has rightly passed the impugned order under its inherent powers. We are unable to accept the contention of the Appellant that the State Commission cannot exercise inherent power for the purpose of extending the Control Period. We may clarify that the Control Period of the tariff order is fixed by the State Commission itself and, hence, the State Commission has inherent powers to extend the Control Period of the tariff order. There is no restriction or fetter on the powers of the State Commission in the Electricity Act, 2003 or under the Conduct of Business Regulations, 2004 to pass such order as the State Commission may deem fit and appropriate in the interest of justice and discharge its functions under the Electricity Act, 2003. The Conduct of Business Regulations, 2004 provide inherent powers to the State Commission to pass any order it deem fit and proper to meet the ends of justice or to prevent abuse of the process of the court. The State Commission has liberty to exercise its inherent powers if the exercise of inherent power is not in any way in conflict with what has been expressly provided in the Civil Procedure Code or against the intentions of the legislature which means that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.

10.12. Regulation 85 of the Conduct of Business Regulations, 2004 dealing with Extension or abridgement of time prescribed fairly provide that subject to the provisions of the Acts, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission.

.....

10.17. This Appellate Tribunal, in its judgment, dated 2.1.2013, in Appeal Nos. 96 & 130 of 2012, held that the State Commission has been vested with inherent powers to meet the end of justice and to prevent abuse of the Code

and such powers can be exercised by the State Commission to extend the Control Period of a tariff order when any project developer, like the Respondent No.2 herein, faces problem, due to reasons beyond its control, in completing its project in the said Control Period in the interest of justice after examining each case on its merits.

.....”

Thus, in the aforesaid Judgment, Hon’ble APTEL has held that the Commission has inherent power to pass any Order and extend the Control Period to meet the ends of justice.

23.11. We also note that while functioning as a Regulator and exercising the Regulatory powers the Commission has powers not only to pass an Order and fix the Control Period but also to modify and alter the same as its Regulatory powers do not get exhausted with the passing of the original order. The Hon’ble Supreme Court has in case of State of U.P. and Others V/s. Maharaja Dharmander Prasad Singh and Others reported in (1989) 2 SCC 505 recorded as under:

“.....

52. It appears to us that view of the High Court that in the absence of a directive or authorisation from the Government under Section 41(1), the Vice-Chairman, acting as the statutory authority dispensing permissions for development under the Act, cannot revoke or cancel a permission once granted is clearly erroneous. In this case the grant of permission is part of or incidental to the statutory power to regulate orderly development of the “Development Area” under the Act under Regulatory Laws. The power to regulate with the obligations and functions that go with and are incidental to it, are not spent or exhausted with the grant of permission. The power of regulation which stretches beyond the mere grant of permission, takes within its sweep the power, in appropriate cases, to revoke or cancel the permission as incidental or supplemental to the power to grant. Otherwise the plenitude of the power to regulate would be whittled down or even frustrated.

.....”

From the aforesaid, it is clear that the regulatory power of the Commission does not get exhausted with the passing of the Order but can be invoked to modify/alter the said order.

- 23.12. UUWA and LUB have raised the objection that the cost of RDF considered by the Commission @ Rs. 1600/MT is very high. The RDF is available @ Rs. 800-1000/MT from Bharuch Environment Infrastructure Limited, a unit of UPL. The Commission may revisit the price of RDF and re-determine the generic tariff. Further they have contended that the Capital Cost, O&M cost etc. are considered by the Commission without any sufficient submissions by the parties. Hence, the Commission may verify and review the same. It is clarified that the present proceedings on Suo-Motu basis is initiated by the Commission with a limited issue of revisit of Control Period i.e. para 2.4.1 and applicability of the order i.e. para 4.9 of the Order. The contentions raised by the above objectors are beyond the scope of the present proceedings. Hence, the same are not considered and rejected.
- 23.13. UUWA and LUB have contended that the Commission has in Solar power project developers' cases not allowed the extension of the Control Period as the review of the Order is not permissible. We note that the said Petitions were been filed by the project developers on different grounds and after considering the plea of the Petitioners, the Commission has not allowed the extension of the Control Period. In the present case, the Commission has initiated the Suo-Motu proceedings based on the representation of the Government of Gujarat that there is uncertainty about the applicability of tariff and other commercial terms and conditions for the projects getting commissioned after 31st March, 2019 as the installation and commissioning of the Waste to Energy projects take about 2 and half years to complete after execution of PPA. Hence, the Commission has decided to revisit its own Order so that certainty about the tariff will be available in the State and project developers are able to complete the projects and disposal of waste becomes possible.
- 23.14. The Municipal Solid Waste is affecting the environment specifically the land, water as well as air. It is necessary to provide the regulatory certainty to such projects, which is beneficial to the Society at large, State as well as Country. We, therefore, decide that the present petition on Suo-motu basis by the Commission is with an intent to give regulatory certainty to the projects and ensuring their commissioning which will go a long way in addressing the problem of disposal of MSW. Hence, the contention of the objectors UUWA and LUB is not accepted and the same is hereby rejected.

23.15. We also decide that the contentions raised by the Respondents UUWA and LUB stating that the present Suo-Motu proceedings amounts to review of the Order No. 4/2016 dated 10.11.2016 are not legal and valid and the same are rejected.

24) Now we deal with the issue of extension of time limit specified in Control Period of Order No. 04 of 2016 dated 10.11.2016 up to the period specified in the Waste to Energy Policy of Government of Gujarat i.e. 31.03.2021?

24.1. M/s. Abellon Clean Energy Limited submitted that in the draft PPA a payment clause is inserted by GUVNL stating that the applicable tariff shall be lower of the tariff as determined by the Commission in Order No. 04 of 2016 or the new tariff which may be determined for the period after completion of the Control Period of Order No. 04 of 2016. This is creating regulatory uncertainty about the tariff receivable by the project developers and the project developers are finding it difficult to achieve financial closure. The project developers are not willing to sign such PPAs when they know beforehand that the project will not achieve financial closure as the installation and commissioning of Waste to Energy projects takes about two & half years' time after signing the PPA which in this case would happen only after expiry of the Control Period on 31.03.2019. The Commission may, therefore, in the interest of all the stakeholders and also the society at large provide regulatory certainty about the applicable tariff and extend the Control Period i.e. upto 31.03.2021.

24.2. We note that during the hearing the project developers have admitted that the installation and commissioning of the Waste to Energy project, takes about two and half years. The Commission has passed the aforesaid order on 10.11.2016 with Control Period upto 31.03.2019. Thus, the tariff and other commercial terms and conditions are valid up to 31.03.2019. However, there has been apprehension in signing of the PPA with GUVNL. The Commission therefore is of the view that the project developers need to be given sufficient time to complete all the activities and commission the project to be eligible for tariff determined by the Commission. The Commission, therefore, decides to extend the time limit of the Control Period specified in para 2.4.1 of the Order No.4 of 2016 till 31.03.2021

- 25) We also note that some of the objectors have raised certain issues which are not related with the present proceedings, the same are dealt with hereunder:
- 25.1. The issue raised by Jindal Urban Waste Management (Ahmedabad) Limited (JUWMAL) that the project being set up by them may be exempted from the applicability of Control Period specified in Order No. 04 of 2016 dated 10.11.2016 and decide that they are eligible to receive tariff of Rs. 7.07 per Unit for 30 years of concession period with annual escalation in line with CERC (WTE) tariff. We clarify that the Commission has determined the tariff taking into consideration various parameters as the distribution licensees are mandated to procure such energy at the tariff determined by the Commission during the life of the project which is estimated to be 25 years. Therefore, if the project developers want to sell such energy to the licensees at a different tariff and for a period beyond 25 years, in that case, the licensees need to agree with it. Moreover, in such case, the procurer/licensees are required to approach the Commission seeking approval for such arrangement.
- 25.2. The project developer needs to file a separate petition for determination of project specific tariff and the Commission has to determine the same as per the provisions of the Electricity Act, 2003. In the present proceedings, the Commission has Suo-Motu initiated proceedings for extension of the Control Period of Order No. 04 of 2016 to align it with the Gujarat Waste to Energy Policy - 2016. Hence, the aforesaid issue raised by JUWM(Ahmedabad) Limited is not acceptable and the same is rejected.
- 25.3. Further, JUWM (Ahmedabad) Limited has raised the issue that the Bank Guarantee demanded by GUVNL during construction of the plant and O & M performance guarantee etc. during operation of the plant for different amount may be waived when the PPA is to be signed with GUVNL as they are also required to give bank guarantee in favour of AMC. We note that the aforesaid issue is not a part of the subject matter of the present proceedings. Hence, the said contention of the JUWM (Ahmedabad) Limited is rejected.
- 25.4. JUWM (Ahmedabad) Limited raised the issue that the CDM revenue sharing decided by the Commission may be revisited and the same may be revised in line

with Clause 24 of the Gujarat Waste to Energy Policy, 2016 that CDM benefit shall be shared in accordance with the concession agreement as specified in the Bid documents. The present proceedings initiated by the Commission is limited to only revising the Control Period and applicability of Order No. 04 of 2016 dated 10.11.2016 and hence, the issue raised by JUWM (Ahmedabad) Limited is not accepted and the same is rejected.

25.5. During the proceedings, it is submitted by Jindal Urban Waste Management (Ahmedabad) Limited that after awarding the project by the AMC and signing of the concession agreement with AMC, they had discussed about the tariff payable to them which is different and distinct from the discovered tariff while awarding the projects by AMC to them. However, they agreed the tariff of Rs. 7.07 per Unit without any tipping fees in line with the Commission's Order No. 04 of 2016 dated 10.11.2016. They had approached GUVNL who is purchasing the power on behalf of the distribution licensees. GUVNL has conveyed that the tariff of Rs. 7.07 per Unit is payable during the period of PPA. They are in process of financial closure. But the financial closure has not been achieved due to two reasons, viz. (i) the concession agreement provides the disposal of waste for 30 years by the project developers and (ii) the tariff for the project has been quoted by them during the bidding process carried out by AMC was Rs. 7.17 per Unit for 30 years' period but later on they have agreed to supply power at the rate of Rs. 7.07 per Unit i.e. the tariff determined by the Commission. Hence, as the project was awarded to them prior to the Order No. 04 of 2016 and they agreed to the tariff of Rs. 7.07 per Unit during the concession period, they may be exempted from the Control Period specified in the order and period for agreement (PPA) and tariff payable by GUVNL may be considered for 30 years. Since this issue is beyond the scope of the present proceedings, the same cannot be accepted and hence rejected.

25.6. JUWMAL also requested to consider the life span of the project as 30 years and the tariff determined by the Commission may be escalated on year to year basis. We note that the tariff was determined by the Commission in Order No. 04 of 2016 dated 10.11.2016 following due process of tariff determination. The issues raised by JUWMAL were not envisaged by the Commission and no comments were invited from the Stakeholders. Thus, the issue is beyond the scope of the present proceedings, hence, the same is rejected.

- 25.7. Dynagreen Environmental Protection Group Company Limited submitted that the life of project be considered as 25 years. Moreover, the cost of the project may also be more than Rs. 16 Crores per MW. The project developers should have adequate experience, sufficient funds and at least 1 project registered with United Nations CDM mechanism. The aforesaid contentions are beyond the scope of the present proceedings. The Commission has invited comments and suggestion with regard to extension of Control Period specified in para 2.4.1 of the Order No. 04 of 2016 and consideration of applicability of Order specified in para 4.9 of the aforesaid Order. Hence, the aforesaid contentions of the objector are not permissible for any relief in the present proceedings and therefore the same are rejected.
- 26) In view of the above observations, we decide that the Control Period specified in the para 2.4.1 of Order No. 04 of 2016 dated 10.11.2016 is to be considered as from the date of the Order i.e. 10.11.2016 to 31.3.2021. The applicability of the Order specified in the para 4.9 also be read as the projects which are installed and commissioned during the aforesaid period i.e. 10.11.2016 to 31.3.2021 are eligible for the tariff determined in Order No. 04 of 2016 dated 10.11.2016.
- 27) We order accordingly.
- 28) With this, the present petition stands disposed off.

Sd/-
[P. J. THAKKAR]
Member

Sd/-
[K. M. SHRINGARPURE]
Member

Sd/-
[ANAND KUMAR]
Chairman

Place: Gandhinagar.

Date: 23/10/2017.