

**Appellate Tribunal for Electricity, New Delhi  
(Appellate Jurisdiction)**

**Appeal No. 242 of 2014**

**Dated: 23 November, 2015**

**PRESENT: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER  
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

**IN THE MATTER OF:**

Uttar Gujarat Vij Company Limited,  
Visnagar Road, Mehsana-384001

**....Appellant**

**VERSUS**

1. Gujarat Electricity Regulatory Commission  
6<sup>th</sup> Floor, GIFT One,  
Road 5C, Zone 5,  
Gandhinagar – 382355

2. Claris Lifesciences Limited (CLL),  
Claris Corporate Head Quarters,  
Sangeeta Complex, Near Parimal Railway  
Crossing,  
Ellisbrige, Ahmedabad-380006

**Respondent/  
Petitioner**

3. Gujarat Urja Vikas Nigam Limited,  
Sardar Patel Vidhyut Bhavan,  
Race Course Circle, Vadodara-390007

4. Gujarat Energy Development Agency,  
4th Floor, Block No. 11 & 12,  
Udyog Bhavan, Sector-11,  
Gandhinagar-382017, Gujarat

**Respondents**

Counsel for the Appellant(s): Mr. M.G. Ramachandran  
Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Mr. Ishan Mukherjee  
Ms. Mandakini Ghosh

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan  
Mr. D.V. Raghuvansy for R-2  
Mr. Sanjay Sen, Sr. Adv.  
Mr. Matrugupta Mishra  
Mr. Mritunjay  
Mr. S.R. Pandey, Legal Advisor for  
GERC  
Mr. Tabrej Malawat  
Ms. Sikha Ohri  
Mr. Hemant Singh for R-1

## **J U D G M E N T**

### **PER HON'BLE MR. MUNIKRISHNAIAH, TECHNICAL MEMBER**

1. The present Appeal has been filed under Section 111 of the Electricity Act, 2003 against the Order dated 22.7.2014 passed by the Gujarat Electricity Regulatory Commission (hereinafter referred to as the '**State Commission**') in Petition No. 1358 of 2013.
2. The Appellant is Uttar Gujarat Vij Company Limited and is a Distribution Licensee. Respondent No. 1 is Gujarat State Electricity Regulatory Commission and

Respondent No. 2 is the Generator M/s. Claris Lifesciences Limited.

3. The relevant facts for the purpose of deciding this Appeal are as under:

3.1 The Respondent No. 2, Claris LifeSciences Limited (hereinafter will be called as Generator) approached to Energy & Petrochemicals Department (EPD) and applied for allocation of Solar Power project to be commissioned by the Respondent at Chacharwadi-Vasana, Taluka: Sanand, District: Ahmedabad (Project Site). The Respondent was allowed 2 MW Solar power project from the Energy & Petrochemicals department vide their letter no. SLR/11/2010/573493/B dated 14<sup>th</sup> October, 2010.

3.2 The Respondent No. 3 (GUVNL) had entered into Power Purchase Agreement (PPA) with the Respondent-2 (Generator) on 8<sup>th</sup> December 2010. Thereafter, Respondent No. 2 signed the tripartite Agreement with Appellant (UGVCL) and GUVNL on 22<sup>nd</sup> June, 2011.

3.3 The Respondent No. 2 had decided to commission the project on the Roof Top of its works at Chacharwadi – Vasana, Taluka: Sanand, District: Ahmedabad as the tentative location for its 2 MW Solar Power Plant.

3.4 The Scheduled Commercial Operation date was prescribed as 31.12.2011. Further, as per PPA, it was the responsibility of the Respondent No. 2 (Generator), to deal with the Gujarat Energy Transmission Corporation Limited (GETCO) and other agencies in regard to timely establishment of evacuation facilities for conveyance of power from the Solar Power Project to the nearest sub-station of the Appellant.

3.5 The Respondent No. 2 has proposed to commission the project on the Roof Top of its works at Chacharwadi – Vasana, Taluka: Sanand, District: ahmedabad-382213 as the tentative location for its 2 MW Solar plant. However, after shadow analysis, it was found by the Respondent-2 that the space available on the Roof Top was adequate for 1.5 MW

Solar Project only and it is not sufficient for 2 MW. The Respondent-2 (Generator), therefore, requested the Chief Engineer of Respondent No. 3 (UGVCL), vide its Letter No. 5/CLARIS/Solar/UGVCL/04 dated 11/11/2011 to put on hold the work of transmission line from their substation to the Respondent No. 2, works at Chacharwadi – Vasana.

3.6 The Generator received a reply from the Chief Engineer of Respondent No. 3 (UGVCL) vide their letter no. UGVCL/R&C/Com/Solar/673 dated 12<sup>th</sup> December 2011 accepting the Generator's request to withhold the connectivity subject to readiness of the petitioner to pay the Liquidated Damages.

3.7 In spite of requests by Respondent-2 and even after confirmation/approval by the Respondent-3, UGVCL, the Appellant initiated the transmission line work at project site.

3.8 One of the officers of the Appellant vide letter dated 12.12.2011 wrongly informed the Respondent No. 2 that the evacuation work would be kept in abeyance

subject to the Respondent No. 2 (Generator) paying the liquidated damages as per Article 4.3 of the Agreement. However, the work had already been initiated and the letter dated 12.12.2011 had been wrongly issued by the officer of the Appellant.

3.9 On 26.12.11, the Respondent No. 2 (Generator), wrote to the Appellant requesting to change the location. The Scheduled Commercial Operation date was 31.12.2011 and the Respondent No. 2 chose to ask for change of location for the first time on 26.12.2011.

The above request was also made by the Respondent-2 (Generator) on 28.12.2011 to the Principal Secretary, Energy and Petrochemicals Department, Government of Gujarat.

3.10 The Appellant/Respondent-3 (UGVCL) approved the change of location on 01.05.2012 subject to the conditions that

- (1) The Respondent-2 has to pay Rs.27.73 lakhs towards cost of the existing transmission line already erected by the Appellant.
- (2) The Respondent-2 (Generator) shall pay the entire cost of the evacuated line to the new proposed site of the Solar Project.
- (3) The commencement of the commercial operation at the new site shall not be later than 31.12.2012.

3.11 The Generator (R2) agreed to the conditions mentioned in the letter dated 01.05.2012 and informed the Appellant on 05.05.2012 regarding acceptance.

3.12 In the meanwhile, the Appellant had completed all the work including installation of ABT meter which is the final stage. Inspection report of HT installation dated 29.12.2011 signed by the representative of Respondent No. 2 shows that the meter was installed and all works completed.

On 27.01.2012, the GERC passed a generic Tariff Order for the control period 21.01.2012 to 31.03.2015. The tariff determined by the Commission is at the Bus Bar of the Generator.

3.13 Clause 4.4 of the Order of the Commission provides for the erection of the transmission line from the switch yard of the Generator to the substation of the GETCO and the cost of the same will be borne by GETCO.

3.14 On 15.02.2012, the Appellant served a notice to the Respondent No. 2 towards payment of liquidated damages and the Respondent No. 2 paid the liquidated damages for two months. Further, on 28.03.2012, the Respondent (Generator) extended the bank guarantee and promised to pay the liquidated damages regularly every month.

3.15 On 06.11.2012, the parties entered into a supplement PPA to effect change of location of the power project and the Power Purchase Agreement dated 08.12.2010 shall stand modified as specified in



the Clauses 2.1 to 2.8 of the Supplemental Agreement entered on 6 November 2012.

3.16 On 19.12.2012, the Respondent No. 2 (Generator) wrote to the Appellant that the Generator was ready to commission the project between 26-28.12.2012. However it is clear that the evacuation facility at the new premises was not yet ready. Therefore the Generator requested the Appellant to permit a tap off from the evacuation line connected to the neighboring solar project of the generator's sister concern namely M/s Abellon Clean Energy as a stop gap arrangement.

3.17 On 29.12.2012, the Generator's unit was commissioned and this commissioning was confirmed by GEDA (Green Energy Development Agency) vide its certificate dated 17.1.2013.

3.18 The Appellant informed the Respondent No. 2 that the liquidated damages would be leviable from 31.12.2012 till the erection of line.

3.19 The Generator requested the Appellant vide its letter No. 2/1/2013, for permission to evacuate power from 2 MW Solar Power Project and Power was injected to the Appellant from 29.12.2012 onwards.

3.20 On 26.02.2013, The Appellant wrote to the Generator *inter alia* confirming that as per GEDA certificate the plant was commissioned on 29.12.2012. However the Appellant continued to insist on payment of Liquidated Damage by the Generator till 1.2.2013 i.e to the day when the transmission line was erected by the Appellant.

3.21 Aggrieved by the Appellant's non-acceptance of levy of Liquidated Damages (LD) from 29.12.2012 to 31.01.2013 and non-payment of energy charges for energy injected during 29.12.2012 upto 31.01.2013, the Respondent No. 2 filed the present petition. The Respondent-2 also prayed to direct the Appellant to refund the cost of transmission lines at both the locations, according to the GERC Tariff order No. 1 of

2012, the responsibility to lay the evacuation line lies with the Appellant (UGVCL).

3.22 On 10.10. 2013, the Respondent No. 2 (Generator) filed a Petition No. 1358 of 2013 for resolving the dispute between Respondent No. 2 and Appellant.

3.23 On 22.07.2014, the State Commission passed the Impugned Order and held as under:

*“In view of the above observations, we decide that the present petition succeeds partially. We decide that the petitioner is not liable to pay the cost of transmission/distribution network created for the new project location i.e. Village: Bhatkota, Taluka: Modasa, District: Sabarkantha to the Respondent No. 1 sub-station. The amount recovered by the respondent for creation of transmission/distribution network shall be refunded to the Petitioner, within 1 month from the date of this order, by the Respondent No. 1 UGVCL. The transmission/distribution network costs for the original site at Village: Chacharwadi, Taluka: Sanand, District: Ahmedabad to UGVCL/GETCO substation recovered by the Respondent No. 1 UGVCL is valid and legal and the claim of the petitioner for refund of the same is rejected. We also decide that the Petitioners’ project was commissioned and achieved the SCOD on 29.12.2012. Hence, the recovery of Liquidated Damages by the respondents for the period 29.12.2012 to 31.01.2013 was illegal and contrary to the provisions of the PPA. We, therefore, direct the Respondent No. 1 UGVCL to refund the LD amount within one month from the date of this order. We also decide that the petitioner is eligible to receive the payment for energy injected into grid from 29.12.2012 to 31.01.2013 at the tariff rate of Rs. 9.98 per KWh.*

*The respondents are directed to pay the amount for the energy injected into the grid from 29.12.2012 to 31.01.2013 at the rate of Rs. 9.98 per Kwh within 1 month from the date of this order”.*

3.24 Aggrieved by the Impugned Order dated 22.07.2014, the Appellant has filed this Appeal before this Tribunal praying for the following reliefs:

- a) Allow the appeal and partially set aside the Order dated 22.07.2014 passed by the State Commission to the extent challenged in the present appeal.
- b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

4. Heard the arguments of the Learned Counsel Mr. Anand K. Ganeshan for the Appellant and Learned Counsel Mr. Buddy A. Ranganadhan for Respondent. After going through the submissions made by both the parties, and other material available on record including the impugned order passed by the State Commission. the following issues arise before this Tribunal for consideration:

- a) Issue No. 1: Whether the State Commission erred in directing the Appellant to refund the Transmission (evacuation line) charges at the old location i.e. at Chacharvadi Vasna, Taluka:**

**Modasa, Sanand and at new location Bhatkota, Taluka: Modasa, District: Sabarkantha ignoring the condition laid down in the supplementary Agreement.**

- b) Issue No. 2: Whether the State Commission erred in disallowing Rs. 10.2 lakhs of Liquidated Damages levied by the Appellant for the period of 29.12.2012 to 31.01.2013.**
- c) Issue No. 3: Whether the State Commission is correct in directing the Appellant regarding the Payment of energy injected into standby system arranged by the Appellant as per the request of the Respondent No. 2 (Generator) from 29.12.2012 to 31.01.2013.**

5. Since all these issues are interwoven, we are taking up and decided them together.

The following are the submissions made by the Appellant on all the above issues:

- 5.1 that the State Commission has not construed the provisions of the PPA dated 8.12.2010 entered into between the Appellant and Respondent No. 2 in pursuance of the Order dated 29.1.2010 passed by the State Commission and the Supplemental Agreement dated 6.11.2012 while adjudicating a petition under Section 86 (1) (f) of the Electricity Act, 2003.

5.2 that the State Commission erred in ignoring the express provision in the Supplemental Agreement dated 6.11.2012 entered into between the parties and without appreciating that the Supplemental Agreement was signed by Respondent No. 2 voluntarily and without any coercion clearly agreeing as under-

*“2.2 M/s CLL shall bear cost of Distribution network to be erected to provide evacuation facility at existing location as commitment given by the developer in the undertaking dated 28.03.12. The copy of the same is attached here.*

.....

*2.4 Since M/s. CLL has changed location of the Solar Power Project after lapse of significant time, non-availability of evacuation system shall not be considered as a ground for non-levy of Liquidated Damages and M/s. CLL shall pay Liquidated Damages up to Commercial Operation Date of the solar power project without maintaining on technical grounds. Further, Power Purchase Agreement is terminable after 1 year from the date of Scheduled Commercial Operation Date as mentioned in Article-4.3 of the PPA. Moreover M/s CLL shall be solely responsible for commissioning of solar project before 31<sup>st</sup> December 2012 even after considering the delay in change in location of the solar power project.”*

5.3 that the State Commission also ignored that the Respondent No. 2 vide letter dated 19.11.2012 recognised that it has signed Supplementary PPA with the Respondent No. 1 on 6.11.2012 and stated as under–

*“Having totally understood and willing to abide all the terms and conditions mentioned in the Supplemental PPA, we request your good office to kindly undertake the erection work of Evacuation Line Facility at the new location.”*

5.4 that the State Commission failed to appreciate that the Respondent No. 2 having given an undertaking and based thereon sought substantial accommodation from the Appellant. Thereafter, the Respondent No. 2 unilaterally changed its position and filed the petition before the State Commission.

5.5 that the State Commission has misconstrued the provisions of the Solar Power Policy and its Order dated 29.1.2010 with regard to the responsibility of the Appellant to lay down the transmission evacuation line. It is not disputed that laying down the line is the responsibility of the Appellant.

However, the cost of such line when the location of the solar power project was changed by the Respondent No. 2 after lapse of significant time must also be borne by the Respondent No. 2 and cannot be saddled on the Appellant.

5.6 that there is an inconsistency in the Impugned Order since on one hand, the State Commission has held that the Respondent No. 2 is liable to pay the charges for creation of transmission evacuation facilities at the first location since the infrastructure was created by the Appellant, but on the other hand not applied the same logic in the case of creation of the transmission evacuation facility to the second location.

5.7 that the State Commission erred in ignoring that the location was changed after substantial time only at the sole discretion of the Respondent No. 2 and the Appellant need not have agreed to the same except by stipulating the terms and conditions in the Supplemental Agreement dated



6.11.2012. The Appellant did not terminate the PPA but allowed the Respondent No. 2 to carry out its sola project at a different location in exchange for payment of liquidated damages and also the charges / costs of both the transmission lines. This was the agreement between the parties and cannot be changed by the State Commission in an adjudicatory proceeding.

5.8 that the State Commission failed to appreciate that there is no equity in commercial contracts. The law is well settled in the case of SK Jain v. State of Haryana & Anr (2009) 4 SCC 357. Having induced the Appellant to agree to the change of location on the condition that the Respondent No. 2 would bear the transmission costs for the lines at both locations and also pay the liquidated damages, it is not open to the Respondent No. 2 to challenge the very same conditions by way of the petition before the State Commission.

5.9 that the State Commission also failed to appreciate that the Respondent No. 2 also obtained a further accommodation in the meeting dated 7.8.2013 wherein the following was agreed to -

- *It was mutually agreed to consider COD as 29.12.12.*
- *LD charges were waived for January, 2013.*
- *Line charges were not to be refunded.*
- *Above were agreed subject to consideration of evacuation of power within the limits of 2.4 MW in proportion of both Abbellon (3 MW) & CLL (2 MW) as was already agreed earlier due to line constraints upto 31.01.2013.*

In accordance with the above, the Appellant informed the Respondent No. 2 on 10.10.2013, that all calculations had been revised and given effect to. Having got the benefit, the Respondent No. 2 could not have once again challenged the arrangement between the parties.

5.10 that the State Commission has lost sight of the consumer interest and has loaded the cost of creation of transmission infrastructure at the second location on the general body of consumers

even though the cost had to be incurred solely to accommodate the Respondent No. 2 and for no other reason.

5.11 that the State Commission failed to appreciate that the liquidated damages ought to be paid by the Respondent No. 2 in terms of the Agreement dated 6.11.2012. There was no default on the part of the Appellant and in fact, even though it takes 4 months to put the transmission evacuation line, the Appellant, by special efforts put the line in the changed location by 1.2.2013. This itself has given substantial benefit to the Respondent No. 2 and the levy of liquidated damages has been restricted for a period of 1 month only.

5.12 that the State Commission failed to appreciate that from the date of signing of PPA on 8.12.2010, it was known to Respondent No. 2 that in terms of PPA, the solar power project was required to be commissioned by 31.12.2011 failing which, liquidated damages shall be applicable. However,

the Respondent No. 2 as late as in the month of December 2011 (after 11 months from signing of PPA and few days prior to scheduled commercial operation day decided to change the solar power project site from Village. Chancharvadi to Village: Bhatkota. Accordingly, the Supplemental Agreement dated 6.11.2012 was executed to effect change of location of the power project with a specific stipulation with regard to applicability of liquidated damages even in the absence of the availability of transmission line.

6 ***Per Contra***, the following are the submissions on behalf of the Respondent No. 2, for all the above three issues:

6.1 that with regard to the claim for the half laid old transmission line to the original project site (Claim No. 1), it is submitted:-

- (a) that there was no occasion for the Appellant to lay any part of the line or to claim any amount from the Generator when the Generator had already written to the Appellant to keep on hold the laying of the line.
- (b) that after the request by the Generator, the Appellant took no steps to relocate the part of

the line which has been laid to the original project site. This was despite the fact that the Generator had much earlier evinced its acceptance to bear the costs of relocation and reuse of such line.

- (c) that the first time, the Appellant and the GUVNL accepted the delay in commissioning of the project, the only condition was the payment of Liquidated Damages in terms of the original PPA. All the other conditions and stipulation were unlawful and afterthoughts.
- (d) that even though the Commission has in the impugned order rejected this claim of the Generator, the Generator would still be entitled to contend that such amount ought to be refunded to it in this appeal on the principles analogous to Order 41 Rule 22 of the Code of Civil Procedure.

6.2 that with regard to Rs.81.66 lakhs paid by the Generator for the new transmission line to the new project site (Claim No. 2), it is submitted that:-

- (a) Such demand is completely unlawful, contrary to the Solar policy of the Government of Gujarat and also the GERC Tariff Order.
- (b) The demand by the Appellant towards the cost of the old line and also of the new line is self-contradictory. Having required the Generator to pay for the old line under the law, solar policy and the GERC tariff order, the Appellant has to lay and bear the cost of the transmission line up to the switch yard of the Generator's facility. The Generator has already paid the liquidated damage from the

original scheduled commercial date to the actual commercial operation date i.e 29.12.2012. Hence there can be no question of the appellant levying the liquidated damages as also recovering the cost of the new transmission line.

- (c) The Supplementary PPA providing the unconscionable demand of the cost of new transmission line has not been approved by the Commission and is therefore not binding either on the Commission or for that matter on this Hon'ble Tribunal.

6.3 that with regard to the refund of Rs. 10.2 lakhs of Liquidated Damages between 29.12.2012 and 1.2.2013 (Claim No. 3) it is submitted that:-

- (i). **Clause 2.4** of the amended PPA only means that if the generator's plant is not ready by the Scheduled Commercial Operation date, the generator is liable to pay LD even if the Transmission evacuation facility (to be built by GETCO) is not ready.
- (ii). The said clause 2.4 does not mean that even if the generators plant is ready by the SCOD, the generator is still liable to pay LD simply because the transmission facilities are not ready.  
And/or

The said clause 2.4 does not mean that if the generator's plant is made ready and "available" at a later date (the COD), the generator will continue to pay LD indefinitely, till the transmission line is made available by GETCO.

- (iii). The only test, therefore for the levy of LD is whether the generator's plant is ready or not. If the Generator's plant is ready, there cannot, either in law, equity or contract, be a levy of LD on the generator, thenceforth.
- (iv). Under Section 86 (1) (b) of the Electricity Act the Commission is empowered to even re-open or modify the terms of PPA but has, in fact, applied the terms of the PPA in a reasonable, sound and equitable manner.
- (v). It is, in fact, the Generator who has suffered financially due to the fact that if it were not allowed to evacuate power its investment in the plant would be lying idle from 29.12.2012 to 1.2.2013 on account of GETCO's failure to set up the transmission facilities.
- (vi). The Appellant has for the period 29.12.2012 to 1.2.2013 not suffered any losses since, there was already a stop gap transmission facility to evacuate the power. If the Appellant is unable to purchase/off take the power because of the fault of GETCO in not constructing the lines, it cannot make the generator liable for GETCO's fault.
- (vii). Under Section 74 of the Contract Act, when a contract provides for payment of Liquidated Damages in the event of breach, the complaining party is only entitled to "reasonable compensation" for the loss caused to it up to the maximum amount which is the quantum of LD specified on the contract.
- (viii). Simply because an amount has been mentioned as a measure of damages in the contract, as in the present case, it does not mean that loss need not be proved.

In this regard, reference may be had to the judgments of the Supreme Court in:-

- (i). Fateh Chand Vs Balkishan Das  
(1963) 1 SCR 515 at 530-531**
- (ii). Maulla Bux Vs Union of India  
(1969) 2 SCC 554 at 559 para 6;**
- (iii). ONGC Vs Saw Pipes  
(2003) 5 SCC 705 at 739 para 61.**
- (iv). Kailash Nath Arora Vs DDA  
(2015) 4 SCC 136**

(ix) From 29.12.2012 to 1.2.2013 the Appellant has not suffered any loss at all and in fact after 29.12.2012 apart from the fact that it is the Generator who has suffered the loss, there is no breach on the part of the Generator at all. Hence, in either view of the matter, there can't be any levy of LD after 29.12.2012 onwards, as rightly directed by the State Commission.

(v). Reference may also be had to the Judgment of this Hon'ble Tribunal in **GUVNL Vs Acme Power Appeal No. 54 of 2013 dt 11-11-2013.**

6.4 that as regards the energy injected from 29.12.2012 to 31.1.2013, (Claim No. 4) it is undisputable that the Generator had in fact, injected 2,55,515 units of energy from the Generator's facility into the Grid.



6.5 that the act of generating energy and feeding to the Appellant's Grid was a part of the obligations under the PPA and hence could not be a gratuitous act. Whether such injection was under the stop gap arrangement and through the transmission facility ultimately constructed by the appellant is immaterial as regards the liability of the appellant to pay for the energy generated by the Generator and used by the Appellant to supply to its consumers.

6.6. The Commission's Order is fully justified in law and in accordance with the objectives of the State Commission to promote generation from renewable source of electricity under Section 86 (1) (e) of the Act.

7. **Our consideration and conclusions on these issues:**

The submissions of the Appellant and Respondents for all the issues are taken together, but we want to analyze the issues, issue-wise and record our opinions.

**8. Issue No. 1: Whether the State Commission erred in directing the Appellant to refund the Transmission (evacuation line) charges at the old location i.e. at Chacharvadi Vasna, Taluka: Modasa, Sanand and at new location Bhatkota, Taluka: Modasa, District: Sabarkantha ignoring the condition laid down in the supplementary Agreement.**

8.1 In the impugned order, the State Commission directed against the Appellant and the relevant part is quoted below:

*“We observe that according to the Solar Power Policy of the Government of Gujarat as well as the Commission’s Order no. 1 of 2012, the responsibility to lay the transmission line from the Solar Power Projects to the nearest sub-station lies with the GETCO. Also, the original PPA dated 08.12.2010 between the petitioner and the Respondent No. 2 GUVNL, requires the evacuation facility to be laid by the GETCO/Discom, as the case may be. The Respondent No. 1, therefore, cannot be allowed to take advantage of the supplemental PPA and get away with its responsibility to provide the evacuation facility for the Solar Power Project. As such, we decide that the cost of transmission line at the new site is to be borne by the Respondent No. 1 and the amount recovered from the petitioner on this account be refunded”.*

8.2 Let us examine the relevant part of the Power Purchase Agreement (PPA) and Solar Power Policy 2009 issued by Government of Gujarat’s Energy and Petrochemicals Department:

8.3 The relevant part of the PPA entered on 08.12.2010 between the procurer (GUVNL) and Generator (M/s. Claris Lifesciences Limited (CLL), is quoted below:

**Article 4.1: Obligations of Power Producers:**

- (i) The Power Producer shall obtain all statutory approvals, clearances and permits necessary for the project at his cost as listed in the schedule 3.
- (ii) The power producer shall construct, operate and maintain the project during the term of PPA at his cost and risk including the interconnection facility.
- (iii) \_\_\_\_\_
- (iv) The Power Producer shall seek approval of GETCO/Discom (as case may be) in respect of interconnection facilities.
- (v) The Power Producer shall approach GETCO/Discom (as the case may be) for laying transmission line from its switchyard to nearest substation of GETCO. Further Power Producer shall ensure the injection of power at not lower than 11kV level. Power producer shall also install Remote Terminal Units (RTUs) to enable SLDC to monitor injection of power.
- (vi) The Power Producer shall undertake at its own cost maintenance of interconnection facilities as per the specifications and requirements of GETCO/Discom (as case may be) as notified to the Power Producer, in accordance with Prudent Utility Practices.

## **Article 4.2 : Obligations of GUVNL**

- (i) To allow Power Producer to operate the Project as a base-load generating station.
- (ii) Pay to power producer for month energy bills for scheduled energy as certified by SLDC in SEA/ Certified by Discom (as case may be).

### **8.4 Solar Power Policy 2009 of Government of Gujarat**

According to Section 14 of the policy which is as under:

#### **14. Grid Connectivity and Evacuation facility up to GETCO substation:**

*The evacuation facility from the Solar Substation/Switchyard to the GETCO substation shall be initially approved by GETCO after carrying out the system study. The power by the SP|G shall be injected at 66 kV.*

*The transmission line from the switchyard of the Solar Substation to the GETCO Substation shall be laid by GETCO. They should be integrated by installing RTUs by solar project developer so that the penetration can be monitored at the connectivity substation by the SLDC on real basis.*

- 8.5 The relevant part of the Commission's Order specified in their order No. 1 of 2012 dated 27.01.2012, is quoted below:

#### **“4.4. Evacuation Facilities:**

Interfacing line of appropriate capacity and voltage as per the Central Electricity Authority (CEA) (Technical Standard for connectivity to the grid) Regulations, 2007 shall be provided by the STU or the Distribution Licensee at their cost. The intending generator shall apply to the STU or the Distribution Licensee concerned well in advance.

Switchyard equipment, metering and protection arrangement and Remote Terminal Units (RTU) at generator end shall be provided by the owners of solar generators/ solar Project Developers at their own cost. The interconnection voltage at generator switchyard will depend on the quantum of power to be evacuated and as per the connectivity granted by the STU or the Distribution Company in line with the State Grid Code.

The transmission line from the switchyard of generator to the Gujarat Energy Transmission Corporation Ltd. (GETCO) substation shall be laid by GETCO.....”

- 8.6 The Respondent (Generator) initially proposed to set up solar power project at Chacharvadi Vasna, Sanand Tq. and the said location was later on changed to Survey No. 56&62, village Bhatkota, Tq Madasa due to technical reasons. The same was permitted by Energy and Petrochemicals Depart, Govt. of Gujarat and also by GUVNL.

In view of this, the Respondent (Generator) entered the Supplemental Power Purchase Agreement on 6<sup>th</sup> November 2012 with UGVCL.

8.7 As per the Article 4.1 (v) of PPA dated 08.12.2010, the Power Producer shall approach GETCO/Discom for laying transmission line from its switchyard to the nearest sub-station of GETCO. Accordingly, the Respondent approached GETCO for laying of evacuation line from GETCO sub-station to Generator's switchyard and the Appellant started execution of the line from the GETCO switchyard to the old location Chacharvadi village, vasna, Taluka.

8.8 While the transmission line was under construction, the Respondent (Generator) intimated on 26.12.2011 few days before the schedule commercial operation date to GETCO regarding shifting of solar power project from the existing location to the new location.

8.9 The Generator wrote a letter to the Chief Engineer, Uttar Gujarat Vij Company Ltd., Corporate Office, Visnagar Road, Mehsana on 19.11.2012 informing “we request your good office to kindly undertake the erection work of Evacuation Line Facility at the new location”. This clearly shows that the Respondent (Generator) has intimated regarding erection of new transmission line few days before the scheduled commercial operation date (i.e. 31.12.2011).

8.10 According to PPA, the Generator has to approach the Distribution licensee, GETCO for laying transmission line from its switchyard to nearest sub-station of GETCO. Further, the Generator shall also install remote terminal units to enable SLDC to monitor injection of power.

8.11 According to Solar Power Policy of Government of Gujarat and as per State Commission’s Order 1 of 2012 dated 27.01.2012, the evacuation facility from the nearest GRIDCO sub-station to the generating bus of the Generator is the obligation of

the Distribution licensee. i.e. GETCO. Accordingly, the transmission licensee has to bear the expenditure of the transmission line from generator bus to the nearest sub-station of the licensee.

8.12 Accordingly, the Distribution Licensee started execution of transmission line from their sub-station to the generator switchyard at Chacharwadi village.

8.13 We find from the submission, (Annexure-F) that the Generator wrote a letter to the Chief Engineer, UGVIJ Company Ltd., Mehsana on 26<sup>th</sup> December 2011 and the extract of the letter is quoted below:

*“With reference to the above, we are planning to change the location of proposed 2 MW solar plant due to non-availability of sufficient space at roof top of Claris’s manufacturing facilities. Now, we are planning to put up this project near ‘Madasa’ where we have sufficient land.*

*In view of the above, we would like to request you not to lay the 11 KV line for above project at Claris’s Campus”.*

This clearly shows that the Respondent (Generator) intimated to the Appellant few days before the



scheduled date of commissioning i.e. 31.12.2011, not to execute the line at old location.

8.14 Again, on 28.11.2012, Respondent (Generator informed change of location to the Appellant due to shortage of clear space available (8 acre approx.) at the proposed roof top of the existing plant which could accommodate only 1.5 MW instead of 2 MW solar P.V. plant. Hence, requested to change the location of solar plant to Survey No. 56&62, Village Bhatkota, Taluka – Modasa, Distt. District Sabarkantha, which is approximately 12 acres.

8.15 The Divisional Engineer, H.T., UGVCL conducted testing of the metering equipment erected on the evacuation line on 29.12.2011. The representative of the consumer also signed the inspection report of the H.T. installation on 29.12.2011. The following are the incriminating points recorded in the H.T. test report.

- (a) Today i.e. on 29.12.2011, CTPT and ABT secure meter installed for 2 MW solar power plant.

- (b) Due to no work carried and on consumer side, only CTPT charged from UGVCL end.

This shows that the transmission line was completed upto the premises of the Generator and line was charged upto metering cubicle (CTPT).

8.16 We have observed that the Appellant executed the evacuation line on both the locations as per the request of the Respondent-2 (Generator). First to evacuate the power from the Petitioner plant in the first location i.e. at Chacharwadi village to the GETCO substation as per the solar policy and as per the Order No. 1 dated 27.01.2012.

8.17 As such, we cannot find fault with the Appellant in execution of the evacuation line at the 1<sup>st</sup> location and the same is found to be confirmed from the record of H.T. inspection report dt 29.12.2012. Further, the Respondent (Generator) intimated to the Appellant regarding change of location first time on 26.12.2011 as against the scheduled commercial operation date of 31.12.2011.

8.18 Hence, we decide that the Generator is liable to pay the cost of the 1<sup>st</sup> line erected at Chacharwadi

village and the Appellant is not bound to refund the amount collected towards the cost of 1<sup>st</sup> line. In the Impugned Order, the Commission has rightly decided that the Generator is liable to pay the cost of 1<sup>st</sup> line.

8.19 Accordingly, the Distribution Licensee is not liable to refund the cost of 1<sup>st</sup> line i.e. Rs. 27.73 lakhs to the Generator.

8.20 Let us examine, whether the Respondent (Generator) is liable to pay the cost of transmission line erected at new location or not.

8.21 As seen from the records that the Generator has given an undertaking on 28 March 2012 and the relevant part of the undertaking is as under:

- (a) The Condition to signing supplemental PPA is very much in our knowledge and will be considered from our end to further expedite the process.
- (b) As seen from the records that Respondent No. 2 (Generator) has given undertaking on 28.03.2012. The relevant portion is as under:

*“Our bank guarantee with UGVCL will be extended till 31.01.2013. Liquidity damages will be paid by*

*5<sup>th</sup> of every month and will continue till the commissioning of project at new proposed location on monthly basis without considering any clause of any new agreement to prevent LD and no any litigation will be raised on later stage in this regards.*

*If the LD is not paid as per the scheduled time line than the Bank Guarantee will be encashed without any prior notice. We have written a letter to EPD for changing the project location on 28.12.2011 and if the permission granted by 30.04.2012 then the tentative commissioning date of project would be 31.10.2012 at new location. We are ready to execute a supplemental PPA as per revised tariff order from GERC. Existing evacuation line cost at present location will be incurred by project developer if any and shall be paid on the receipt of estimate form UGVCL and if we will get the permission of new location than the evacuation cost at that location will be borne by us only”.*

In the undertaking, the Respondent (Generator) has agreed to pay the existing evacuation line cost on receipt of the estimate from UGVCL and also agreed to pay the cost of evacuation line at new location, if permission was granted by the Appellant. Further, they became ready for entering Supplementary Agreement.

(ii) The Appellant granted permission for the change of location on 01.05.2012, subject to the following conditions:

- (1) The Appellant has to pay Rs.27.73 lakhs towards cost of the existing transmission line already erected by the Appellant.
- (2) The Appellant shall pay the entire cost of the evacuated line to the new proposed site of the Solar Project.
- (3) The commencement of the commercial operation at the new site shall not be later than 31.12.2012.

The Respondent (Generator) informed his acceptance to the above condition on 05.05.2012.

8.22 Subsequently, the Respondent (Generator) entered Supplemental Power Purchase Agreement with UGVCL on 06.11.2012 and the relevant part of the Supplemental PPA is quoted below:

The relevant part of the Supplemental Agreement is as under:

*2.1 The Project site in the Power |Purchase Agreement dated 8<sup>th</sup> December 2010 executed with GUVNL at Village: Chacharvadi Vasna, Taluka: Modasa Dist: Sabarkantha.*

*2.2 M/s CLL shall bear cost of Distribution network to be evocated to provide evacuation facility at existing location as commitment given by the developer in under taking dated 28.03.2012.*

*2.3 M/s CLL shall ensure the commissioning of the solar project including evacuation line on or before*

*31<sup>st</sup> December 2012 and carry out the work of evacuation lines from the project site at his own cost (at new location) to GETCO substation under supervision of UGVCL and require to pay supervision charges.*

*2.4 Since M/s. CLL has changed the location of the Solar Power Project after lapse of significant time, non-availability of Distribution network shall not be considered as a ground for non-levy of Liquidated Damage. M/s CLL shall pay Liquidated Damages up to Commercial Operation Date of the solar power project without maintaining on technical grounds. Further, Power Purchase Agreement is terminable after 1 year from the date of Scheduled Commercial Operation Date as mentioned in Article – 4.3 of the PPA. Moreover, M/s. CLL shall be solely responsible for commissioning of solar power project before 31<sup>st</sup> December 2012 even after considering the delay in change in location of the solar power project.*

*2.5 UGVCL shall pay the fixed tariff mentioned hereunder for the period of 25 years for all the Scheduled Energy/Energy injected as certified in the monthly SEA by SLDC. This tariff is determined by Hon'ble Commission vide Tariff Order for Solar based power projects dated 27.01.2012.*

*2.6 CLL shall submit all documents in compliance to Article – 4.1 (x) of the PPA at the time of commissioning of the project, failing which UGVC will initiate actions as per condition of the PPA including termination of PPA and claiming compensation.*

*2.7 All other terms and conditions including tariff of Power Purchase Agreement dated 8<sup>th</sup> December 2010 between GUVNL and CLL shall remain unchanged.*

*2.8. Over above M/S CLL shall followed terms & condition which are mentioned in undertaking.*

8.23 It is a fact that the Respondent entered into Supplement Agreement with the Appellant and it says that the Respondent (Generator) has accepted for the payment of the line cost at both the places.

Due to lapses of the Generator, we are directing the Generator to pay the cost of the line at 1<sup>st</sup> location i.e. near Chacharvadi village.

8.24 The Government of Rajasthan to promote renewable energy sources in the state of Gujarat, framed a solar policy and as per policy, the procurer STU has to facilitate the evacuation line from the Generator switchyard to GETCO substation at their cost (at the cost of Distribution Licensee/State Transmission Utility).

8.25 Let us examine the relevant sections of Electricity Act 2003 towards promotion of renewable energy sector, which is as under:

- a) *“As per Section 61(h) which says the Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the promotion*

*of co-generation and generation of electricity from renewable source of energy.*

- b) *“As per Section 86(1)(e) of Electricity Act 2003, the State Commission has to promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee”*

Accordingly, it is the responsibility of the State Commission to promote the generation of electricity from renewable energy sources by providing suitable measures for connectivity with the grid.

8.26 The State Commission expressed their view during the public hearing on the issue of evacuation line and the Commission’s ruling is quoted below:

***“Commission’s ruling:***

*One of the advantages of solar technology is the ability to utilize non-fertile and non-productive land and harsh conditions, which often found at remote locations and hence, may be far from the STU substations. The utilization of such land should not be discouraged. The STU is the best-suited agency with the expertise to carry out the work of laying transmission lines throughout the state. Further, the Solar Power Policy, 2009 of the Government of*



*Gujarat provides that the transmission line from the switchyard of the substation of the megawatt-scale solar power plant to the GETCO substation shall be laid by GETCO”.*

8.27 Thus, to encourage, the Renewable Energy Generation in the state and to utilize the non-fertile and non-productive land under harsh conditions, which are often found at remote locations and may be far from the STU substations.

The State Commission implemented the solar policy laid down by the Govt. of Gujarat and taken a decision that the State Transmission Utility (STU) has to bear the cost of evacuation line from the generator bus to the nearest sub-station of the GETCO in their Order No. 1 dated 27.01.2012.

This is to encourage the renewable energy generation in the state and to relieve some burden on the cost of the renewable energy developers and the fringe benefit is announced to attract the entrepreneurs by the Government of Gujarat in the solar policy.

8.28 The contention of the Appellant is that, the Respondent No-2, the Generator M/s. Claris Lifesciences Ltd., had entered into a supplemental Agreement based on the undertaking given by the Generator on 06.11.2012, and hence the Generator is liable to pay the cost of evacuation transmission line in the new location.

8.29 It is a fact, that the developer/generator has signed the supplemental Agreement accepting the conditions laid down in the undertaking, but at the same time the Appellant cannot be allowed to take advantage of supplemental PPA and get away with responsibility to provide the evacuation facility for the solar project.

8.30 The developer is developing the project with good intention and the Government of Gujarat has allowed certain benefits to the developer to develop renewal energy generations in the state, to save the fossil fuel of the country (coal, oil, gas), to fulfill the policy of the Government of India and to reduce

the global pollution by developing Renewal Energy Sources.

8.31 We consider, as per the Solar Policy of the Government of Gujarat, as per the Commission Order dated 27.01.2012, and as per the Indian Electricity Act, the procurer that is the Appellant has to provide evacuation system from the Generator bus to the GETCO Sub-station.

In view of the above, we feel the that the Appellant is liable to fulfill the obligation of solar policy of the State and consider to exempt from payment of cost of new evacuation line from the GETCO sub-station to the new generator's location i.e. at Bhatkota, Taluka: Modasa, District: Sabarkantha by the Respondent No. 2 (Generator).

Further, there is no loss in erection of evacuation line at first location, as the cost of the line is paid by the Respondent (Generator) and as per policy, the Distribution Licensee has to erect the evacuation line in the new location.

Thus, we affirm the order of the Commission on this Issue. We direct the Appellant to refund the cost of evacuation line executed at the new location, if collectd.

**9. Issue No. 2: Whether the State Commission erred in disallowing Rs. 10.2 lakhs of Liquidated Damages levied by the Appellant for the period of 29.12.2012 to 31.01.2013.**

9.1 Let us examine the relevant clause of original PPA dated 08.12.2010 and is quoted below:

*“Clause 4.3: Liquidated damages for delay in Commissioning the Project/Solar Photovoltaic Grid Interactive Power Plant beyond Scheduled Commercial Operation date.*

*(i) If the project is not commissioned by its Scheduled Commercial Operation Date other than the reasons mentioned below, the Power Producer shall pay to the GUVNL liquidated damages for delay at the rate of Rs.10000 (Rupees Ten thousand ) per day per MW for delay of first 60 days and Rs.15000 (Rupees Fifteen thousand) per day per MW thereafter. Liquidated damage is payable upto delay period of 1 year from Scheduled Commercial Operation Date. If the Power Producer fails to make payment of the liquidated damages for a period exceeding 30 days, GUVNL shall be entitled to invoke the Bank Guarantee to recover the liquidated damages amount. In case of delay more than 1 year, GUVNL assumes no obligation and has right to terminate the Power Purchase Agreement by giving 1 month termination notice.*

*1. The project cannot be Commissioned by Scheduled Commercial Operation Date because of Force Majeure event; or*

2. *The Power Producer is prevented from performing its obligations because of material default on part of GUVNL.*
3. *Power Producer is unable to achieve commercial operation on Scheduled Commercial Operation Date because of delay in transmission facilities/evacuation system for reasons solely attributable to the GETCO/Discom (as case may be)”.*

According to the above clause, if the project is not commissioned by its scheduled commercial operation date i.e. 31.12.2011, for other than the reasons mentioned in the clause, the Power Producer shall pay to the GUVNL liquidated charges up to the delay period of one year from the scheduled commercial operation date and if the Power Producer fails to make the payment of LD charges for a period exceeding 30 days, GUVNL shall be entitled to invoke the bank guarantee towards recovery of LD charges amount and has right to terminate the Power Purchase Agreement by giving one month termination notice.

9.2 It is a fact that the Generator Unit of the Respondent No. 2 (Generator) was commissioned on 29.12.2012 and the same was certified by GEDA vide its

certificate dated 17.01.2013. Hence, according to the certificate issued by GEDA, the Respondent No. 2 (Generator) is liable to pay the LD charges up to 29.12.2012 technically i.e. within one year from the date of original scheduled commercial date of 31.12.2011.

9.3 The contention of the Appellant is that the transmission line for evacuation of generation from the new station was completed in all respects on 01.02.2012 whereas the generating unit was commissioned on 29.12.2012, and the Appellant claims as per the Supplemental PPA that the Generator is liable to pay the LD charges for this period, i.e. amount to Rs. 10.2 lakhs for the period from 29.12.2012 to 31.01.2013.

9.4 Though, the erection of new line was not completed on the day of commissioning of the unit, but as per the request of the generator an alternate arrangement was provided by the Appellant to inject

the generated power from the generating unit to GETCO sub-station.

9.5 Further, as per the original PPA, the liquidated damages has to be paid by the Respondent to the Appellant up to one year from scheduled date of commercial operation i.e. 31.12.2011 and according to the commissioning report, the unit of the generator was commissioned on 29.12.2012 i.e. within one year period.

9.6 From the above facts, it is established that the project was commissioned on 29.12.2012. But, the Appellant failed to establish the dedicated evacuation line in time. As such, the Appellant cannot be allowed to take advantage of its own fault. Further, the Appellant made alternate arrangements for evacuation of power from the Respondent's generating station.

9.7 The Appellant also received L.D. charges from the Respondent (Generator) for the period upto the commissioning of the plant at new location and the

Respondent prayed to exempt the L.D. charges for one month only i.e. upto the completion of new line. Further, due to non-completion of new line, the Generator was unable to inject full power from its generating station and forced to inject less power due to line constraints and due to this, the Generator incurred some loss in revenue towards injection of less power to the GETCO system.

9.8 We, therefore, decide that the LD charges is leviable on the Respondent (Generator) up to the date of commission of project only i.e. upto 29.12.2012. Accordingly, the Appellant is directed to refund the liquidated damages, if any, collected for the period from 29.12.2012 to 31.01.2013 to the Respondent No. 2 (Generator).

9.9 In view of the above, we affirm the Order of the State Commission on this issue.

9.10 Accordingly, this issue is decided against the Appellant.



**10. Issue No. 3: Whether the State Commission is correct in directing the Appellant regarding the Payment of energy injected into standby system arranged by the Appellant as per the request of the Respondent No. 2 (Generator) from 29.12.2012 to 31.01.2013.**

10.1 We note that the Petitioner has commissioned 2 MW Solar Power Project on 29.12.2012 and the same is confirmed by the GEDA's certificate dated 17.01.2013. Further, the GEDA which is a nodal agency to certify the commissioning of the project noted that the Solar Power Project of the Respondent No. 2 was commissioned on 29.12.2012 and generated energy of 1309.5 KWh during 13 hours to 13.58 hours on the commissioning day.

10.2 According to the request of the Respondent, the Appellant has arranged alternate arrangement for exporting the power from the generating station bus to the grid sub-station from 29.12.2012 to 31.01.2013.

10.3 The Petitioner and the Respondent have executed Supplemental PPA dated 06.11.2012 in which the parties agreed in Article 2.5 of the Supplemental of PPA as under:

*“..... Article 2.5 UGVCL shall pay the fixed tariff mentioned hereunder for the period of 25 years for all the Scheduled Energy/Energy injected as certified in the monthly SEA by SLDC. | This tariff is determined by Hon’ble Commission vide Tariff Order for Solar based Power Projects dated 27.01.2012.*

*Tariff for PV project: Rs. 9.98/KWh for First 12 years and thereafter Rs. 7.00/KWh for first 13<sup>th</sup> years to 25<sup>th</sup> year....”*

As per the above Clause/Article, UGVCL shall pay the fixed tariff for the period of 25 years for all the Scheduled Energy/Energy injected as certified in the monthly SEA by SLDC.

10.4 It is a fact that the Respondent-2 injected the generated power through alternate feeder to the GETCO substation and the Appellant sold the power to their consumers and thereby received revenue from the sale of power.

10.5 Considering the above facts, we decide that the Appellant is liable to pay the energy charges agreed in the Supplemental Agreement for the power received from the date of commissioning of 2 M.W. solar power project from 29.12.2012 to 31.01.2013 at the rates specified in the Supplemental PPA Agreement dated 06.11.2012.

10.6 Accordingly, this issue is decided against the Appellant and the Commission's Impugned Order on this issue is affirmed.

### **ORDER**

The Appeal No. 242 of 2014 filed by the Appellant is dismissed and the Impugned Order dated 22.07.2014 is affirmed.

No order to cost.

Pronounced in the open court on this 23<sup>rd</sup> day of November 2015.

**(T. Munikrishnaiah)**  
**Technical Member**

**(Justice Surendra Kumar)**  
**Judicial Member**

Dated, 23<sup>rd</sup> November, 2015.

**REPORTABLE / ~~NON-REPORTABLE~~**