

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 1617 of 2017.**

**In the Matter of:**

**Petition under Section 86 (1)(e) and 86 (1) (f) of the Electricity Act, 2003 and agreement for wheeling entered into with GETCO dated 24.3.2015 and agreement for wheeling and purchase of excess energy entered into with PGVCL on 30.3.2015 and dispute regarding levying of transmission charges, wheeling charges and not providing banking and purchase of surplus energy.**

Petitioner : Sheetal Cool Products Private Limited  
Plot No. 75 to 80, GIDC Estate,  
Amreli- 365 601

Represented by : Advocate Shri Anal Shah

Vs.

Respondent No. 1 : Paschim Gujarat Vij Company Limited (PGVCL)  
Off. Nana Mava Main Road,  
Near Bhaktinagar Railway Station,  
Laxminagar, Rajkot – 360 004.

Represented by : Learned Advocate Shri M. G. Ramachandran along with Shri  
J. J. Gandhi

Respondent No. 2 : Gujarat Energy Transmission Corporation Limited (GETCO)  
Vidyut Bhavan, Race Course,  
Vadodara 390 007.

Represented by : Learned Advocate Shri M. G. Ramachandran along with Shri  
N. P. Maheshwari and Ms. Venu Birappa.

**CORAM:**

**Shri Anand Kumar, Chairman  
Shri K. M. Shringarpure, Member  
Shri P. J. Thakkar, Member**

**Date: 7/05/2018**

**ORDER**

1. The present petition has been filed by the Petitioner, M/s Sheetal Cool Products Private Limited, seeking following reliefs:
  - a. Declare and hold that as per Wind Power Policy- 2002 notified on 20.6.2002 by Energy & Petrochemicals Department of Government of Gujarat vide Government Resolution No. EDA-10-2001-3054-B (Part II), the Petitioner is entitled to wheel the power to its consumption Unit by payment of wheeling losses @ 4 % (all inclusive),
  - b. Declare and hold that Clause No. 3.2 of the Wheeling Agreement dated 30.3.2015 signed between the Petitioner and Respondent No.1 (PGVCL) is void,
  - c. Direct Respondent No.1 to amend/alter and revise the Wheeling Agreement dated 30.3.2015 signed between the Petitioner and PGVCL so as to make it in consonance with the Wind Power Policy, 2002,
  - d. Direct Respondent No.1 to provide the benefit of banking of electricity as per Wind Power Policy, 2002,
  - e. Direct Respondent No.1 to amend the rate for purchase of surplus electricity by adding 5 paise per year for every year since date of installation and commissioning of WTG,
  - f. Direct the Respondent No. 2 to refund the transmission charges recovered from the Petitioner from 24.3.2015 till date,
  - g. Pass any other order as it may deem fit and proper in the interest of justice.
  
2. Facts mentioned in the Petition are stated below:

- 2.1. The Petitioner, a company incorporated under the Companies Act, 1956, is engaged in the business of manufacturing and marketing of ice-creams, frozen food and dairy products located at Plot No. 75 to 80, GIDC Estate, Amreli.
- 2.2. The Petitioner is having two Wind Turbine Generators (WTGs), (i) 1.25 MW at Village Vanku, Taluka: Abdasa, Dist. Kutch and (ii) 1.5 MW at Village Bhambhdai, Taluka: Mandvi, Dist. Kutch. Thus, the Petitioner is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003.
- 2.3. The present petition relates to WTG No. (i) which was earlier owned by M/s Radhe Enterprise. Gujarat Energy Development Agency (GEDA) permitted M/s Radhe Enterprise to set up a Wind Farm of 1.25 MW on the land bearing survey No. 255/1 at Village Vanku, Taluka: Abdasa, Dist. Kutch and the same was commissioned on 27.3.2006 under the Wind Power Policy 2002 notified by Energy and Petrochemicals Department, Government of Gujarat on 20.6.2002. The commissioning certificate was issued by GEDA vide its letter No. GEDA/PWF/SGWPL-RE/Vanku/248 on 18.4.2006.
- 2.4. M/s Radhe Enterprise had opted for self-consumption of energy generated by the WTG and accordingly it entered into an Agreement on 19.6.2006 with Gujarat Energy Transmission Corporation Limited (GETCO) for wheeling of energy generated by WTG to its manufacturing unit located at Gondal Road, Rajkot.
- 2.5. By the aforesaid agreement, GETCO had agreed to wheel the power in accordance with the provisions of Wind Power Policy- 2002 and as per the terms and conditions contained in the application form and the agreement. The agreement including the clauses relating to Eligible Period, Wheeling Charges, Banking of Energy etc. were as per the provisions of Wind Power Policy, 2002.
- 2.6. The Petitioner, is a consumer of Respondent PGVCL (Consumer No. 43060) having Contract Demand of 500 KVA for its plant/unit at Plot Nos. 75-80, GIDC Estate, Amreli.

Considering the power consumption at its manufacturing unit, the Petitioner decided to buy a WTG to avail the benefits of generation for captive use.

- 2.7. The Petitioner accordingly entered into discussion and negotiations with M/s Radhe Enterprise for purchase of its 1.25 MW WTG at Village Vanku, Dist. Kutch. Since M/s Radhe Enterprise agreed to sell its WTG to the Petitioner, GEDA, on the basis of application made by the Petitioner granted the permission vide its letter No. GEDA/WF.Vanku 2014-15/6521 dated 24.2.2015 for sale of WTG in the name of the Petitioner. Thereafter, M/s Radhe Enterprise vide sale deed dated 26.3.2015 sold the aforesaid WTG to the Petitioner.
- 2.8. The Petitioner also opted to utilize the electricity generated from the above WTG for its self-consumption at its manufacturing unit located in Amreli. The electricity generated from WTG in Kutch was to be injected in the networks of Respondents GETCO and PGVCL. The Petitioner accordingly entered into a fresh wheeling Agreement dated 24.3.2015 with GETCO. The said agreement was executed as per the Wind Power Policy 2002 of the Govt. of Gujarat. From the various Clauses of this agreement such as Eligible Period, Wheeling Charges etc., it is clear that GETCO had recognized the fact that since the WTG was commissioned during Wind Power Policy 2002, on sale of the WTG to the Petitioner, only a fresh wheeling agreement was required to be executed with the Petitioner. The terms and conditions of fresh agreement were based on the Wind Power Policy 2002 which was in operation on the date of commissioning of the WTG.
- 2.9. Subsequently, as the Petitioner's manufacturing unit was situated within the distribution area of PGVCL, an agreement was required to be executed with PGVCL for wheeling of electricity from the WTG to its manufacturing unit. After going through the pre-printed Wheeling Agreement of PGVCL, it was pointed out that the draft agreement was not in accordance with the Wind Power Policy- 2002. However, PGVCL informed that the

agreement is prepared as per the present Policy/Order, Rules and Regulations. The Petitioner also informed that GETCO has executed the wheeling agreement dated 24.3.2015 on the basis of Wind Power Policy- 2002 and PGVCL also ought to execute wheeling agreement as per Wind Power Policy- 2002. However, PGVCL being reluctant to make any changes in the wheeling agreement, the Petitioner was constrained to execute the wheeling agreement prepared by PGVCL. The Petitioner had no option but to sign the agreement as without wheeling agreement in place with PGVCL, the Petitioner would not be able to wheel the electricity from the WTG to its manufacturing unit. The Petitioner under financial duress and coercion signed and executed the wheeling agreement with PGVCL on 30.3.2015.

2.10. The Petitioner immediately lodged its protest to the wheeling agreement vide its letter dated 30.3.2015, wherein the Petitioner categorically mentioned that it had executed the wheeling agreement with PGVCL under protest and that the agreement should be executed under Wind Power Policy- 2002. PGVCL vide its letter dated 24.4.2015, in reply, did not agree to amend the wheeling agreement and reiterated its earlier stand.

2.11. Since, PGVCL did not agree to revise/amend the wheeling agreement, the Petitioner wrote letters to the Secretary of this Commission on 28.4.2015 and 11.12.2015 narrating the aforesaid situation. The Petitioner also highlighted the similar case of M/s Kansara Popatlal Tribhovandas Metal Pvt. Ltd. who had purchased old WTG from M/s Antai Balaji limited on 30.9.2005, in whose case the concerned DISCOM i.e. UGVCL has executed the wheeling agreement as per Wind Power Policy with wheeling charges @ 4%. A reference was also made to the case of M/s British Super Alloys-Petition No. 1118 of 2011, which was allowed by the Commission vide Order dated 28.11.2011 and directions were given to UGVCL to amend the wheeling agreement and to refund excess wheeling charges and wheeling losses. In reply, vide letter of this Commission, GERC/Legal/2015/2454

dated 9.12.2015, the Petitioner was informed that the dispute between the Petitioner and distribution company is required to be resolved in terms of the agreement and that in case of failure to resolve the dispute the Petitioner can approach the Commission for adjudication of dispute by filing a petition as per the Conduct of Business Regulations, 2004.

2.12. It is apparent from the Wind Power Policy of 2002, GERC Order No. 2 of 2006, Wind Power Policy of 2007 and its amendment, GERC Order Nos. 1 of 2010 and 2 of 2012 as well as Wind Power Policy, 2013 that the WTG of 1.25 MW capacity of the Petitioner, installed on 27.3.2006, is governed by the Wind Power Policy- 2002 of the Govt. of Gujarat. The Order No. 2 of 2006 dated 11.8.2006 and Order No. 1 of 2010 dated 30.1.2010 make it clear that the commercial settlement of WTGs installed and commissioned under Wind Power Policies of 1993 and 2002 of the Government of Gujarat would be governed by the various provisions as provided in those respective policies. Therefore, as per Wind Power Policy, 2002 the Respondent is entitled to recover the losses and the transmission charges only @ 4 %. Since the Petitioner has purchased the WTG from M/s Radhe Enterprise which was commissioned on 27.3.2006, neither the Order No. 2 of 2012 passed by the Commission nor Wind Power Policy, 2013 was applicable. Hence, PGVCL is not justified in incorporating the clauses for charging wheeling charges and losses @ 10 % and 7% in case of small investors as per the present rules and Regulations. Further, PGVCL has arbitrarily refused to amend and/or revise the wheeling agreement despite the fact that the Petitioner had pointed out that GETCO had executed wheeling agreement dated 24.3.2015 with the Petitioner for the said WTG as per Wind Power Policy, 2002.

2.13. Merely because the Petitioner has purchased the WTG on 26.3.2015, it does not mean that WTG would be deemed to be re-installed or re-commissioned and therefore, the tariff

Orders and Wind Policy relevant at the time of purchase of the WTG are not required to be considered. The relevant date for application of rules and regulations is only the date of installation and commissioning of the WTG and the same is expressly made clear by the Commission in its Order No. 2 of 2006 dated 11.8.2006 and Order No.1 of 2010 dated 30.1.2010.

2.14. Sale of WTG would only require the licensee to enter into a fresh agreement with the new owner because of change in ownership but the terms and conditions of the earlier agreement would substantially remain the same except for the duration. However, PGVCL has compelled the Petitioner to enter into an arbitrarily altered and modified wheeling agreement with higher wheeling losses. Further, PGVCL had arbitrarily removed banking provision for which the Petitioner is otherwise eligible under the Wind Power Policy-2002. PGVCL has incorporated provisions for higher wheeling losses by stating that the same is as per present applicable Rules and Regulations and has deliberately adopted the rate of Rs. 2.60 for surplus electricity generated by the WTG and injected into the grid. On one hand for charging wheeling loss PGVCL is relying on recent Orders of the Commission and policies of the Govt. and on the other hand it has adopted for the rate for purchase of surplus power as determined by Wind Power Policy, 2002. In fact, as per Wind Power Policy, 2002 the rate of Rs. 2.60 for sale of surplus power is to be increased by 5 paise per year. As the WTG was commissioned on 27.3.2006, PGVCL while executing the wheeling agreement with the Petitioner on 30.3.2015 was required to add 45 paise for sale of power.

2.15. Similar issue regarding applicability of Wind Power Policy- 2002 in respect of WTG installed and commissioned during the control period but subsequently sold to another party has been decided by the Commission in the case of M/s British Super Alloys Private Limited Vs. GETCO and UGVCL in Petition No. 1118 of 2011. In the said case, the M/s

British Super Alloys Private Limited had purchased WTG from M/s Decolight Ceramics Limited and dispute arose with regard to charging of wheeling loss for the WTG. The Petitioner in that case contended that since the WTG was commissioned on 15.12.2007, wheeling loss @ 4 % as per GERC Order No. 2 of 2006 and Wind Power Policy- 2007 was applicable. However, GETCO and UGVCL executed the wheeling agreement with wheeling losses @ 10% relying upon the GERC Order No. 1 of 2010 and Open Access Regulations. The Commission, vide Order dated 28.11.2011, allowed the petition of M/s British Super Alloys Private Limited.

2.16. The Clause No. 3.2 of the wheeling agreement dated 30.3.2015 signed between PGVCL and the Petitioner is pari materia to Clause No. 4.2 of the Wheeling Agreement between GETCO and M/s British Super Alloys Private Limited. The Commission has in the matter of M/s British Super Alloys Private Limited held that the said Clause No. 4.2 is void. Hence, the Clause No. 3.2 of the wheeling agreement dated 30.3.2015 signed between the Petitioner and PGVCL is also required to be declared void as the same is not in consonance with the Wind Power Policy- 2002 and Orders of the Commission.

2.17. Respondent No. 1 PGVCL has been charging wheeling losses @ 10% on the energy injected from 1.25 MW WTG of the Petitioner since 30.3.2015. Additionally, Respondent No. 2 GETCO is charging 4 % transmission loss. The said action of the Respondents is in violation and against the provisions of Wind Power Policy- 2002 and Orders of the Commission. The Petitioner is entitled to wheel the power to its point of consumption on payment of 4 % wheeling charges. Hence, the Respondent No. 2 is required to be directed to refund 4 % transmission charges and Respondent No. 1 is required to be directed to adjust 6 % wheeling loss additionally charged by it since 31.3.2015 till date against future charges.

2.18. In case of Kansara Popatlal Tribhovandas Metal Private Limited, where old WTG of M/s Antai Balaji Ltd., commissioned on 30.9.2005, was purchased, UGVCL has executed the wheeling agreement with wheeling losses @ 4 % as per the Wind Power Policy- 2002. In the said agreement UGVCL also provided benefit of banking of electricity. However, in the present case, PGVCL has executed the wheeling agreement with the Petitioner with the wheeling loss @ 7 % over and above transmission charges @ 4 % charged by GETCO. Further, PGVCL has also removed provision of banking of electricity. There is no rationale or justification for different licensees executing different wheeling agreement with similarly situated consumers.

3. Respondent Paschim Gujarat Vij Company Limited vide its reply dated 3.3.2017 submitted as follows :

3.1. The petition filed by the Petitioner purporting to be under Section 86 (1)(b) and (f) of the Electricity Act, 2003 raising disputes regarding levy of transmission charges and wheeling losses regarding banking of energy facilities is misconceived and is liable to be rejected. The Petitioner entered into the wheeling agreement with Respondent No.1 on 30.3.2015 after it had acquired the existing wind farm from M/s Radhe Enterprises vide sale deed dated 26.3.2015. In terms of the provisions of the Government Policy, Regulations and Agreement reached between the parties, the wheeling agreement dated 30.3.2015 is a new and independent agreement to be considered on the terms and conditions contained in the said agreement. The liability to pay wheeling charges under the new agreement is as per the policy of the Government of Gujarat then prevalent and the same has been incorporated in clause – terms and conditions for wheeling of energy.

3.2. The Petitioner is not entitled to claim the same privileges which were admissible to M/s Radhe Enterprises under the earlier wheeling agreement dated 19.6.2002 with GETCO.

3.3. M/s Radhe Enterprises had entered into the agreement when the Wind Power Policy- 2002 was prevalent and therefore the terms and conditions for wheeling were decided in terms of the said Wind Power Policy- 2002. However, when the Petitioner, a private company acquired the wind farm from M/s Radhe Enterprises and entered into an independent agreement dated 30.3.2015, the terms and conditions of wheeling provided under the Wind Power Policy was no longer applicable. The terms and conditions of wheeling of electricity as governed by the provisions of the Order dated 8.8.2012 passed by the Commission is applicable to the wheeling of energy on the distribution system in the present case. As set out in Clause 3 of the wheeling agreement dated 30.3.2015, the Petitioner agreed to compensate the Respondent by payment of transmission charges and wheeling losses at the rate of 10 % of the energy, which was the prevalent charges as per the Orders passed by the Commission in place of the compensation at 4 % provided for in the agreement reached between M/s Radhe Enterprises in the year 2006 as per the then prevalent rate of 4 % as per the Commission's Order. The Petitioner having acquired the Wind Farm and having entered into a new agreement with the Respondent as per the applicable Regulations, can no longer claim that the transmission charges and wheeling losses @ 4 % shall continue to apply.

3.4. Further, the conditions as specified by the Respondent in its letter dated 31.3.2015, were duly accepted by the Petitioner and based on the same, the facilities of transmission and wheeling were provided to the Petitioner. It is not open to the Petitioner now to seek any variation with the above arrangement. The above arrangement is also consistent with what has been allowed to others who are governed by the then prevalent wind power policy. Thus, there is no merit in the claim made by the Petitioner.

3.5. The wheeling agreement was entered into with the Respondent No.1 in accordance with the requirement for the Petitioner to avail the benefit of wheeling. It is wrong and denied

that there was any representation from the Officers of the Respondent No. 1 or Respondent No.2 in regard to the applicability of transmission charges and wheeling losses at the rate of 4 % as per the terms of the Wind Power Policy, 2002 and not 10 % as per the terms and conditions contained in the Agreement dated 30.3.2015. Neither Respondent No.1 nor Respondent No. 2 could have given any such representation when the transmission charges and wheeling losses have to be determined based on the date of wheeling agreement and further as the wheeling agreement entered into with the Petitioner was a new agreement. The Petitioner is not entitled to claim the same privileges of 4 % allowed to M/s Radhe Enterprises under the Wind Power Policy- 2002 as per the then existing terms and conditions. It is wrong and denied that the Petitioner was forced or constrained to sign the wheeling agreement.

3.6. The transmission charges and wheeling losses at the rate of 4 % of the energy injected into the grid as decided by the Commission in the Order No. 2 of 2006 dated 11.8.2006 was applicable only for the agreement entered into as per the Wind Power Policy, 2002 on or before 10.8.2009. The said terms and conditions was not applicable to the wheeling agreement and arrangement entered into after coming into force of the Wind Power Policy, 2007 notified by the Govt. of Gujarat on 13.6.2007 wherein it is provided that in case the transmission and wheeling charges decided in the policy are inconsistent with the charges and losses decided by the Commission, the charges and losses decided by the Commission shall be applicable. It is, therefore, not open to the Petitioner to claim the transmission charges and wheeling losses to be applicable at the rate of 4 % after the Government of Gujarat had notified the new Wind Power Policy, 2007 and the Commission has passed the Order dated 1 of 2010 dated 30.1.2010.

3.7. Upon the change of legal ownership of the WTG, namely, sale of WTG by M/s Radhe Enterprises to the Petitioner, the Petitioner had to sign a new wheeling agreement. The

Petitioner was not entitled to continue the agreement which M/s Radhe Enterprises signed with the Respondent No.1 for wheeling of electricity. The new wheeling agreement was required to be signed on the terms and conditions prevalent on the date of the agreement including that the transmission charges and wheeling losses are to be adjusted in terms of the Order dated 8.8.2012 passed by the Commission. The Respondent in this regard relies on the Order dated 7.10.2010 passed by the Commission in Petition No. 1026 of 2010 in the matter of M/s Ajanta Limited Vs. GUVNL and Ors.

3.8. The case of M/s British Super Alloys Private Limited is distinguishable and has no applicability to the present case. In that case the Commission was dealing with the issue of the liability of the developer to pay the normal transmission charges and also to pay transmission and wheeling losses at 7 % of the energy fed into the grid. The Commission held that the same was contrary to the Order No. 2 of 2006 dated 11.8.2006 passed by the Commission and also inconsistent with the Wind Power Policy 2007. Difference in the present case and British Super Alloys Private Limited is that the WTG in case of British Super Alloys Private Limited was commissioned during the control period of GERC Order dated 11.8.2006 and in the present case it was commissioned prior to the Order dated 11.8.2006.

4. Respondent GETCO vide its reply dated 27.4.2017 submitted as follows:

4.1. The Petitioner, M/s Sheetal Cool Products Private Limited, has 2 wind farms, (i) 1.5 MW located at Mandvi, Kutch and (ii) 1.25 MW located at Vanku, Kutch.

4.2. The Petitioner had purchased the WTG of 1.5 MW from Suzlon to be installed at location 482/P, Bhambhdai, Mandvi, Kutch under the GoG Policy 2013 and GERC Order No. 2 of 2013. The transfer permission to the WTG was granted by GEDA on 8.1.2014 to the Petitioner and the machine was commissioned on 5.3.2014.

- 4.3. The Petitioner signed a Bulk Power Transmission Agreement with GETCO on 22.1.2014 for wheeling of wind generated power to its captive consuming unit as per the provision of GoG GR. No. EDA 102001-3054-B dated 25.7.2013 and Order No. 2 of 2012 dated 8.8.2012 of the Commission. Para 4 of the said BPTA provides for terms and conditions for transmission/wheeling of energy according to which the Petitioner is to compensate GETCO for such wheeling of power to consumption site at below 66 kV voltage level as per the transmission charges applicable to normal Open Access consumers and transmission and wheeling losses @ 10 % of energy fed into the grid.
- 4.4. The captive consumption is at GIDC Amreli where the Petitioner is having a contract demand with PGVCL of 500 KVA at 11 kV voltage level. Therefore, as per the provisions of the BPTA signed in line with the GoG Policy and the Commission's Order, the Petitioner has to pay the transmission charges to the Respondent No.1 from the date of commissioning of the WTG. The Respondent No. 2 has been raising invoices of the Transmission Charges to the Petitioner for capacity of 1.5 MW on monthly basis as per the Tariff determined by the Commission from time to time. The Petitioner is bound to pay such transmission charges for the installed capacity of 1.5 MW for the complete term of the BPTA signed with the Respondent No.2.
- 4.5. M/s Radhe Enterprises purchased machine of 1.25 MW from Suzlon for installation at Survey No. 255/1, Village Vanku, Abdasa, Dist. Kutch. The WTG was commissioned on 27.3.2006 and commissioning certificate was issued by GEDA on 18.4.2006. M/s Radhe Enterprise signed the Transmission Agreement with GETCO on 19.6.2006 and continued to take set off of the wind generation upto February, 2015. A letter was submitted by the Petitioner on 2.3.2015 regarding request of wheeling agreement with the Petitioner as they had purchased the WTG from M/s Radhe Enterprise. GEDA had granted the approval to M/s Radhe Enterprise for sale of wind farm vide letter GEDA/WF/Vanku/2014-

15/6521/Dtd. 24.2.2015. GETCO in continuation of the letter of the Petitioner requested to submit various documents on 10.3.2015. The Petitioner submitted the documents on 18.3.2015 and the BPTA was signed with the Petitioner on 24.3.2015 and conveyed to the Petitioner by the Respondent No. 2 vide letter dated 25.3.2015.

4.6. As per the terms and conditions for Transmission of energy in the Agreement signed with the Petitioner, GETCO has not been raising any invoice for the transmission charges for 1.25 MW capacity from the date of signing the agreement where only 4 % losses are being recovered as per the GoG Policy.

4.7. The Petitioner at prayer No. (vii) has prayed to refund the transmission charges recovered from the Petitioner from 23.3.2015 till date. The prayer asked by the Petitioner is wrong and misconceived as the Petitioner has stated in Para 4 that this Petition relates to Wind Turbine generator of 1.25 MW located in Village Vanku, Abdasa. Whereas the transmission charges recovered from the Petitioner is related to its 2<sup>nd</sup> WTG of 1.50 MW located in Village Bhambhdal, Mandvi. The Respondent No. 2 has therefore raised the invoice for Transmission charges of 1.5 MW in line with the policy and Order No. 2 of 2012 of the Commission and the Petitioner has paid the charges for the same from April, 2014. Whereas for the WTG of 1.25 MW which was commissioned in the year 2006, the Respondent has never raised any invoice for transmission charges. Considering this, the Petitioner is not entitled to any relief as prayed for or otherwise.

5. The matter was kept for hearing on 21.1.2017 and on 6.5.2017.

6. Advocate Shri Anal Shah on behalf of the Petitioner submitted as follows:

6.1. The primary issue involved in the present case is the wheeling agreement dated 30.3.2015 for the Petitioner's 1.25 MW wind turbine generator (WTG) with Respondent PGVCL, which is not in consonance with the Wind Policy, 2002 as well as various Orders and

Regulations of the Commission. The Petitioner for its aforesaid WTG has also signed the wheeling agreement with GETCO on 24.3.2015, which is in line with and as per the provisions of the Wind Power Policy, 2002. However, the wheeling agreement signed with PGVCL, the terms and conditions prevailing on the date of the agreement i.e. Wind Power Policy, 2013 and the Order No. 2 of 2012 of this Commission have been made applicable which is not valid.

- 6.2. Though the Petitioner purchased the WTG on 26.3.2015, it does not mean that WTG would be deemed to be re-installed or re-commissioned. The WTG was commissioned on 27.3.2006 and the commissioning certificate was issued by GEDA on 18.4.2006. Hence, the relevant date for application of rules and regulations is only the date of installation and commissioning of the WTG i.e. 27.3.2006 and the same is also expressly made clear by the Commission in its Order No. 2 of 2006 and Order No. 1 of 2010.
- 6.3. A similar issue was also raised in Petition No. 1118 of 2011 before the Commission in the matter of M/s British Super Alloys Private Limited Vs. GETCO and UGVCL. The dispute therein was with regard to charging of wheeling loss for the WTG, which was purchased by the Petitioner from M/s Decolight Ceramics Limited. The Petitioner, therein contended that since the WTG was commissioned on 15.12.2007, the applicable wheeling loss would be 4% % as per GERC Order No. 2 of 2006 and Wind Power Policy 2007. However, Respondents GETCO and UGVCL, therein, executed the wheeling agreement with wheeling losses @ 10% relying upon GERC Order No. 1 of 2010 and Open Access Regulations. The Commission vide its Order dated 28.11.2011 allowed the petition and held that the Petitioner, therein is eligible to wheel power to the place of consumption by paying 4% transmission losses in kind to GETCO as per the provisions of Order No.2 of 2006.

6.4. Further, referring to the Wind Power Policy, 2002, he submitted that as per the Clause 2 – Operative Period, of the policy, the operative period would mean that the beneficiaries who set up the energy generating units during the operative period of the policy would become eligible for the benefits which would be declared in the policy. Also, the eligible period will be twenty years or the life span of the wind energy generator, whichever is earlier i.e. units would be eligible for the benefits available in the policy such as selling/wheeling/banking of electricity/exemption from electricity duty/demand cut etc. wherever applicable for the entire eligible period. Likewise, the Order No. 2 of 2006 dated 11.8.2006, at Clause 7, provides the plant life and agreement period as 20 years. The said Order also provides that the commercial settlement of WEGs installed under the Wind Power Policies of Govt. of Gujarat issued in years 1993 and 2002 would be governed by the provisions of this Policy.

6.5. Further referring to the agreements dated 24.3.2015 and 30.3.2015 entered into by the Petitioner with the Respondents GETCO and PGVCL respectively, he pointed out that as GETCO has consciously and rightly applied the terms and conditions for wheeling in the agreement as per the GoG Wind Policy, 2002 i.e. @4 % losses in the form of energy wheeled, whereas the wheeling agreement with PGVCL provides for wheeling charges as per the Order No. 2 of 2012 and Wind Power Policy, 2013. Moreover, the clause relating to Banking facilities as provided in Wind Power Policy, 2002 has also been removed from the wheeling agreement. However, PGVCL has adopted the rate for purchase of surplus power as per the Wind Power Policy, 2002 as it is on lower side and beneficial to them.

7. Learned Advocate Shri M. G. Ramachandran, on behalf of the Respondent submitted, as follows:

7.1. Upon the change in legal ownership of the WTG, i.e. sale of the WTG by M/s Radhe Enterprise to the Petitioner, the Petitioner is required to sign a new wheeling agreement. The

Petitioner is not entitled to continue with the existing agreement for wheeling of electricity. The new agreement is required to be signed with the terms and conditions prevailing on the date of agreement including the transmission charges, wheeling charges/losses and banking facilities etc. The benefit of old wheeling agreement and Wind Power Policy, 2002 will not be available to the Petitioner.

- 7.2. Further, the case of British Super Alloys Vs. GETCO & UGVCL is distinct from the present case and has no application herein. In the British Super Alloy case, the Commission was dealing with the issue of the liability of the developer to pay the normal transmission charges and also to pay transmission and wheeling losses at 7 % of the energy fed into the grid. Also, the WTG was commissioned during the control period of the Commission's Order No. 2 of 2006 dated 11.8.2006, whereas in the present case, it was commissioned prior to the Order dated 11.8.2006.
- 7.3. As far as the applicability of the Wind Power Policy 2002 by GETCO in its wheeling agreement dated 24.3.2015 is concerned, it may have assumed the applicability of Order of the Commission in British Super Alloys case in the present case. However, as the said case is distinct as pointed out, it is not applicable in the present case.
- 7.4. Further referring to the wheeling agreement, it was pointed out that wheeling agreement only provides for pre-mature Termination by way of mutual consent and giving a written notice to the other party and the wheeling agreement does not provide for transfer or assignment of the agreement. Thus, upon sale of WTG by M/s Radhe Enterprise, the wheeling agreement stands terminated and such agreement cannot be treated as continued agreement with the Petitioner. The Petitioner has to enter into a new wheeling agreement as per the terms and conditions of the prevailing Policy/Orders.

8. Based on the submissions made by the parties, the issues that emerged for decision of the Commission are as under:
- i. Whether the Petitioner's WTG is governed by Wind Power Policy 2002 notified by GR. No. EDA-10-2001-3054-B-Part II and entitled to wheel the power to the place of consumption with payment of transmission and wheeling losses @ 4% only?
  - ii. Whether the Petitioner is entitled to the benefit of banking as per Wind Power Policy 2002?
  - iii. Whether Clause 3.2 of the wheeling agreement dated 30.03.2015 signed between the Petitioner and the Respondent is legal and valid or void?
  - iv. Whether the Respondent No.1 is mandated to procure surplus energy by adding 5 paise per unit for every year from the date of installation and commissioning of the WTG?
  - v. Whether the transmission charges/losses levied by the Respondent No.2 from 24.03.2015 till date are legal and valid and as per the provisions of the law?
- 8.1. We have considered the submissions made by the parties. In the present case it is undisputed that 1.25 MW Wind Turbine Generator, situated at survey no. 255/1, village Vaknu, Tal. Abdasa, Dist. Kutchh, was set up by M/s. Radhe Enterprise. The said WTG was commissioned on 27.03.2006 and GEDA issued commissioning certificate vide letter no. GEDA/PWF/SGWPL-RE/Vanku/248 on 18.04.2006. The electricity generated from the WTG was being wheeled for self-consumption (Captive Use) by M/s Radhe Enterprise to its consumption place.
- 8.2. M/s Radhe Enterprise and Respondent No.2 GETCO entered into agreement on 19.06.2006 for transmission of energy from the WTG to its consumption place. Subsequently, after discussion and negotiation with M/s Radhe Enterprise, the Petitioner purchased the 1.25 MW WTG with the approval of GEDA vide letter No. GEDA/WF.Vanku/2014-15/6521 dated 24.2.2015 and executed a sale deed with M/s Radhe Enterprise on 26.03.2015.

8.3. Petitioner had applied to GETCO for transmission of the power from this purchased WTG to the place of its consumption, which involved the networks of GETCO and the distribution licensee, PGVCL, in whose area the Petitioner is situated. Accordingly, the Petitioner signed transmission agreement with GETCO on 24.3.2015 and wheeling agreement with PGVCL on 30.3.2015.

8.4. The dispute arose between the parties i.e. Petitioner, GETCO- the State Transmission Utility and PGVCL, a distribution licensee in whose area the Petitioner is situated, is with regard to transmission charges and losses to GETCO and wheeling charges and losses to PGVCL for transmission and wheeling of the energy generated from the WTG purchased by the Petitioner from M/s Radhe Enterprise for captive use. The place of self-consumption of the units generated from the WTG of the Petitioner is different and distinct from that of M/s Radhe Enterprise. Thus, the primary issue for the consideration of the Commission is as to whether the applicable transmission and wheeling charges and losses for the WTG which was commissioned under Wind Power Policy, 2002 and changed the ownership as well as the location of wheeling (change in consumption place) would be as per the Commission's Orders and Wind Power Policy prevailing at the time of change of ownership or as per the Orders and Policy prevailing at the time of commissioning of WTG.

8.5. Since the issue Nos. 8 (i) and 8 (ii) both depend upon the applicability of the Wind Power Policy, 2002 to the Petitioner's WTG and thus being interwoven, we decide to deal them together.

As the issues relate to Wind Power Policy 2002 notified by Government of Gujarat, vide GR No. EDA-10-2001-3054-B (Part II) dated 20.6.2002, it is necessary to refer the relevant provisions of the Policy, which are reproduced below:

## 2. Operative period

*This policy will come into force with the date of issue of this Govt. Resolution. This policy will remain in operation for period of five (5) years. It would be necessary to clarify that the operative period would mean that the beneficiaries who set up wind energy generating units during the said period of five (5) years and units installed during this operative period of the policy would become eligible for the benefits which would be declared in the policy. The eligible period should however be twenty years or the life span of the wind energy generator, whichever is earlier i.e. units would be eligible for the benefits available in the policy such as selling/ wheeling/ banking of electricity/ exemption from electricity duty/ demand cut etc. wherever applicable for the entire eligible period.*

### *3. Eligibility*

*Under this policy no cash incentives or Sales Tax incentives are available primarily due to constraints of resources. It is therefore, proposed to widen the eligibility criteria for setting up such wind energy generators. The beneficiaries are classified in two parts as under:*

*(i) Any registered industrial undertaking engaged in manufacture or production of goods within the State*

*Such industrial units may be allowed to wheel power to their own manufacturing units (maximum upto two units) within the State at a wheeling price to be paid by them. This would encourage the industrial undertakings to set up such wind generators since they would be availing the benefits of relatively cheaper electricity. Such wind energy generating units may also be allowed at their option to sell electricity to the Gujarat Electricity Board at a fixed price to be paid per unit. It should be made obligatory for them to give the option and the option once exercised should not be changed.*

*(ii) Non-industrial non-manufacturing units*

*Non-industrial non-manufacturing units and developers may also be allowed to set up wind energy generating units where they will have to sell electricity to the Board and may not be permitted to wheel the power to any unit either of their own or to a third party. Under the developer approach, permission may be granted to developers to set up wind energy generating units in advance to be transferred to the interested investors subsequently to ensure effective planning/energy generation and optimum use of land.*

#### **5. Sale of Energy**

*As regards the purchase price of energy generated by windfarms it is proposed that in the case of industrial undertaking at their option and in case of non-industrial units, the Gujarat Electricity Board may purchase electricity generated by such wind energy generating units at Rs. 2.60 per unit. An increase of 5 paise is to be provided every year for 10 years. After the 10<sup>th</sup> year, the rate will be negotiable. In the case of industrial undertakings, the option of wheeling electricity is made available to them instead of selling it to the Gujarat Electricity Board.*

#### **8. Wheeling of Electricity:**

*The industrial undertakings setting up wind energy generators while opting for wheeling the electricity to their manufacturing units may be allowed to do so at a wheeling charge of 4%.”*

Clause 2 of the aforesaid Policy provided that it will come into force from the date of issuance of G.R. The aforesaid Policy was issued by the Government of Gujarat vide G.R.No. EDA-10-2001-3054-B (Part II) dated 20.6.2002. Thus, the starting/coming into force date of the Policy was 20.6.2002. Further, it provided that it will remain in operation for a period of 5 years. It also provided that the WTGs set up during the aforesaid period of 5 years shall be eligible for the benefits envisaged in the aforesaid Policy. It also provided

that the eligible period should be 20 years from the date of operation of WTG or its life span whichever was earlier. The benefits envisaged in the Policy to the WTGs such as sale of energy, wheeling of energy, banking of electricity, exemption from electricity duty and demand cut of the consumers etc. wherever applicable shall be for the entire eligible period of 20 years.

Clause 3 (i) of the said Policy provided that the industrial units may be allowed to wheel power to their own manufacturing units (maximum upto two units) within the State at a wheeling price to be paid by them. Further, such wind energy generators were also entitled to sale electricity to GEB at a fixed rate to be paid per unit. It was obligatory for WTG to give an option and once an option was exercised it should not be changed. Clause 3 (ii) provided that non-industrial non-manufacturing units shall sale the electricity to the Board and they were not permitted to wheel the power to any unit either of their own or to a third party.

Clause 5 of the said policy provided that in case the industrial undertaking exercised the option to sell the energy to GEB and similarly if the non-industrial units sell electricity to GEB, they were entitled for Rs. 2.60 per unit to be escalated at the rate of 5 paisa per unit for 10 years and after 10 years, the rate would be negotiable. It was also provided that the industrial undertaking setting up the WTG had an option to wheel the power for their own consumption or selling it to the Gujarat Electricity Board.

Clause 8 of the aforesaid policy provided that whenever industrial undertakings set up a WTG and opt for wheeling of electricity to their manufacturing place, the same may be allowed by charging wheeling charge @ 4%.

Clause 10 of the said policy provided for banking of electricity. The surplus energy available was allowed to be banked for a maximum period of six months with GEB/AEC/SEC/licensee.

8.6. On combined reading of the aforesaid provisions, it is clear that the WTGs set up within 5 years from 20.06.2002 are eligible for benefit provided in Wind Power Policy 2002. The industrial units, who set-up WTGs for captive purpose are made eligible to wheel the power to the place of consumption by paying wheeling charges @ 4%. Further, it also provided that in case of sale of energy to GEB, the same shall be @ Rs. 2.60/unit and to be increased every year @ 5 paisa/unit for initial 10 years and thereafter, the said rate was negotiable between the parties. Thus, the WTGs which had been commissioned during the control period of the Wind Power Policy, 2002 are entitled for the benefits envisaged/provided therein.

8.7. It is also necessary to refer the agreement executed between GETCO and M/s Radhe Enterprise. The agreement dated 19.6.2006 between GETCO and M/s Radhe Enterprise was forwarded by GETCO vide letter No. ACE(C&R)/EE-C/DE-1/267 dated 19.06.2006. In the said letter, it has been stated that all the terms and conditions for wheeling of Energy prescribed under the Agreement are as per the GoG Wind Farm Policy 2002 Govt. Resolution EDA-10-2001-3054-B (Part-II) dated 20.6.2002 are subject to amendment in accordance with the prevailing Act/Rules/Regulations as well as policy of GoG/Company. The relevant extract of agreement dated 19.6.2006 is reproduced below:

....

*AND WHEREAS*

*The Firm above named has been permitted by the Gujarat Energy Development Agency (GEDA) to set up a Wind farm of 1.25 MW capacity (i.e.1 unit of WTG of 1.25 MW) on*

*Revenue Survey Nos. 255/1 Village: Vanku of Taluka: Abdasa, District : Kutchh in accordance with the provisions of the Wind Power Generation Policy, 2002 issued under the Resolution No. EDA-10-2001-3054-B (Part-II) by the Government of Gujarat on 20<sup>th</sup> June, 2002 (hereinafter referred to as the Policy)*

...

**AND WHEREAS**

*GETCO is agreeable to so wheel the power on behalf of the Firm in accordance with the Policy and as per the terms and conditions contained in the Application Form filed by the Firm with GEDA and this Agreement.*

...

**2.0 Eligible Period:**

*The Eligible Period of the Agreement will be 20 (twenty) years from the date of commencement of operation by the Windfarm or the life span thereof, whichever is earlier, for the purpose of availing the benefits on account of wheeling of power, banking of power, exemption from payment of electricity duty, Demand Cut etc., as more particularly described under this Agreement.*

...

**3.0 Terms and Conditions for Wheeling of Energy:**

*3.1 The Firm being a Registered Industrial Undertaking within the meaning contained in the Policy is desirous of wheeling the Energy to the other companies of its ownership as mentioned under the recital of this Agreement in accordance with the provisions of the Policy. The Firm has selected this option for making it operative during the entire Eligibility Period.*

*3.2 Wheeling Charge: The Firm will compensate GETCO for such wheeling of power by 4% (Four percentage points) in the form of Energy for Wheeling of Power from the Wind Farm to its companies mentioned herein above.*

....

*3.4 Banking of Energy:*

*The Firm will be eligible to Bank the Surplus Energy with its principal energy supplier, namely Uttar Gujarat Vij Company Ltd. (UGVCL)/ Paschim Gujarat Vij Company Ltd. (PGVCL)/Dakshin Gujarat Vij Company Ltd. (DGVCL)/ Madhya Gujarat Vij Company Ltd. (MGVCL) or Ahmedabad Electricity Company (AEC for short) or Surat Electricity Company (SEC for short) for a maximum period of 6 (six) months from the date of its generation and injection into the GETCO Grid System. The Energy not utilized within this period, will be deemed to have lapsed for any other purpose for which the Firm is otherwise held eligible under this Agreement.*

...

*3.6 This Wheeling & Banking Agreement shall be governed by the provisions of Open Access Regulations determined by GERC from time to time as per power conferred to GERC under the Electricity Act, 2003.*

As per the Recital 1 of the agreement it was agreed between the parties that the M/s Radhe Enterprise has set up 1.25 MW WTG under Wind Power Generation Policy 2002. Recital 3 provided that GETCO is agreeable to wheel the power on behalf of M/s Radhe Enterprise in accordance with the Policy and as per the terms and conditions stated in the application form filed with GEDA and this Agreement.

Clause 2 of the said agreement provided that the eligible period of the agreement will be 20 years from the date of commencement of the operation of WTG or life span of the WTG,

whichever is earlier, for the purpose of availing the benefits on account of wheeling of power, banking of power, exemption from payment of electricity duty, demand cut etc.

Clause 3.1 provided that the firm being registered industrial undertaking as per the policy, desires to wheel the energy to other companies of its ownership. It also stated that the Petitioner has selected this option for making it operative during the entire eligibility period. Thus, it was agreed between the parties that the wheeling of energy as opted by M/s. Radhe Enterprise was for the entire eligibility period as stated above.

Clause 3.2 of the said agreement provided that M/s Radhe Enterprise will compensate GETCO for such wheeling of power by 4% in the form of energy for wheeling of power from the wind farm to its companies mentioned in the agreement.

Clause 3.4 of the agreement provided that M/s Radhe Enterprise will be eligible to bank surplus energy with its principal energy supplier namely UGVCL/PGVCL/DGVCL /MGVCL or AEC or SEC for a maximum period of six months from the date of generation and injection into the GETCO grid. The energy, if not utilised within the aforesaid period, will be deemed to have lapsed for any other purpose for which M/s Radhe Enterprise is otherwise held eligible under the agreement. Clause 3.6 of the said agreement provided that the wheeling and banking agreement shall be governed by the Open Access Regulations notified by the Commission from time to time as per the power conferred to the Commission under the Electricity Act, 2003.

- 8.8. On plain reading of the provisions of the Policy as well as the agreement between GETCO and M/s Radhe Enterprise, it transpires that being an industrial undertaking M/s Radhe Enterprise exercised the option of captive use of the energy generated from WTG during the eligible period specified in the Policy or the life span of the WTG, whichever is earlier. It was also agreed that the wheeling charges/transmission charges for the same will be 4% of

energy injected into the grid from the WTG. It was also agreed between GETCO and M/s Radhe Enterprise that they will be eligible to bank the surplus energy for a maximum period of 6 months from the date of its generation and injection into the GETCO Grid System.

- 8.9. It is undisputed that the WTG purchased by the Petitioner from M/s Radhe Enterprise was commissioned on 27.03.2006. Thus, the WTG in question was commissioned within the operative period specified in the Wind Power Generation Policy 2002 notified by the Government of Gujarat vide GR dated 20.6.2002. Therefore, the provisions of the said Policy are applicable to the WTG commissioned during the operative period of the Policy for the entire eligible period of the WTG or the life span of the WTG, whichever is earlier.
- 8.10. Further, we note that the Commission passed the Order No. 2 of 2006 on 11.8.2006 i.e. after the transmission agreement was signed between M/s Radhe Enterprise (from whom the Petitioner purchased the WTG) and GETCO but during the operative period of Govt. of Gujarat Policy of 2002. In the said generic tariff order the Commission determined the preferential tariff for the WTGs set up exclusively for sale to the distribution licensee. In the said Order at Para 20, the Commission also decided the transmission and wheeling charges for transmitting the power to the point of use which is reproduced below:

### ***20. Transmission & Wheeling Charges***

*Many respondents sought clarifications about the applicability of transmission and wheeling charges in case of procurement of power by distribution licensees from wind energy sources.*

*The Commission clarifies that the procurement of power by distribution licensees/GUVNL from wind energy sources shall be undertaken on 'Ex-Bus' basis (pooling station i.e. =66 KV Sending end).*

*However, in case the owner of a WEG opts for wheeling power for own use, the GETCO / Distribution Licensee shall transmit the power to the point of use. For transmitting this power to the point of use, only GETCO will be entitled to charge 4% of energy injected (in kind) as all inclusive Transmission charges/wheeling charges to GETCO only.*

As per aforesaid order, the Commission decided that the transmission charge and wheeling charge payable by the wind turbine generator will be @ 4% of energy injected into grid (in kind) as all inclusive transmission charges/wheeling charge to GETCO only.

- 8.11. Further, in the said order the Commission also decided about the commercial settlement of WTG installed under Wind Generation Policy issued by the State Government in the year 1993 and 2002 which is reproduced below:

***Commercial settlement of WEGs installed under Wind Generation Policies of State Government issued in the years 1993 and 2002***

*The existing wind energy policies (1993 and 2002) of the State Government contain a provision for banking of wind energy generation. Under this arrangement, the WEG gets set off against his captive consumption to the extent of his wind energy generation. Such set off is given based on his captive consumption (which in effect is the energy he draws from the licensee at the point of use) and his wind energy generation in three specified parts of the day over a six month period.*

*In respect of wind energy generating units set up under the 1993 policy of Government of Gujarat and who have opted for wheeling for self use, the existing facility of six month banking shall continue till the agreement period. The WEGs set up during the operative period of the Wind Power Generation Policy-2002 (up to 19th June 2007) and who may have opted for wheeling for self-use, will also be eligible for the banking facility as*

*envisaged in that policy. Any generation not consumed within the permissible banking period of six months will lapse.*

*The WEGs which came up under State Government's earlier policies will be governed till the Agreement periods (as may have been entered into under the State Government's policies of 1993 and 2002) by the applicable provisions of Set-off and payment under these relevant policies.*

It is apparent from the above that the Commission recognized the availability of 6 months period for banking of surplus energy available after set off against captive consumption in respect of WTGs set up under 1993 and 2002 Policies of the State Government. The Commission also recognized that any generation not consumed within the permissible banking period of 6 months would lapse. The WTGs set up under the aforesaid Policy period and having agreements, are governed by the agreements and applicable provisions of set-off and payment under the relevant Policies. Thus, the Commission had recognised the provisions of Government of Gujarat Policy of 1993 and 2002 and also recognised that the sanctity of the agreement signed by the parties shall be maintained.

- 8.12. The Respondent has contended that the transmission charges and wheeling losses at the rate of 4% of the energy injected into the grid as well as decided by the Commission in Order No. 2 of 2006 dated 11.8.2006 were applicable only for the agreement entered into as per the Wind Power Policy, 2002 on or before 10.8.2009. The said terms and conditions are not applicable to the Wheeling Agreement and arrangement entered into after coming into force the Wind Power Policy 2007 as amended on 13.6.2007 which provided that in case the transmission and wheeling charges decided in the Policy are inconsistent with the charges and losses determined by the Commission, the charges and losses decided by the Commission shall apply and thus, the Petitioner cannot claim the transmission charges and

wheeling losses @ 4%. We note that the Commission had decided the transmission and wheeling charges and losses in the Order dated 11.8.2006, which were different and distinct from the charges and losses specified by the Government in Wind Power Policy, 2007 amended on 13.6.2007. However, as noted above, in case of any conflict between the Policy and the Order of the Commission, the Orders of the Commission are to prevail. Nonetheless, in the aforesaid Order, the Commission had specifically allowed the continuation of treatment for WEGs which were set up under the Wind Power Policy, 2002, i.e. prior to the Order of the Commission, as per the terms of the Policy. Hence, the aforesaid contention of the Respondents is not acceptable as it is not legal and valid for the following reasons:

(i) The Wind Power Policy, 2002, 2007 and 2013 notified by the Government of Gujarat specifically provide that the provisions of said policies are applicable to the Wind Turbine Generators set up under the aforesaid policies during the life span of the projects. Thus, the provisions of aforesaid policies shall be applicable to the WTG for the life span of 20/25 years as the case may be. Therefore, the concessions envisaged in the aforesaid policy shall be available to the WTGs during the life span of 20 or 25 years as the case may be.

(ii) The generic Orders passed by the Commission viz. Order No. 2 of 2006, dated 11.8.2006, Order No. 1 of 2010, dated 30.1.2010, Order No. 3 of 2012 dated 08.8.2012 and Order No. 3 of 2016 dated 30.8.2016, provide that the decisions in the said Orders are applicable only to the projects which were commissioned during the control period of the said Orders. They do not provide that the decision of the said Orders shall apply to the projects which were established during the earlier control period of the Orders or Government Policy.

(iii) It is an admitted fact that the Wind Turbine Generator of 1.25 MW set up by M/s Radhe Enterprise and purchased by the present Petitioner M/s Sheetal Cool Products Private Ltd.

was commissioned on 27.3.2006 i.e. under the Operative Period of Wind Power Policy, 2002. As recorded in earlier para 8.5 above, Wind Power Policy, 2002 provides that the industrial undertakings who set up wind power projects during the operative period is allowed to wheel the energy to its consumption place on payment of wheeling charge @ 4%.

Based on aforesaid observation, we note that the reliance of Respondent on the Wind Power Policies notified after 2007 by the Government and the Orders of the Commission on the aforesaid aspect is not legal and valid. Hence, the same is rejected.

8.13. Since, in the foregoing paras, we have already held the applicability of the provision of Wind Power Policy, 2002 to the Petitioner's WTG, as far as the benefits of banking of electricity is concerned, we note that Clause 10 of the Wind Power Policy 2002, provides that the surplus energy available after set-off could be banked for a maximum period of six months with GEB/AEC/SEC. Thus, the Petitioner is also eligible for banking of six months. After six months any balance energy available is considered as lapsed unit and not entitled for set-off purposes.

8.14. Now we deal with issue No. 8 (iii) as to whether the Clause 3.2 of the wheeling agreement dated 30.03.2015 signed between the Petitioner and the Respondent is legal and valid or void. In this regard, it is necessary to refer Clause 3.2 of the wheeling agreement dated 30.03.2015 signed between the Petitioner and the Respondent PGVCL. The same is reproduced below:

*3.2 Wheeling Charge:*

*(a) The Company will compensate GETCO/DISCOM for wheeling of power to the consumption site at 66 KV Voltage level and above as follows:*

*The wheeling of electricity generated from the Wind Turbine Generators (WTGs), to the desired location(s) within the state shall be allowed on payment of Transmission Charges and Transmission losses otherwise applicable to normal Open Access Consumers.*

*(b) The Company will compensate GETCO and DISCOM for wheeling of power to the consumption site at below 66 KV Voltage level as follows:*

*(i) The Wheeling of electricity generated from the WTGs to the desired location(s) within the State, shall be allowed on payment of transmission charges, otherwise applicable to normal Open Access Consumer and Transmission and wheeling losses @ 10% of energy fed to the grid.*

*(ii) The wheeling of electricity generated by smaller investors, having only one WTG in the state, to the desired location(s), shall be allowed on payment of transmission charges, otherwise applicable to normal open access consumer and transmission and wheeling losses @ 7% of the energy fed to the grid.*

*(c) If the company desires to wheel the electricity to more than two locations will hereby agree to pay 5 paise per unit on energy fed in the grid to concerned Distribution Company in whose area the power is consumed.*

### *3.3 Wheeling of Energy:*

*The Company will be eligible to wheel the energy as per this agreement and the agreement with GETCO. GETCO shall transmit the energy to the boundary of DISCOM. The energy so wheeled (Net of wheeling/Transmission loss/ charge) shall be set off against monthly consumption of the company's recipient unit located in the DISCOM*

As per the aforesaid clause in the wheeling agreement, it is agreed by the Petitioner to pay the Respondents, i.e. PGVCL and GETCO.

1) Transmission charges and transmission losses otherwise applicable to normal Open Access consumers for wheeling of power generated from WTGs to the consumption site within the State at 66 kV Voltage level and above

2) For wheeling of power to the consumption site at below 66 kV Voltage level:

(i) Transmission charges otherwise applicable to normal Open Access consumers and Transmission and Wheeling losses @10% of energy fed into the Grid for wheeling the power generated from the WTGs to the consumption site located within the State.

(ii) Transmission charges otherwise applicable to normal Open Access consumers and Transmission and Wheeling losses @ 7% of energy fed into the Grid for wheeling of power generated by small investors having only one WTG in the State to the consumption site.

3) Wheeling the power to more than two location @ 5 paise per unit on energy fed into the Grid to the concerned DISCOM in whose area the power is consumed.

8.15. Thus, it is apparent from Para 8.7 and 8.14 that the Petitioner who had purchased the 1.25 MW wind turbine from M/s Radhe Enterprise which was commissioned on 27.3.2006 needs to pay the transmission and wheeling charges different and distinct from what was required to be paid by M/s Radhe Enterprise as per the transmission agreement dated 19.6.2006 between the GETCO and M/s Radhe Enterprise, which was 4% wheeling loss in kind only for transmission and wheeling of energy from WTG to the place of consumption.

8.16. The aforesaid Clause 3.2 of the wheeling agreement is in contravention of the provisions of the Wind Power Policy 2002 notified by GoG vide G.R.No. EDA-10-2001-3054-B-dated 20.06.2002, which specifically provided at Clause 8 that the WTG set up during the operative period of the Policy shall pay wheeling charges at the rate of 4% for captive use. Further, Clause 2 of the said Policy provided that the Operative period of the Policy is 5 years, i.e. from 20.06.2002 to 19.06.2007. It was also provided that the benefit enshrined in

the said Policy would be available to the beneficiaries for a period of 20 years or the life span of the WTG, whichever is earlier. Thus, the benefit allowed in the Govt. Policy, 2002 to the WTGs which was originally owned by M/s Radhe Enterprise would continue to be available to the Petitioner who has purchased the WTG from M/s Radhe Enterprise. Mere change of ownership does not change the date of commissioning of the WTG. Clause 3.2 of the wheeling agreement executed between the Petitioner and the Respondent is thus contrary to the provisions of the Govt. Policy, 2002 which is applicable to the WTGs installed and commissioned during the period from 20.6.2002 to 19.6.2007. As the aforesaid Clause 3.2 of the wheeling agreement is against the provisions of the Wind Power Policy 2002, it cannot be made applicable to the Petitioner's WTG which was originally set-up and commissioned during the operative period of Wind Power Policy, 2002. We, therefore, decide that Clause 3.2 of the wheeling agreement between the Petitioner and the Respondent No.1 is illegal, arbitrary and the same is void ab initio.

8.17. Now we deal with issue No. 8 (iv) as to whether the Respondent No.1 is mandated to procure surplus energy by adding 5 paise per unit every year from the date of installation and commissioning of the WTG. We note that the relevant Clause 5 of Wind Power Policy 2002 is pertaining to the sale of energy by the Wind Turbine Generators to the distribution licensees. It is necessary to reproduce the same hereunder:

#### *5. Sale of Energy*

*As regards the purchase price of energy generated by Windfarms it is proposed that in the case of industrial undertaking at their option and in case of non-industrial units, the Gujarat Electricity Board may purchase electricity generated by such wind energy generating units at Rs. 2.60 per unit. An increase of 5 paise is to be provided every year for 10 years. After the 10<sup>th</sup> year, the rate will be negotiable. In the case of industrial undertakings, the option*

*of wheeling electricity is made available to them instead of selling it to the Gujarat Electricity Board.*

We note that the provision relied upon by Petitioner that the distribution licensee/Board shall pay the tariff at the rate of Rs. 2.60 per unit for the energy purchased from the WTGs and escalate the same @ 5 paisa/unit every year for 10 years is not correct as it pertains to the WTGs who are selling energy to the distribution licensee/Board and not utilising for self-use. In the present case, the Petitioner is utilising the energy generated from WTG for self-use and therefore it is not entitled for tariff as per Clause 5 of the Wind Power Policy 2002 which provides escalation of 5 paisa per unit every year over the initial tariff of Rs. 2.60 per unit for 10 years. Therefore, the contention of the Petitioner to provide the tariff @ Rs. 2.60 per unit for first year with escalation @ 5 paisa per unit from second year onwards on the basic tariff is illegal and arbitrary. Hence, the claim of the Petitioner in this regard is rejected.

8.18. Now we deal with issue No. 8(v) as to whether the transmission charges/losses levied by the Respondent No.2 from 24.3.2015 till date are legal and valid and as per the provisions of the law or not. In this regard, we note that as recorded in earlier para the transmission agreement executed between GETCO and the Petitioner on 24.3.2015 for transmission of energy generated from 1.25 MW WTG provides for compensation to GETCO @ 4% in the form of energy by the Petitioner for wheeling of power as per the Wind Power Policy, 2002.

8.19. We also note that GETCO in its reply dated 27.4.2017 contended that GETCO is not charging any transmission charges for WTG of 1.25 MW purchased from M/s Radhe Enterprise by the Petitioner except 4% energy losses which is in accordance with earlier agreement dated 19.6.2006 between the GETCO and M/s Radhe Enterprise. On referring to Clause 3.2 of the agreement between GETCO and the Petitioner dated 24.3.2015, it transpires that the parties agreed that the Company (Petitioner) will compensate GETCO for

wheeling of power by 4 % in the form of energy for wheeling of power from the wind farm to companies mentioned in the agreement i.e. Petitioner. Thus, the contention of GETCO seems valid. GETCO has also contended that the Petitioner has also set-up 1.5 MW WTG at village Bhambhdai, Mandvi, which was commissioned on 5.3.2014 and the transmission agreement (BPTA) in this regard was signed on 22.1.2014 for wheeling of wind generated power to its captive consuming unit. As the above wind turbine was commissioned during the control period of Order No. 2 of 2012 dated 8.8.2012 and subsequent order of the Commission on the said order, GETCO is entitled to recover the transmission charges on above 1.5 MW WTG as provided in the Commission's aforesaid order. We note that the Petitioner has not refuted the aforesaid contention of GETCO. We also note that the Petitioner has in the petition raised the issue pertaining to the transmission charges/wheeling charges and losses levied on 1.25 MW WTGs by the Respondents. Transmission and wheeling charges and losses for 1.5 MW WTG, which was commissioned on 5.3.2014 are not disputed by the Petitioner and are not the subject matter of present dispute before the Commission.

8.20. We further note that the Commission has in its Order dated 28.11.2011 in Petition No. 1118 of 2011 in the case of M/s British Super Alloys Private Limited Vs. GETCO and UGVCL decided the similar issue as under:

*10.9 According to the above clause, the petitioner is required to pay normal transmission charges and also to pay transmission and wheeling losses @ 7% of the energy fed into the grid. The above clause of the transmission agreement is inconsistent with the provisions of the Order No.2 of 2006 dated 11.8.2006 of the Commission and also inconsistent with the Wind Power Policy, 2007 of the Government of Gujarat. Hence, we decide that the above clause is void. The petitioner and respondents are directed to amend the above clause as decided in this order by stating that the petitioner shall be required to pay transmission and wheeling losses @ 4% of the energy injected into the grid and the petitioner is not required to pay any transmission charges. We also decide that*

*the transmission charges which are collected by the respondent No.1 are not in accordance of the order No.2 of 2006 dated 11.8.2006. Hence, the same is inconsistent with the legal provisions. We, therefore, direct the respondent No.1 to refund the transmission charges which were recovered by them from the petitioner.*

*10.10 Based on the above observations, we decide that provisions of the Order No.2 of 2006 dated 11.8.2006,are applicable in the present case and the petitioner is eligible to wheel power to the place of consumption by paying 4% of transmission losses in kind to the GETCO.*

*[11] Based on the above, we decide that the petition succeeds. We decide that the petitioner is entitled to wheel the power to its point of consumption on payment of 4% of energy (in kind) fed into the grid as transmission and wheeling charges. The respondents are directed to refund the transmission charges recovered from the petitioner and also give an adjustment for 3% losses which were recovered in excess from the petitioner by the respondent from the wheeling made by the petitioner in future. Both the petitioner and the respondents are directed to amend the transmission and wheeling agreements by amending the relevant clauses in accordance with clause no.20 of the Order No.2 of 2006 dated 11.8.2006 of the Commission*

From the above, it transpires that the levy of transmission/wheeling losses and charges by Respondent are illegal and arbitrary and against the Government of Gujarat Wind Power Policy, 2002 which deserves to be quashed and set aside.

Further, the recovery of transmission charge, losses and wheeling charge and losses by the Respondent are illegal and arbitrary so far as 1.25 MW WTGs purchased from M/s Radhe Enterprise by the Petitioner is concerned. Therefore, the same need to be refunded to the Petitioner.

8.21. In view of above, we decide that the present Petition is allowed partly. We decide and declare that the Petitioner is eligible and entitled to wheel the electricity generated from 1.25 MW WTG purchased from M/s Radhe Enterprise which was commissioned on 27.3.2006 as it is governed by the Govt. G.R.No.EDA-10-2001-3504-(Part II) dated 20.6.2002 and accordingly the Petitioner is liable to pay only 4% wheeling losses for wheeling the energy generated from WTG to its place of consumption. The recovery of transmission charges/losses, wheeling charges and losses above 4% losses on energy injected into the grid by the Respondents is illegal and arbitrary. Therefore, the Respondents are required to refund the aforesaid losses and charges to the Petitioner. The Petitioner is entitled for banking of energy available after set-off for a period of six months which shall lapse if not consumed in six months. The prayer of the Petitioner to amend the rate for purchase of surplus power by adding 5 paise per unit since the date of installation and commissioning of the WTG is not legal and valid and the same is rejected.

9. We order accordingly.

10. With this order present petition stands disposed of.

**Sd/-**  
**[P. J. THAKKAR]**  
**Member**

**Sd/-**  
**[K. M. SHRINGARPURE]**  
**Member**

**Sd/-**  
**[ANAND KUMAR]**  
**Chairman**

Place: Gandhinagar.  
Date: 7/05/2018.