

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2398 of 2024.

In the matter of:

Petition under Section 63 read with Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 seeking for adoption of tariff discovered under tariff based competitive bidding process conducted by PGVCL vide RfS No. PGVCL/ Project/ DSM/ PM-KUSUM-C-FLS/TN-10 dated 29.02.2024 for 125 Nos. of solar plants of total 276.0 MW through RESCO model, for solarization of various 11 kV feeders in PGVCL for implantation of FLS (Feeder Level Solarization) under PM KUSUM - C Scheme of Government of India.

Petitioner : Paschim Gujarat Vij Company Limited
Represented by : Ld. Adv. Mr. Utkarsh Singh alongwith Mr. S.N.vParmar
Objector : M/s Gensol Engineering Limited
Represented by : Nobody was present.

CORAM:

**Mehul M. Gandhi, Member
S.R. Pandey, Member**

Date: 04/11/2025.

ORDER

1. The present Petition has been filed by the Petitioner Paschim Gujarat Vij Company Limited (PGVCL) under Section 63 read with Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 interalia seeking for adoption of tariff discovered under tariff based competitive bidding process conducted by PGVCL vide RfS No. PGVCL/ Project/ DSM/ PM-KUSUM-C-FLS/TN-10 dated 29.02.2024 for 125 Nos. of solar plants

of total 276.0 MW through RESCO model, for solarization of various 11 kV feeders in PGVCL for implantation of FLS (Feeder Level Solarization) under PM KUSUM - C Scheme of Government of India.

2. The Commission has passed the Order dated 05.04.2025 in the present matter wherein while adopting the discovered/negotiated tariff under the Competitive Bidding Process conducted by the Petitioner through RfS No. PGVCL/Project/DSM/PM- KUSUM-C-FLS/TN-10 dated 29.02.2024 as per para 9.36 of the Order, has also allowed the Petitioner PGVCL to sign the Power Purchase Agreement with the successful bidders except in respect of M/s Gensol Engineering Limited for the capacity and tariff as per table stated in para 9.36 of the Order. It was also recorded in the said Order that as the matter of M/s GENSOL Engineering Limited for signing of the PPA in the name of its SPV Gensol Engineering Limited with the Petitioner PGVCL is pending, the matter be listed for hearing on this issue and accordingly, the present Petition is partly allowed so far as bidders as stated in Para 10.1 & 10.2 of said Order dated 05.04.2025. The Commission also directed the Petitioner PGVCL that for the purpose of transparency, after execution of the PPA, publicly disclose the name of the successful bidder(s) and the tariff quoted / negotiated and agreed by them together with the break up with the component, for 30 days on its website in terms of Clause 10.3 of the bidding Guidelines as amended for knowledge and information of the stakeholders.
3. Thereafter, the present matter was kept for hearing on 06.05.2025. The Commission passed Daily Order on 19.05.2025 in the matter. It was recorded in the aforesaid Daily Order that the Ld. Counsel Mr. Divyansh Singh, appearing on behalf of the Objector Gensol Engineering Limited,

submitted that the arguing counsel for the Objector has circulated an email seeking the adjournment due to his personal difficulty in the present matter and accordingly, requested the Commission to adjourn the hearing and post the matter on any date subject to convenience of the Commission, which was not objected by the counsel of Petitioner PGVCL. Accordingly, considering the request of the Objector and the PGVCL having no objection to the same, the matter is adjourned and with joint concurrence of the parties, the matter was posted for hearing on 27.05.2025.

4. During the hearing on 27.05.2025, the Ld. Counsel for Objector Gensol Engineering Limited submitted that the arguing counsel who was previously engaged by the Objector has withdrawn his Vakalatnama in the present Petition due to personal reasons and seek the permission of the Commission to file Vakalatnama on behalf of the Objector in the present matter. He also stated that he has informed to the Objector in this regard. He submitted that the Commission may issue notice to the Objector and hear him. He requested the Commission to grant the adjournment in the matter. Whereas, the counsel for the Petitioner, submitted that the objections raised by the Objector are not valid and sustainable, however, he has no objection to the adjournment sought by the counsel appearing for the Objector and requested the Commission to give shorter time. Having considered the request of Objector Gensol Engineering Limited and the Petitioner PGVCL has no objection to the same, the matter was adjourned so as to grant an opportunity of hearing to the Objector.
5. Thereafter, the matter was kept for hearing on 29.07.2025 and the Commission passed Daily Order on 06.08.2025 wherein it was recorded

that when the matter was called out, nobody was present on behalf of the Objector M/s Gensol Engineering Limited nor any written communication about their inability to remain present has been made despite notice. Ld. Adv. Mr. Utkarsh Singh for the Petitioner PGVCL submitted that the Commission may adjourn the present matter in view of non-appearance of the Objector. It was also recorded that considering the request of the adjournment of Petitioner and in absence of the Objector, the matter is adjourned in the interest of justice. It was further recorded that the Objector is not appearing from the last hearing and no further adjournment be granted from the next hearing onwards. It was also directed to the Petitioner and the Objector to file its written submissions, within one week time from the date of this Order in the present matter.

6. The matter was kept for hearing on 04.09.2025 and the Commission passed Daily Order on 16.09.2025 wherein it was recorded that when the matter was called out, nobody was present on behalf of the Objector M/s Gensol Engineering Limited nor any written communication about their inability to remain present has been made despite notice. Ld. Adv. Mr. Utkarsh Singh for the Petitioner PGVCL submitted that the Objector is not remaining present since last couple of the hearing. He submitted that the Petitioner has already filed the submissions in the matter and have nothing more to add in the matter. The Commission may accordingly, decide the matter based on the records of the Petition. It was noted by the Commission that since last many hearings the Objector has not remained present before the Commission and also not communicated about their inability to remain present despite notice. The Commission also gave ample opportunity to the Objector M/s Gensol Engineering

Limited to make out their case but the Objector has failed to do so. Even, during the hearing on 04.09.2025, the Objector has chosen not to remain present in the proceedings. The Commission also noted the submissions of the counsel of the Petitioner that the Petitioner has already filed the submissions in the matter and have nothing more to add in the matter and accordingly requested the Commission to decide the matter based on the records of the Petition. Therefore, the Commission has decided to reserve the matter for appropriate Order.

7. The Objector Gensol Engineering Limited has filed its comments vide affidavit dated 20.12.2024 in the present matter as under:

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Paschim Gujarat Vij Company Limited ("PGVCL") has filed petition bearing number 2398 of 2024 for adoption of tariff discovered under tariff based competitive bidding process conducted by PGVCL vide RfS No. PGVCL/Project/DSM/PM-KUSUM-C-FLS/TN-10 dated 29.02.2024 ("RFS") for 125 Nos. of solar plants of total 276.0 MW through RESCO model, for solarization of various 11 kV feeders in PGVCL for implantation of FLS (Feeder Level Solarization) under PM KUSUMC Scheme of Government of India ("Kusum Project").

Gensol Engineering Limited ("Gensol"), has been selected as the successful bidder in the competitive bidding process conducted by PGVCL for development of Kusum Project.

Gensol is hereby submitting comments in response to notice for public hearing issued in tariff adoption petition filed by PGVCL being Petition No. 2398/2024. Gensol is supporting the tariff adoption petition filed by PGVCL. However, Gensol is submitting before this Hon'ble Commission to allow wholly owned special purpose vehicle of Gensol i.e. Gensol Green Energy Private Limited ("Gensol SPV") to sign the Power Purchase Agreement for developing the Kusum Project.

Jurisdiction:

1. *PGVCL has filed the present petition under Section 63 read with Section 86 (1) (b) of the Electricity Act, 2003 ("Electricity Act"). Section 86 (1) (b) empowers this Commission to regulate electricity purchase and procurement process.*

Section 86 (1) (b) reads as follows:

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

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

2. *Signing of the Agreement is a part of the procurement process, therefore this Hon'ble Commission has an exclusive jurisdiction to regulate terms of the procurement including terms of the power purchase agreement ("PPA"). Name of the Party is an important part of any power purchase agreement and any issues concerning signing of the power purchase agreement has to be decided at this stage, otherwise this tariff adoption will be an academic exercise.*

In "Hotel & Restaurant Assn. and Another v. Star India (P) Ltd. and Others" [(2006) 13 SCC 753], in regard to the role of TRAI as a regulator, Hon'ble Supreme Court held:

"55. TRAI exercises a broad jurisdiction. Its jurisdiction is not only to fix tariff but also laying down terms and conditions for providing services. Prima facie, can fix norms and the mode and manner in which a consumer would get the services.

56. The role of a regulator may be varied. A regulation may provide for cost, supply of service on non-discriminatory basis, the mode and manner of supply making provisions for fair competition providing for a level playing field, protection of consumers' interest, prevention of monopoly. The services to be provided for through the cable operators are also recognised. While making the regulations, several factors are, thus required to be taken into account. The interest of one of the players in the

field would not be taken into consideration throwing the interest of others to the wind."

Hon'ble Supreme Court in "V.S. Rice and Oil Mills v. State of A.P." [(1964) 7 SCR 456] held:

"Then it was faintly argued by Mr Setalvad that the power to regulate conferred on the respondent by Section 3(1) cannot include the power to increase the tariff rate; it would include the power to reduce the rates. This argument is entirely misconceived. The word "regulate" is wide enough to confer power on the respondent to regulate either by increasing the rate, or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair prices..."

Therefore, in terms of afore-quoted regulatory provisions and case laws, this Hon'ble Commission has jurisdiction to ensure fairness in execution of power purchase agreement. Adjudication of such dispute should also be undertaken at the time of the tariff adoption due to nature of the dispute i.e. determination of parties to the PPA. Signing of the PPA is an intrinsic part of the tariff adoption. PGVCL has approached this Hon'ble Commission to seek approval for signing of the PPA and this Hon'ble Commission should exercise its power under Section 86 (1) (b) to direct PGVCL to allow Gensol SPV to sign the PPA for developing the Kusum Project.

Facts:

- 3. On 13.10.2023, PGVCL issued RFS for purchase of solar power through competitive bidding process for developing the Kusum Project at various locations in the State of Gujarat.*
- 4. Gensol was declared as a successful bidder and was issued 28 letters of intent dated 21.08.2024 ("LoI") issued for developing Kusum Project.*
- 5. Post execution of the LoI, Gensol, vide communication dated 18.09.2024, made a request to PGVCL for allowing Gensol SPV to develop the Kusum Project. Gensol's request have been denied by PGVCL, vide its letter dated 08.11.2024, on the ground that RFS*

does not allow any entity other than the person who has participated in the Bid to sign the PPA. PGVCL lost sight of the fact that Gensol was merely praying for compliance of industrial practice by allowing 100% owned subsidiary to sign the PPA.

It is humbly prayed that this Hon'ble Commission should direct PGVCL to allow Gensol SPV to sign PPA for developing Kusum project on following grounds:

- A. *Signing of the PPA by a special purpose vehicle is neither prohibited in RFS nor in any applicable guidelines. RFS has been issued in terms of "Guidelines for Implementation of Pradhan Mantri Kisan Urja Suraksha evam Utthan Mahabhiyan (PM KUSUM) Scheme" ("Kusum Guidelines").*
- B. *Kusum Guidelines do not put any prohibition on development of Kusum Project vide SPV route.*

Various States have issued bid documents for development of Projects under Kusum Guidelines. Reading of bid documents reflect that these documents expressly allowed special purpose vehicles to enter into power purchase agreements post selection of the successful bidder.

If PGVCL is not being directed to execute PPA with Gensol SPV then it will be a discrimination on the basis of the location of the power plant. Almost all Indian States' Kusum Project implementing agencies are allowing SPVs to enter into PPA. Continuous denial by PGVCL will be an arbitrary exercise.

Relevant excerpt from various States' Kusum Bid Documents are being reproduced hereinafter:

***Rajasthan- NIT No: JVVNL/SE(KUSUM)/XEN(RE-DSM)/TN- 13
Dated 29.10.2024***

A. *Bid document*

1.1.3. A Bidder which has been selected as Successful Bidder based on this RfS can also execute the Project through a Special Purpose Vehicle (SPV) i.e., a Project Company especially

incorporated / acquired as a subsidiary Company of the successful bidder for setting up of the Project, with at least 51% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of PPA.

1.1.4. If the selected bidder wishes to execute the project through SPV, the Memorandum of Association (MoA) / Articles of Association (AoA) of the SPV highlighting the relevant provision which highlights the objects relating to Solar Power Plant development has to be submitted to the Nodal officer prior to signing of PPA.

Uttar Pradesh- RFS No: 03/UPNEDA-PM KUSUM-C2/FLS/2024, Dated: 19.07.2024

A.4 INCORPORATION OF A PROJECT COMPANY BY BIDDERS:

a) In case a Bidder is selected as a Successful Bidder, it can choose to incorporate a Project Company. In case a Bidder is a consortium/ JV, it would be mandatory to incorporate a Project Company to sign the PPA. The said Project Company has to be formed within thirty (30) days from the issuance of LOA. Further, Bidder/ SPG shall be responsible to get all required clearances in the name of the Project Company, and transfer already obtained clearances, if any.

Maharashtra- Rfs: MSEDCL/CE/RE/2022/Solar/KUSUM- C/T-04 dated 22.06.2022

3.11 Power Purchase Agreement:

1. A copy of Power Purchase Agreement, to be executed between MSEDCL and the successful bidder or it's 100% subsidiary Special Purpose Vehicle (SPV), shall be provided by MSEDCL along with this Rfs. The PPA shall be signed within 30 days from the date of issue of Letter of Award (LoA). PPA will be executed between MSEDCL and selected bidders. The PPAs shall be valid for a period of 25 years from the Commercial Operation Date of the proposed / new solar power projects based on the terms, conditions and provisions of the Rfs.

Madhya Pradesh- RFP No: F/UVN/2022/KUSUM-C/III/4872

"3.14.2. Bidder may choose to start the process of forming a special purpose vehicle (SPV) or Project Company at bid stage itself. However, for participation in bid, formation of a SPV is not required. In case a Bidder selected as a Successful Bidder, it can choose to incorporate a Project Company. In case a Bidder is a consortium/ JV, it would be required to incorporate a Project Company to sign the PPA. The said Project Company has to be formed within thirty (30) days from the issuance of LOA. Further, Bidder/ RPG shall be responsible to get all required clearances in the name of the Project Company, and transfer already obtained clearances, if any."

Punjab- RfS No. PEDA/KUSUM-C/2024 25/11

"Section-A: Key Definitions

58. "Special Purpose Vehicle" shall mean a Project Company especially incorporated / acquired as a subsidiary Company of the successful bidder for setting up of the Project, with at least 51% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013:

a) In case of Consortium/JV as successful bidder- If they want to, the Members of the Consortium/JV can execute the Project through a special purpose vehicle which would be a company registered under the Companies Act, 2013 with the Lead Member holding at least 51% (fifty one percent) of the equity shares of the SPV and the remaining equity shares would be with the other members, before signing of the IA. The shareholding pattern of the SPV cannot be changed upto one year after the Commercial Operational Date of the Project. b) In case of any other entity as a successful bidder- If it wants to, the bidder can execute the Project through a special purpose vehicle which would be a company registered under the Companies Act, 2013 as its fully owned subsidiary (i.e. a 100% subsidiary) before signing of the IA. The shareholding pattern of the SPV cannot be changed upto one year after the Commercial Operational Date of the Project."

Karnataka: RFP No.: KREDL/07/SOG/F-108/KUSUM- C/2022 23/Call-2

"5.3.11 Where the Bidder is a Single Business Entity, it may at its option, form an appropriate Special Purpose Vehicle under the Companies Act, 1956/2013 (the "SPV") to execute the PPA and implement the Project. In case, the Bidder is a Consortium, it shall, prior to execution of the PPA, incorporate as per the terms of the RFP, an appropriate "SPV" in India only to execute the PPA and implement the Project. The Consortium in addition to forming a "SPV" in India only, shall also comply with the following requirements:"

- C. This Hon'ble Commission has been approving various bid documents of GUVNL and in all those bid documents of procurement of power from renewable energy sources, SPV has been allowed to develop the project. If PGVCL will not be directed to follow the practice being consistently followed in this state then it will be an unreasonable exclusion of the Gensol from the facilities being availed by similarly situated renewable power developers.*
- D. Terms of the RFS includes assignee as one of the permitted entity to be termed as Project Developer or Solar Power Generator. Therefore, there is no prohibition in bid documents for assigning. Item 41 of Part B reads as follows:*
- (41) "Project Developer" or "Developer" or "Solar Power Generator (SPG)" shall mean the successful Bidder whose Bid to perform the Contract as per this RfS has been accepted by PGVCL, Work order is issued by PGVCL and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor*
- E. This Hon'ble Commission vide its order dated 25.09.2024 in petition number 2332 of 2024 allowed Parent to develop the Project even if the PPA was signed with SPV as long as the parties are willing. If the same distribution licensee can agree for assignment of rights from SPV to Parent in absence of any express provision allowing the same then it is a discrimination if PGVCL's request of most efficient structure for developing the project is not approved. Relevant paras of the order is being reproduced hereinafter:*

8.11. It is also open to parties to assign the PPA with the consent of the other party. In the present case, the Respondent No. 1 is the parent company of the Respondent No 2.

8.9. The Respondent No. 1 was the originally successful bidder and the Respondent No. 2 was the SPV. There is no bar in the Respondent No. 1 now seeking to execute the project so long as all parties are willing.

F. It is submitted that incorporation of SPV by the successful bidder for the purposes of signing the PPA is an implied term in the RfS. The principles of business efficacy as laid down by the Supreme Court in "Nabha Power Limited (NPL) vs. Punjab State Power Corporation Limited and Ors." (2018)11 SCC 508, are relevant in this regard. The Supreme Court unequivocally stated that in case of ambiguity, the courts can invoke the doctrine of business efficacy and read the implied terms in a contract, if so needed.

It relied on the following 5 conditions (The Penta Test) laid down in judgment of the Lords of the Judicial Committee of the Privy Council in the appeal preferred from the Full Court of the Supreme Court of Victoria in "B.P. Refinery (Westernport) Proprietary Limited vs. The President Councillors and Ratepayers of the Shire of Hastings" [1977] UKPC 13:

- i. It must be reasonable and equitable.*
- ii. It must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it.*
- iii. It must be so obvious that "it goes without saying".*
- iv. It must be capable of clear expression.*
- v. It must not contradict any express term of the contract.*

Relevant excerpt from the judgment is quoted below:

"49. We now proceed to apply the aforesaid principles which have evolved for interpreting the terms of a commercial contract in question. Parties indulging in commerce act in a commercial sense. It is this ground Rule which is the basis of The Moorcock test of giving 'business efficacy' to the transaction, as must have been intended at all events by both business parties.

The development of law saw the 'five condition test' for an implied condition to be read into the contract including the 'business efficacy' test. It also sought to incorporate 'The Officious Bystander Test' [Shirlaw v. Southern Foundries (supra)]. This test has been set out in B.P. Refinery (Westernport) Proprietary Limited v. The President Councillors and Ratepayers of the Shire of Hastings (supra) requiring the requisite conditions to be satisfied: (1) reasonable and equitable; (2) necessary to give business efficacy to the contract; (3) it goes without saying, i.e., The Officious Bystander Test; (4) capable of clear expression; and (5) must not contradict any express term of the contract. The same penta-principles find reference also in Investors Compensation Scheme Ltd. v. West Bromwich Building Society (supra) and Attorney General of Belize and Ors. v. Belize Telecom Ltd. and Anr. (supra). Needless to say that the application of these principles would not be to substitute this Court's own view of the presumed understanding of commercial terms by the parties if the terms are explicit in their expression. The explicit terms of a contract are always the final word with regards to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular Clause of the contract, should not do violence to another part of the contract."

6. *Allowing Gensol SPV to sign PPA is reasonable, equitable and is necessary to give business efficacy to the contract*

Allowing Gensol SPV for project development is most efficient for following reason:

- (a) Gensol Engineering Limited (GEL) is operating multiple businesses, moving these specific projects in an SPV will help in effective monitoring of all aspects of the project. SPV will ensure a separate cost account for these projects.*
- (b) Majority of the funds required for this project (>70%) will be coming in the form of bank loans, and lenders prefer SPV structure for close monitoring of project cash flows. Lenders often prefer to invest in isolated entities that limit their exposure to risk associated with other parts of a business.*

- (c) *Enhanced Creditworthiness: An SPV can sometimes achieve a better credit rating than its parent company because the SPV's financial risk is limited to the specific project and does not include broader corporate risks. This can lead to more favourable borrowing terms, such as lower interest rates or more capital.*
- (d) *Attracting Investment: SPVs allow for more flexible investment options. Investors can invest directly in the project without exposure to the parent company's broader financial risks. This structure attracts private equity firms and institutional investors seeking direct exposure to specific projects.*

7. *Signing of PPA by any wholly owned special purpose vehicle is obvious and it goes without saying*

It is a consistent practice of distribution licensees of this state to allow SPV structure. Kusum Bid Documents of almost all state allows project development by SPV then it is so obvious that it goes without saying that Gensol SPV will be allowed to develop the Project.

8. *Does not contradict any express terms of RFP or PPA*

Allowing Gensol SPV to develop the Project does not contradict any express terms of RFP or PPA. PPA terms allowing assignment clearly indicate that not only bidder who participates in the Bid is allowed to develop the Project but also SPV formed by successful bidder is allowed to develop the Project.

In terms of aforesaid submissions, it is humbly prayed that this Hon'ble Commission should direct PGVCL to allow SPV to develop the Project.

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8. In response to the above objections/submissions of the Objector M/s Gensol Engineering Limited, the Petitioner PGVCL has filed its response vide affidavit dated 25.01.2025, as under:

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1. *That the Petitioner has filed Petition No. 2398 of 2024 before this Hon'ble Commission for adoption of tariff discovered under tariff based competitive bidding process conducted by PGVCL vide RfS No. PGVCL/ Project/ DSM/ PM-KUSUM-C- FLS/TN-10 for 125 Nos of S/S Level solar plants of total 276.0 MW, through RESCO model, for solarization of various 11 KV feeders in PGVCL for implementation of FLS (Feeder Level Solarization) under PM KUSUM-C scheme of Government of India.*
2. *That the Hearing was held on 13-12-2024 and the Hon'ble Commission had passed daily order Dated 18-12-2024 whereby the Hon'ble Commission had directed the petitioner to place on record of the present Petition, the submissions with regard to the subject matter stated in Para 2.2 of daily order, within 7 days from date of this Order and reserved the Order. In pursuance to the hearing on 13.12.2024 the Petitioner had submitted in affidavit reply vide PGVCL/project/Reg./petition/kusum-c FLS/3080, dtd.17-12-2024.*
3. *Subsequent to the above, on 20-12-2024, M/s Gensol Engineering limited has filed an objection in the proceedings and prayed Hon'ble Commission to direct PGVCL to allow Gensol SPV to sign PPA for developing Kusum projects on various grounds.*
4. *At the outset it is submitted that M/s Gensol Engineering limited is supporting the tariff adoption and has not raised any issue in regard to the said exercise. The Objector has sought for relief which is not within the scope of the present Petition.*

5. *M/s Gensol is seeking to raise other aspects on the identity of the person to sign the PPA. M/s Gensol had not raised any issue in reference to the Public Notice Dated 27th November, 2024 issued by Petitioner inviting Comments/Suggestions from the Stakeholders on the petition. This was also duly noted in the Order dated 18.12.2024. M/s Gensol also did not appear during the hearing on 13.12.2024. However, after the required timelines and further after the completion of Hearing, M/s Gensol Engineering limited has sought to file the submissions which cannot be considered as the arguments in the petition is already completed and matter is reserved for Order.*

6. *Without prejudice to the above, the Petitioner most respectfully and humbly submits following;*

- a) *The Petitioner published PM KUSUM-C FLS tender TN-10 on dtd.29-2-2024. As a part of tender, RFS, PPA, RMS document and Annexure-3 were the part of the tender documents (Petition page no.277 to 437). In the RFS(tender), apart from sole bidder, there was a provision of "Joint Venture" type entity (page 29 of 67), petition page no.306. Under this type of entity under clause(a), copy of incorporation/registration in case of special purpose vehicle or copy of JV was required to be submitted by the bidder if SPV company of the bidder is to be taken into consideration under joint venture entity clause of RFS.*
- b) *The Petitioner issued Lol to all eligible bidders(SPG) after e-reverse auction and approval from the Board of the PGVCL.*
- c) *In respect of M/s Gensol Engineering Limited, the Petitioner submits that M/s Gensol has applied as sole bidder as per RFS*

clause 1.3 as a "company" and submitted the required documents only for the sole bidder as a company, on the name of M/s Gensol Engineering Limited. Therefore it was entirely the choice of M/s Gensol to bid in its name as sole bidder.

- d) The Petitioner issued Lol to objector M/s Gensol Engineering Limited dated 21-8- 2024 in respect of 28 nos of eligible bids having aggregate 118.5MW plant capacity and M/s Gensol accepted this Lol unconditionally on dtd.27-8-2024 and 28-8-2024, again on the name of M/s Gensol Engineering Limited without any representation.*
- e) As a part of tender evaluation process, the Petitioner considered documents and submission for the document submitted during the tendering process and for entity type of sole bidder, the Petitioner issued Lol on the name of sole bidder and for entity type of "joint venture" under clause G.3.(a) (1.5), the Petitioner issued Lol with both company name i.e. Lead member JV with the name of joint venture company.*
- f) The Objector submitted the request dated 18-9-2024 and requested the Petitioner to allow to sign PPA with M/s Gensol Green Energy private limited as an SPV, other than successful bidder M/s Gensol Engineering Limited. The Petitioner had not accepted the request of the objector M/s Gensol Engineering Limited and accordingly informed the objector vide PGVCL/R&C/DSM/Kusum-C FLS/ TN- 10/2830, Dtd.8-11-2024. There cannot be any direction to compel PGVCL to accept such requests of the Objector.*

g) The Objector M/s Gensol Engineering Limited has sought to cite examples of other states i.e. Rajasthan, Uttar Pradesh, Maharashtra, Madhya Pradesh, Punjab and Karnataka under Para-B after Para 5 (page 4 to page 7) whereas provision under the clause of respective tenders are cited in support of his prayer to direct petitioner to allow Gensol SPV to sign PPA as in other states SPV have been allowed to sign PPA. In this regard, petitioner respectfully submits that in all this states, as represented by the objector, there is a provision to execute the project through special purpose vehicle (SPV) whereas there is no such specific provision in the present case. It was entirely the choice of the Objector to participate in the bid and further the choice to participate as sole bidder in its own name or joint venture/SPV. In the tender TN-10 of the petitioner, accommodation of SPV company is under the Joint venture entity as described in the para above, which is the part of provision of the tender. Change in entity type from sole bidder to JV would mean post tender participation of the new entity. The petitioner most respectfully submits that in the earlier tenders of PM KUSUM-C FLS scheme, no such request on post tender basis were allowed and EMD of such bidders were forfeited by the Petitioner if they did not sign the PPA. Therefore there would be discrimination if the Petitioner allows to the Objector what has not been allowed to others.

h) There is no issue of discrimination vis-à-vis other states. Each state can have its own bidding terms and conditions and having voluntarily participated in the bid, the Objector cannot

challenge any of the terms and conditions thereof. There was no reason why the Objector did not participate as SPV in the first place.

- i) The Objector M/s Gensol Engineering Limited, under Para-C of the prayer (page 7) submitted that Hon'ble commission has been approving various bid documents of the GUVNL and in all those bid documents of procurement of power from renewable energy sources, SPV has been allowed to develop the project. The issue has to be decided based on present bid documents and not on the basis of other bid documents. In this regard, petitioner most respectfully submits that request of objector is denied by the petitioner on the terms and condition of the tender no. TN-10. Further the Objector has sought to refer to Petition No. 2332 of 2024 as from SPV to Parent which is a different case altogether and the facts therein are completely different. Further in the said case, the original bidder was the Parent and the assignment was accepted by GUVNL. In this case, Petitioner has not accepted the claim of the Objector for assignment.*
- j) The reference to "assigns" in RFS is to "permitted assigns". Therefore the right of permitting assignment is only with the Petitioner. If the Petitioner has not permitted the assignment, the same cannot be compelled by the Objector. There is no implied term to allow the signing through SPV. There is no ambiguity and even without such term, the contract is effective. Further the interpretation of the Objector is contrary to the express terms of RFS. The case does not fall within the scope of*

business efficacy and implied term/PENTA test referred in case of Nabha Power Limited v. Punjab State Power Corporation Limited and Others (2018) 11 SCC 508. The above principle cannot be used to change the identity of one of the parties to the contract. The assignment of contract cannot be claimed as a matter of right. This is particularly when there is no reason for the assignment when the Bidder had the opportunity to participate as sole bidder/joint venture- SPV.

a. The Objector M/s Gensol Engineering Limited, under Para-i (page 10) submitted the reasons for allowing Gensol SPV to sign PPA to give business efficacy to the contract. In this regard, petitioner most respectfully submits that request of objector is denied by the petitioner on the terms and condition of the tender no.TN-10 and objector had an opportunity to accommodate SPV through bidding under Joint venture entity type as per the provision of the tender by submitting appropriate documents like Form- 2, Form-4, Form-5, Form-7 and Form-8 and the necessary documents in support as per the requirement of the tender before the last date of submission of documents of the tender. Since objector M/s Gensol Engineering Limited has never submitted such documents prior to request dated.18-9-2024 and before that time, Petitioner had already issued Lol dated 21-8-2024 and objector had already accepted vide letter through e- mail dated 27-8-2024 and 28-8-2024 and did not raise any issue even in such letter. Copies of the Letters dated 27.08.2024 and 28.08.2024 are attached hereto and marked as

Annexure A. Thus there cannot be any basis to belatedly claim that the PPA should be signed with a new entity and therefore, then petitioner had not accepted any requests on post tender basis. The factors referred to by the Objector in the Para i is entirely commercial aspects of the Objector and ought to have been considered before participating in the bid.

b. Objector M/s Gensol Engineering Limited, under Para-ii (page 10-11) submitted that signing of the PPA by wholly owned special purpose vehicle is obvious and it goes without saying which is not correct. There cannot be any such automatic assumption. The Objector is saying that one bidder participates in the bid and another entity enters into the PPA. This cannot be something that "goes without saying". This is particularly when the petitioner processed the bids of the objector M/s Gensol Engineering Limited on the basis of documents submitted by the objector and the petitioner relied on the terms and condition of the tender TN-10. The fact that other States or tenders may have allowed something does not mean that it is automatic in all cases.

c. Objector M/s Gensol Engineering Limited, under Para-iii (page 11) submitted that "allowing Gensol SPV to develop the project does not contradict any express term of RFP or PPA" which is not correct. The assignment clause in the draft PPA requires the prior written consent of the other party.

The entire purpose of requirement of consent for assignment would render redundant if it is proceeded that the Petitioner is compelled to accept such claims of assignment by the bidder. Further in the present case, the request of petitioner would indirectly change the type of entity from clause G.3.(a)1.3 as a "Company" to the type of entity under clause G.3.(a) 1.5 as a Joint venture in post tender position.

.....”

9. We have considered the submissions made by the Parties. We note that the Petitioner has filed this Petition seeking for adoption of tariff discovered under tariff based competitive bidding process conducted by PGVCL vide RfS No. PGVCL/ Project/ DSM/ PM-KUSUM-C-FLS/TN-10 dated 29.02.2024 for 125 Nos. of solar plants of total 276.0 MW through RESCO model, for solarization of various 11 kV feeders in PGVCL for implantation of FLS (Feeder Level Solarization) under PM KUSUM - C Scheme of Government of India.
- 9.1. The present proceedings are confined to deciding whether the Objector, M/s Gensol Engineering Limited, may be permitted to execute the PPA with the Petitioner PGVCL through its wholly owned Special Purpose Vehicle (SPV), M/s Gensol Green Energy Private Limited, instead of its own name, for developing KUSUM projects
- 9.2. We note that since last hearings the Objector has not remained present before the Commission and also not communicated about their inability to remain present despite notice. We also note that ample opportunity has been given to the Objector M/s Gensol Engineering Limited to make

out their case, but the Objector has failed to do so. Even during the hearing on 04.09.2025, the Objector has chosen not to remain present in the proceedings.

9.3. We further note that the Commission has passed the Order dated 05.04.2025 in the present matter wherein the Commission had already adopted the discovered/negotiated tariff under the Competitive Bidding Process conducted by the Petitioner through RfS No. PGVCL/Project/DSM/PM- KUSUM-C-FLS/TN-10 dated 29.02.2024 as per para 9.36 of the Order, and also allowed the Petitioner PGVCL to sign the Power Purchase Agreement with the successful bidders except in respect of M/s Gensol Engineering Limited for the capacity and tariff as per table stated in para 9.36 of the Order. It was also decided that as the matter of M/s Gensol Engineering Limited for signing of the PPA in the name of its SPV Gensol Engineering Limited with the Petitioner PGVCL is pending, the matter be listed for hearing on this issue and accordingly, the Petition is partly allowed so far as bidders as stated in Para 10.1 & 10.2 of said Order dated 05.04.2025 is concerned. The Commission also directed the Petitioner PGVCL that for the purpose of transparency, after execution of the PPA, publicly disclose the name of the successful bidder(s) and the tariff quoted / negotiated and agreed by them together with the break up with the component, for 30 days on its website in terms of Clause 10.3 of the bidding Guidelines as amended for knowledge and information of the stakeholders..

9.4. We have taken on records the affidavits dated 20.12.2024 and 25.01.2025 filed by the Objector and the Petitioner PGVCL respectively. We note that under the RfS dated 29.02.2024, the tariff discovered through

transparent competitive bidding process under PM KUSUM - C FLS (Feeder Level Solarization) Scheme of MNRE, Govt. of India, conducted by PGVCL vide RfS No. PGVCL/ Project/ DSM/ PM-KUSUM-C-FLS/TN-10 dated 29.02.2024 for 125 Nos. of solar plants of total 276.0 MW through RESCO model, was in the range of Rs. 2.13 -Rs. 3.00 per unit.

- 9.5. The Commission notes that the Objector, M/s Gensol Engineering Limited, while supporting the tariff adoption Petition of PGVCL, has requested that its wholly owned subsidiary, M/s Gensol Green Energy Private Limited (SPV), be permitted to execute the Power Purchase Agreement. The Objector submitted that signing of PPA through an SPV is a standard and permissible industrial practice, not prohibited either under the RfS or the MNRE Guidelines issued for implementation of the PM-KUSUM Scheme.
- 9.6. It was further submitted that various States including Rajasthan, Uttar Pradesh, Maharashtra, Madhya Pradesh, Punjab and Karnataka have expressly allowed project execution through SPVs under similar bid structures. The Objector contended that denial of such permission by PGVCL would amount to arbitrary and discriminatory treatment vis-à-vis similarly placed developers. Referring to *Nabha Power Limited v. Punjab State Power Corporation Limited* (2018) 11 SCC 508, the Objector argued that incorporation of an SPV for project execution is an implied term necessary to give business efficacy to the contract and is consistent with the “Penta Test” principle of reasonableness and equity. The Objector further urged that allowing the SPV structure enhances creditworthiness, enables project-specific financing, and ensures efficient project

management without contradicting any express term of the RfS or draft PPA.

- 9.7. Per contra, the Petitioner PGVCL submitted that the RfS provided two participation structures, i.e., (i) as a sole bidder, and (ii) as a joint venture/SPV entity and the Objector M/s Gensol Engineering Limited consciously chose to bid as a sole bidder (company) and submitted its documents accordingly. By following the competitive bidding and e-reverse auction, the Petitioner PGVCL issued Letter of Intent (LoI) dated 21.08.2024 to M/s Gensol Engineering Limited for an aggregate capacity of 118.5 MW, which was unconditionally accepted by the Objector on 27.08.2024 and 28.08.2024 without any reservation or reference to SPV formation. Subsequently, Gensol Engineering Limited vide its letter dated 18.09.2024 requested PGVCL to permit execution of the PPA through its newly formed SPV, M/s Gensol Green Energy Pvt. Limited which was declined by the Petitioner PGVCL vide its dated 08.11.2024 stating that such change was not permissible under the RfS.
- 9.8. The Petitioner PGVCL further contended that the RfS does not allow post-tender change in bidder entity. The request amounts to substitution of the contracting party after bid conclusion, which would vitiate transparency and distort the sanctity of the competitive bidding process. Similar requests in past KUSUM tenders were not permitted; thus, allowing this now would create discrimination among bidders. The Petitioner has categorically submitted that the right to permit assignment of the contract vests solely with the Petitioner, and in the absence of such consent, the same cannot be compelled by the Objector. The Petitioner contended that there is no implied term permitting signing of the PPA

through an SPV and that the interpretation advanced by the Objector is contrary to the express provisions of the RfS and the draft PPA. It was further submitted that the principle of business efficacy or implied term, as laid down in *Nabha Power Limited v. Punjab State Power Corporation Limited and Others (2018) 11 SCC 508*, is not applicable to alter the identity of the contracting party. The Petitioner pointed out that the Objector had an opportunity to participate through a Joint Venture/SPV at the bidding stage by submitting the requisite forms and documents as per Tender No. TN-10, but no such documents were filed. The Letter of Intent (LoI) was issued on 21.08.2024 and accepted by the Objector on 27.08.2024 and 28.08.2024 without any objection. The subsequent request dated 18.09.2024 to allow execution of PPA through an SPV was therefore an afterthought and not permissible post-tender.

9.9. The Petitioner also submitted that the Objector's contention that execution through an SPV "goes without saying" or that it does not contradict any term of the RfS/PPA is incorrect, as the assignment clause clearly mandates prior written consent. Accepting such post-bid changes would alter the nature of the bidding entity from "Company" to "Joint Venture", which is impermissible under the tender conditions. Accordingly, the Petitioner PGCVCL prayed the Commission to reject the Objector's plea.

9.10. We note that the RfS dated 29.02.2024 explicitly defines the types of eligible bidders and provides that only those entities who have submitted documents as a sole bidder or joint venture/SPV may sign the PPA. The Objector participated only as a sole bidder. The Commission notes that there is no clause in the RfS or PPA allowing post-bid substitution of the

contracting entity. Each State is entitled to design its bid framework; examples from other States cannot override the explicit RfS issued by PGVCL.

- 9.11. Further, MNRE Guidelines for Tariff-Based Competitive Bidding and the PM-KUSUM Scheme Guidelines mandate that all bids and PPAs must adhere strictly to the notified bidding documents to ensure transparency and fairness. Any deviation or post-facto modification of bidding entity would compromise to compliance of Section 63 of the Electricity Act, 2003.
- 9.12. The reliance placed by the Objector on the Nabha Power Limited case is misplaced. The doctrine of business efficacy applies only to fill gaps in an otherwise inoperative contract, not to rewrite or substitute essential contractual terms such as the identity of the contracting party. On the contrary, PGVCL's decision aligns with the RfS provisions, MNRE Guidelines, and the principles of competitive fairness recognized in *Energy Watchdog v. CERC* (2017) 14 SCC 80 and *Bharat Coking Coal Limited v. AMR Dev Prabha* (2020), which emphasize that the sanctity of the bid process cannot be altered post-discovery of tariff. Therefore, the Commission finds no reason to interfere with such a contractual decision made in accordance with the RfS.
- 9.13. The Commission further notes that the Objector M/s Gensol Engineering Limited despite several opportunities, has failed to remain present in subsequent hearings or substantiate the necessity for such deviation. The Commission also gave ample opportunities to the Objector M/s Gensol Engineering Limited to make out their case but the Objector has failed to do so.

9.14. Based on the above, the Commission hold that the RfS dated 29.02.2024 issued by PGVCL does not provide any scope for execution of PPA by a new SPV when the bidder participated as a sole entity. The request of M/s Gensol Engineering Limited to execute the PPA with the Petitioner PGVCL through M/s Gensol Green Energy Pvt. Limited is contrary to the express terms and conditions of the RfS and therefore, the same is unsustainable in law. The actions of PGVCL in rejecting the Objector's request are found to be valid, fair, transparent, and legally sustainable under Section 63 of the Electricity Act, 2003 and Guidelines issued by MNRE. The tariff discovered through the Competitive Bidding process is hereby adopted for all 125 solar projects aggregating 276 MW thorough RESCO Model under the RfS dated 29.02.2024, including the capacity allotted to M/s Gensol Engineering Limited, subject to compliance with this Order.

9.15. In view of the foregoing analysis and findings, the Commission rejects the plea of M/s Gensol Engineering Limited to allow its Special Purpose Vehicle, i.e., M/s Gensol Green Energy Pvt. Limited to execute the Power Purchase Agreement with the PGVCL and uphold the actions of the Petitioner PGVCL is in consistent with the provisions of RfS dated 29.02.2024, the provisions of the PM-KUSUM-C Scheme and MNRE Guidelines. The Petition stands disposed of accordingly.

10. Order accordingly.

Sd/-
[S.R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.

Date: 04/11/2025.