

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Order No. 05 of 2024

(Remanded by the Hon'ble APTEL)

In the Matter of:

**Tariff Framework for Procurement of Power by Distribution licensees
and Others from Wind Power Projects for State of Gujarat.**

- Objector No. 1 : Gujarat Urja Vikas Nigam Limited
Represented by : Ld. Adv. Ms. Ranjitha Ramachandran with Mr.
Kishor Lakhani.
- Objector No. 2 : Ganesha Wind Park Pvt. Limited
Represented by : Nobody was present.
- Objector No. 3 : OPWIND Energy Pvt. Limited
Represented by : Nobody was present.
- Objector No. 4 : Juniper Green Beam Pvt. Limited
Represented by : Nobody was present.
- Objector No. 5 : Opera Energy Pvt. Limited
Represented by : Nobody was present.
- Objector No. 6 : Indian Wind Energy Association
Represented by : Ld. Adv. Mr. Saunak Kumar Rajguru.
- Objector No. 7 : State Load dispatch Centre – Gujarat
Represented by : Nobody was present.
- Objector No. 8 : Torrent Power Limited
Represented by : Ld. Adv. Mr. Shrinil Shah.

Objector No. 9 : Gujarat Energy Development Agency
Represented by : Nobody was present.

Objector No. 10 : Palsana Enviro Protection Limited
Represented by : Ld. Advocates Mr. Hemant Singh and Mr. Lakshyajit Singh Bagdwal.

Objector No. 11 : APL Corporation Limited
Represented by : Nobody was present.

Objector No. 12 : Nobletex Industries Limited
Represented by : Nobody was present.

Objector No. 13 : Banthia Consultancy
Represented by : Mr. M.I. Vohra.

Objector No. 14 : Kalakruti Processors Pvt. Limited
Represented by : Nobody was present.

Objector No. 15 : Sachin Infra Environment Limited
Represented by : Ld. Advocates Mr. Hemant Singh and Mr. Lakshyajit Singh Bagdwal.

Objector No. 16 : Jaybharat Energy Pvt. Limited
Represented by : Ld. Advocates Mr. Hemant Singh and Mr. Lakshyajit Singh Bagdwal.

Objector No. 17 : Shree Giriraj Cotspin Pvt. Limited
Represented by : Mr. Vikram Shah.

Objector No. 18 : Mr. Jitesh R. Dodiya
Represented by : Nobody was present.

CORAM:

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

Date: 03/11/2025.

ORDER

1. Background of the remand proceedings in the matter of Order No. 5 of 2024 dated 31.08.2024 for Tariff Framework for Procurement of Power by Distribution licensees and Others from Wind Power Projects for State of Gujarat, in brief stated as under.
2. The Commission published and uploaded the discussion paper on 'Tariff Framework for Procurement of Power by the Distribution Licensees and Others from Wind Power Projects for the State of Gujarat', on 02.03.2024 and issued the public notices in the Newspapers as well as hosted the same on the website of the Commission for inviting comments/suggestions/objections from the stakeholders.
3. In response to Public Notice, the Commission received objections and suggestions from some stakeholders and thereafter, the public hearing on the aforesaid discussion paper was held on 08.04.2024 and after hearing of stakeholders and considering the comments/suggestions/objections, the Commission has passed the Order No. 05 of 2024 on 31.08.2024 in the matter of "Tariff Framework for Procurement of Power by the Distribution Licensees and Others from Wind Power Projects for the State of Gujarat."
4. The aforesaid Order was challenged before the Hon'ble APTEL by various parties, viz., (i) Sachin Infra Environment Limited, (ii)

Jaybharat Energy Pvt. Limited, (iii) Indian Wind Energy Associations & Ors., (iv) Palsana Enviro Protection Limited, and (v) Shree Giriraj Cotspin Pvt. Limited had challenged the Wind Tariff Order No. 05 of 2024 dated 31.08.2024 issued by the Commission by filing Appeal No. 06 of 2025 & IA No. 1887 of 2024, Appeal No. 07 of 2025 & IA No. 1876 of 2024, Appeal No. 38 of 2025 & IAs No. 1903 of 2024 & 547 of 2025, Appeal No. 79 of 2025 & IA No. 2001 of 2024 and Appeal No. 164 of 2025 & IA No. 08 of 2025 respectively before the Hon'ble APTEL. In the said Appeals, the Appellants had challenged the decision of the Commission on various grounds *inter-alia* challenging the retrospective applicability of the said Order. Further, the Hon'ble Tribunal vide its Order dated 03.07.2025 in (i) Appeal No. 06 of 2025 & IA No. 1887 of 2024, (ii) Appeal No. 07 of 2025 & IA No. 1876 of 2024, (iii) Appeal No. 38 of 2025 & IAs No. 1903 of 2024 & 547 of 2025, (iv) Appeal No. 79 of 2025 & IA No. 2001 of 2024 and (v) Appeal No. 164 of 2025 & IA No. 08 of 2025 disposed off the appeals and has set aside the Order No. 05 of 2024 dated 31.08.2024 in so far as the Order was given retrospective effect from 06.06.2022 and remanded the matter back to the Commission for its consideration afresh in accordance with law, after giving a reasonable opportunity of being heard to all the parties

5. The relevant part of the aforesaid Order dated 03.07.2025 passed by the Hon'ble APTEL read as under:

“

It is un-necessary for us to examine the rival contentions raised in these appeals on merits, since both the Learned Counsel for the Appellant and Respondent No.2 agree that, on the issue of the tariff order being given retrospective operation, the matter necessitates being remanded to the GERC.

While both Mr. Amit Kapur and Mr. Sourav Roy, Learned Counsel for the Appellants, would raise several grounds in support of their

submissions that the impugned order dated 31.08.2024 could not be given retrospective effect from 06.06.2022, the submission urged on behalf of the 2nd Respondent by Mr. Anand K. Ganesan, Learned Counsel, is that certain metering issues disabled them from giving the impugned order retrospective effect from a date prior to 01.01.2024.

Mrs. Suparna Srivastava, Learned Counsel for the GERC, would submit that, instead of adjudicating this issue, this Tribunal may, in the light of the submissions urged both on behalf of the Appellant and the 2nd Respondent, remand the matter to the GERC giving both parties liberty to raise all such contentions, as are available to them in law on this issue, before the Commission, and leave it to the Commission to pass appropriate orders in accordance with law.

We deem it appropriate, in such circumstances, to dispose of these appeals setting aside the impugned order in so far as the impugned order was given retrospective effect from 06.06.2022. The matter is remanded to the GERC for its consideration afresh in accordance with law. Needless to state that all contentions on this issue are left open to be urged by parties on either side before the Commission, which shall, after giving both parties a reasonable opportunity of being heard, pass orders afresh, on the issue of retrospective effect, in accordance with law.

Both Mr. Amit Kapur and Mr. Sourav Roy, Learned Counsel for the Appellants, submit that the Appellants' interest be safeguarded by granting them liberty to file an appeal afresh on the other issues raised in these appeals, lest the Respondents raise an objection later regarding delay in filing the appeals. Since the other issues raised in this appeal are not being adjudicated, the Appellant is granted liberty, if they so choose, to file an appeal afresh on such of those issues which have been urged in the present appeals, but have not been considered in this order.

Since the issue regarding retrospectivity is short, we request the GERC to hear and decide the matter with utmost expedition, preferably within a period of three months from the date of receipt of a copy of this order.

*All the four appeals, and the I.As therein, are accordingly disposed of.
.....”*

6. The Hon'ble Tribunal passed the Order dated 03.07.2025 in Appeal No. 164 of 2025 & IA No. 08 of 2025 as under:

“.....

Ms. Sakie Jakharia, Learned Counsel for the Appellant, would submit that the present appeal relates only to retrospective application of the tariff order dated 31.08.2024 with effect from 06.06.2022; and no other issue arises for consideration in this appeal. Learned Counsel would submit that the impugned order dated 31.08.2024 could not be given retrospective effect from 06.06.2022. The submission urged on behalf of the 2nd Respondent by Mr. Anand K. Ganesan, Learned Counsel, is that certain metering issues disabled them from giving the impugned order retrospective effect from a date prior to 01.01.2024.

Mrs. Suparna Srivastava, Learned Counsel for the GERC, would submit that, instead of adjudicating this issue, this Tribunal may, in the light of the submissions urged both on behalf of the Appellant and the 2nd Respondent, remand the matter to the GERC, giving both parties liberty to raise all such contentions, as are available to them in law on this issue, before the Commission, and leave it to the Commission to pass appropriate orders in accordance with law.

We deem it appropriate, in such circumstances, to dispose of these appeals setting aside the impugned order in so far as the impugned order was given retrospective effect from 06.06.2022. The matter is remanded to the GERC for its consideration afresh in accordance with law. Needless to state that all contentions on this issue are left open to be urged by parties on either side before the Commission, which shall, after giving both parties a reasonable opportunity of being heard, pass orders afresh, on the issue of retrospective effect, in accordance with law.

*The appeal, and the I.A therein, are accordingly disposed of.
.....”*

7. Pursuant to directions of the Hon'ble APTEL, the matter was kept for hearing on 19.08.2025 by issuing hearing notice to all concerned parties on 13.08.2025 by Office of the Commission. The Commission has passed the Daily Order dated 29.08.2025 and directed the staff of

the Commission to issue a public notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State and invite comments/suggestions/objections from the Stakeholders and also to upload the said notices on the Commission' website and invite comments and suggestions from the Stakeholders on the subject matter on affidavit within 10 days from the date of issue of public notice. The relevant portion of the said Order dated 29.08.2025 is reproduced as under:

“.....

6. *We also note that the Commission has issued the Discussion Paper on Tariff Framework for Procurement of Power by Distribution licensees and Others from Wind Power Projects for State of Gujarat and published the public notices in the English and Gujarati newspapers and also hosted the same on its website, for inviting the comments/suggestions/objections from the stakeholders and after following the consultative process and considering the comments/suggestions/objections of the stakeholders on the subject matter, passed the Order No. 05 of 2024 on 31.08.2024 and decided the “Tariff Framework for Procurement of Power by Distribution licensees and Others from Wind Power Projects for State of Gujarat, including applicability of the aforesaid Order. Therefore, as the matter is remanded back by the Hon'ble APTEL to the Commission for afresh consideration with respect to the limited issue regarding the retrospective effect of Order No. 05 of 2024, we are of the view that a public notice is required to be issued for inviting the suggestions/objections/comments from the stakeholders. We, therefore, directed the staff of the Commission to issue a public notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State and invite comments/suggestions/objections from the Stakeholders and also to upload the said notices on the Commission' website and invite comments and suggestions from the Stakeholders on the subject matter on affidavit within 10 days from the date of issue of public notice. It shall be stated in the public notice that the stakeholders shall file their comments/objections/suggestions to the Secretary, Gujarat*

*Electricity Regulatory Commission, 6th Floor, GIFT ONE, Road 5C, Zone 5, GIFT City, Gandhinagar – 382355, Gujarat in five copies along with affidavit in support of their submissions.
.....”*

8. In compliance to the directives of the Commission vide above Daily Order dated 29.08.2025, Public Notices were issued on 08.09.2025 in the Daily Newspaper and also hosted on the Commission’s website, inviting the comments/objections/suggestions and public hearing on 19.09.2025 regarding initiation of the remand proceedings in terms of the aforesaid Order of the Hon’ble APTEL. During the hearing on 19.09.2025, the Commission heard all the parties in length and passed the Order dated 25.09.2025 wherein it was noted regarding non-appearance of the Objectors No. 2, 3, 4, 5, 7, 9, 11, 12, 13, 14, & 18 although the public notice was issued by the Commission. It was also recorded that the aforesaid objectors neither remained present during today’s proceedings nor made any written communication about their inability to remain present, despite being served the hearing notice to them and accordingly, direction were given to all the parties to file their respective written note of arguments, within weeks’ time, in the matter.
9. In response to the aforesaid public notices and Daily Order dated 25.09.2025, the Commission has received the comments/objections/suggestions and submissions from the following stakeholders.
1. Shree Giriraj Cotspin Pvt. Limited
 2. Indian Wind Energy Association
 3. Jay Bharat Energy P Limited
 4. Sachin Infra Environment Limited
 5. Palsana Enviro Protection Limited

6. Gujarat Urja Vikas Nigam Limited
7. Torrent Power Limited
8. Jitesh R Dodiya, an Individual
9. Connect Solar

10. The following are the gist of submissions made by the above parties:

11. Submissions of Shree Giriraj Cotspin Pvt. Limited

11.1 The Hon'ble APTEL, in its Order dated 03.07.2025, set aside the impugned order insofar as the impugned order was given retrospective effect from 06.06.2022. The matter is remanded back to the state Commission (GERC) for its consideration afresh in accordance with the law.

11.2 The Objector Shree Giriraj Cotspin Private Limited is a company registered under the Companies Act, 2013 and has engaged in the business of manufacturing and exporting cotton thread and cotton yarn, and operates a spinning mill at Village: Depaliya, District: Rajkot, State of Gujarat. The Objector is a manufacturer under the MSME Act. The Objector is an HT consumer PGVCL, having Connection No. 28625 with a contract demand of 2650 KVA under the HTP1 tariff.

11.3 The Commission has passed an Order No. 5 of 2024 dated 31.08.2024 regarding "*Tariff Framework for Procurement of Power by Distribution Licensees and Others from Wind Power Projects for the State of Gujarat*". The impugned Order is granted with retrospective effect from 06.06.2022.

11.4 In this quest for green energy, the Objector erected a wind Turbine Generator (WTG). The Objector's WTG was registered with GEDA on

23.03.2023 and transferred to the Objector on 05.05.2023. It was commissioned on 27.07.2023.

11.5 On 07.07.2023, a Bulk Power Transmission Agreement was executed between the Objector and GETCO. A Provisional Agreement for Wheeling of Wind Power was executed between the Objector and PGVCL on 13.07.2023.

11.6 It is stated that the retrospective operation of the Impugned Order, apart from being legally untenable, harms the Objector's Wind Power Project, which was commissioned much before the passing of the Impugned Order, on the following, amongst other counts:

- a) Imposition of Banking Charges of Rs. 1.10 /unit.
- b) Imposition on banked units a limit of 30% of the power consumed from the Distribution Licensee.
- c) If the banked unit exceeds the limit, it will be considered inadvertent flow without any payment by Discom.

11.7 It is submitted that as far as the control period of the Impugned Order is concerned, the Commission made the following observations:

“3.2. General Principles

a) Control Period

The Commission has noted that the Ministry of Power notified the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 on 6th June 2022 outlining the policy and regulatory provisions for promotion of renewable sources of energy through Open Access. Furthermore, the MoP Rules take effect from the date of their notification, i.e., June 6, 2022. The Commission also notes that the Wind Tariff Order dated 30.04.2020 read with

amendments made in it, was having control period upto 31.03.2022 and there was no tariff order of the Commission as on 06.06.2022 and also specified in the discussion paper that the new Order shall be effective from 06.06.2022 i.e. from the effective date of MoP' Rules. Considering above aspects and to give effect to the provisions of Green Energy Open Access Rules 2022 notified by Ministry of Power, Govt. of India under the Electricity Act, 2003, the Commission found it more appropriate to adopt the policy and regulatory provisions outlined in MoP' Green Energy Open Access Rules, 2022 and defined the Control Period of new tariff order to be made effective from 06.06.2022 in the discussion paper also. Accordingly, the Commission decides to define the Control Period of this tariff framework effective from 06.06.2022 to 31.03.2027. The Wind Power Projects which are commissioned during aforesaid Control Period shall be governed by the provisions MoP' Green Energy Open Access Rules, 2022, read with provisions of GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024 and this Order of the Commission and eligible for the benefits stipulated in this Order. Further, Wind Power Projects commissioned during the Control Period of this Order shall be liable to pay applicable Open Access charges and provisions related to banking facility, energy accounting etc. and shall be governed by this Order read with GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024.”

11.8 The Government of Gujarat published the Gujarat Wind Power Policy, 2016 on 02.08.2016. As far as the operative period of the said Wind Policy 2016 is concerned, the same was stated to be as under:

“2. Operative Period

This policy will come into effect from the date of G.R. and shall remain in operation for a period up to 30th June 2021.”

- 11.9 On 30.08.2016, the Commission issued generic tariff order for procurement of power by Distribution Licensees from wind power projects in Gujarat. The control period of the Tariff Order 2016 expired on 31st March 2019.
- 11.10 On 30.04.2020, the Commission has passed Order No. 02 of 2020, being the *Tariff Framework for Procurement of Power by Distribution Licensees from Wind Turbine Generators and other Commercial Issues for the State of Gujarat*. It is to note that the previous tariff order expired on 31.03.2019, and to ensure regulatory certainty, for projects that were set up in the intervening period, it was clarified in the Tariff Order 2020 that the control period of the previous Tariff Order 2016 shall be deemed to be extended till the date of commencement of Tariff Order 2020. The control period for the Tariff Order 2020 was up to March 31, 2022. The Commission additionally made the following observations regarding retrospectivity of the Tariff Order 2020:

“... However, it is not appropriate to make any dispensation effective retrospectively. Projects setup in the intervening period cannot be subjected to a dispensation that has been decided after a public process at a later date.”

Regarding the approach of the Commission for tariff determination, the Commission proceeded to make the above observation. As mentioned above, the Commission does not prefer a retrospective date. Accordingly, the effective date of Order No. 5 of 2024 should be the date of the Order, i.e., 31.08.2024.

11.11 On 06.06.2022, the Ministry of Power, Government of India has issued Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022. Clause 12 therein provides as follows:

“12. Model regulation on methodology. -

(1) In order to have a common methodology for calculation of all the open access charges, the forum of regulators shall prepare a model regulations on methodology for calculation of open access charges, as well as banking charges within a period of four months from the date of commencement of these rules.

(2) The framing of methodology referred to in sub-rule (1), of the forum of regulators shall ensure that various permissible charges are not be onerous and shall meet the prudent cost of the distribution licensee in order to fulfil the objective of promoting the procurement of green energy by Green Energy Open Access Consumers.”

On 06.06.2022, only the policy is decided. No Model Regulation was declared, so there is no question of imposing the tariff order from that date.

11.12 On 27.01.2023, the MoP, Green Open Access Rules, 2022 were amended. On 03.02.2023, a draft Model regulation was finalized at the 84th meeting of the Forum of Regulators and submitted to the MoP for comments.

11.13 It is stated that the MoP Green Open Access Rules, 2022, mandate a common methodology for calculating all open access charges by the Forum of Regulators through a model Regulation. The State Commission has not notified the model Regulation to date, although the process is ongoing.

11.14 The Government of Gujarat extended the operative period of the Wind Policy, 2016 via various Government Resolutions from time to time. The last extension was issued by a Government Resolution dated 31.03.2023, thereby extending the operative period of the Wind Policy, 2016, up to September 30, 2023, or until a new policy is announced. The relevant extract of the Government Resolution dated 31.03.2023 is reproduced below:

"Resolution:

After careful discussion, the Government is pleased to further extend the operative period of the Gujarat Wind Power Policy-2016 up to 30th Sept-2023 or till a new Wind Power Policy/a new Policy is announced, whichever is earlier, incorporating the amended GRs referred at serial nos. 2 to 6. All other provisions of the Gujarat Wind Power Policy-2016 and amendments thereof shall remain the same."

11.15 The Government of Gujarat issued the Gujarat Renewable Energy Policy 2023 on 04.10.2023, superseding the Wind Policy, 2016. Clause 31 of the Renewable Policy 2023 specifically provides as follows:

"31. Regulations

The Hon'ble Gujarat Electricity Regulatory Commission shall be guided by this policy while framing its rules, regulations, and orders."

It is particularly relevant to mention that Clause No. 34 of the Renewable Policy, 2023, also states as follows:

"34. Wind Projects registered under Gujarat Wind Policy 2016:

Wind power projects which are registered with GEDA as per provisions of Gujarat Wind Policy 2016 as amended and extended

from time to time, before notification of this policy, but not commissioned until effective date of this policy shall be eligible to avail the benefits under the Wind Power Policy-2016 If the registered projects are commissioned by 31/12/2023. All the projects commissioned after 31/12/2023 will be governed as per the Gujarat Renewable Energy Policy-2023.”

11.16 As per Wind Power Policy 2023, all the WTGs commissioned by 31.12.2023 should be governed by Wind Power Policy 2016. Accordingly, Order No. 5 of 2024 should be operative from 01.01.2024.

11.17 On 21.02.2024, the Commission thereafter issued GERC (Terms and Conditions of Green Energy Open Access) Regulation 2024 vide Notification No. 8 of 2024. Regulation 9 provides for eligibility criteria for applying green energy. Open Access provides as follows.

“9. Eligibility criteria for applying Green Energy Open Access.

(I)...

(III) Subject to.....

Provided that Green Energy Open Access consumer seeking open access below 1 MW, shall be allowed based on installation of Special Energy Meter capable of energy recording on 15 minutes time block basis.

Provided that notwithstanding anything contained in these Regulations, any Green Energy (RE) Generating Company having subsisting Power Purchase Agreement (PPA) with the Distribution Licensee, shall not be entitled to Green Energy Open Access for the Green Energy (RE) capacity, for which PPA is entered into as well as for any capacity (quantum of power) for which Open Access is already granted, except in accordance with the terms of such PPA.

Regulation 11 therein provides for the treatment of existing projects as follows:

“11. Treatment for existing Green Energy (RE) Open Access consumer(s)

The Green Energy Open Access availed or to be availed by the consumer/generator/licensee for the RE generator (Green Energy Generator) which were commissioned prior to date of notification of these Regulations shall continue to be governed by the relevant provisions of the Government Policy or the Order(s) of the Commission or Regulations notified by the Commission under the control period under which the RE generator (Green Energy Generator) was commissioned.

Provided that if the consumer/generator/licensee avail Green Energy Open Access from the RE Generator commissioned after notification of these Regulations shall be governed as per the provisions of these Regulations and/or Orders of the Commission as the case may be.

Provided further that in case of inconsistency between the provisions of Order(s) issued after notification of these Regulations, firstly the principle of harmonious interpretation shall be applied and even thereafter if inconsistency persist, the provisions of these regulations shall prevail.

Provided also that if Open Access for any additional Green Energy (RE) capacity is sought by any existing consumer(s)/generators/licensee in addition to existing Open Access capacity, such additional capacity shall be treated as new

application for Green Energy Open Access to the extent of additional capacity commissioned after notification of these Regulations.”

- 11.18 It is submitted that the Commission failed to appreciate that, by way of an Order, it cannot modify/rewrite the terms and conditions of an agreement. The transmission agreement was executed by the objector with GETCO on 07.07.2023. The Impugned Order has the effect of rewriting the terms of the above clause in the said Transmission Agreement.
- 11.19 As Order No. 5 of 2024 is based on the GERC Green Open Access Regulation, 2024, which states that PPAs made before the declaration of this Policy are to be governed by the contemporary policy. Accordingly, Order No. 5 of 2024 should take effect from the date of the said Regulation, i.e., 21.02.2024.
- 11.20 As per APTEL' Order in the same matter by other parties, GUVNL also submitted that certain metering issues disabled them from giving the impugned order retrospective effect from a date before 01.01.2024. Accordingly, some metering issues are not permitting the Distribution Company to implement Order No. 5 of 2024 before 01.01.2024
- 11.21 It is submitted that the retrospective applicability of the impugned Order undermines the legal principles and leads to investment uncertainty. The Commission had earlier extended the control period of the renewable tariff orders till the issuance of the new tariff order. Along the same line, renewable energy stakeholders including the objector, made substantial investments and entered into contracts based on existing tariff orders and policies, with the legitimate expectation of investment and regulatory stability. The retrospective effect on the impugned Order has altered the contractual arrangements

and undermined contractual stability. Accordingly, Order No. 5 of 2024 should be made applicable from the date of Order 31.08.2024. The Objector, having acted on the assurance by way of the prevailing policy framework, cannot now be put to prejudice by way of the impugned Order.

11.22 The retrospective implementation of the impugned Order leads to regulatory uncertainty and thus cannot be countenanced in law. The retrospective operation of the impugned Order has the effect of imposing an onerous burden.

11.23 It is stated that impugned Order is bad in law since it is based on irrelevant and extraneous considerations that are completely misplaced and against the espoused principles for the promotion of renewable energy, causing Investment and regulatory uncertainty.

11.24 Based on the above, it is requested to set aside Order No. 05 of 2024 dated 31.08.2024 to the extent of retrospective effect from 06.06.2022 as directed by Hon'ble APTEL in its Order dated 03.07.2025 in Appeal No. 164 of 2025.

12. Submissions of Indian Wind Energy Association

12.1. In the Wind Tariff Order 2024, the Commission decided that the said Order would be applicable w.e.f 06.06.2022 i.e., retrospectively. InWEA filed an Appeal before Hon'ble viz. Appeal No. 38 of 2025 *inter-alia* assailing the retrospective applicability of Wind Tariff Order 2024. Hon'ble APTEL vide its Judgement dated 03.07.2025 has allowed in WEA's Appeal and set-aside the Wind Tariff Order 2024 to the extent it applied retrospectively w.e.f. 06.06.2022, along with a direction to the

Commission to reconsider the issue in accordance with law and pass orders afresh.

12.2. It is no longer res integra that Tariff Orders cannot have retrospective applicability. In this regard, the following judgments of Hon'ble Supreme Court are noteworthy: -

- (a) BSES Rajdhani Power Ltd. v. DERC, (2023) 4 SCC 788 holding that the principles of tariff cannot be changed retrospectively [Para 54-58].
- (b) DERC v. BSES Yamuna Power Ltd., (2007) 3 SCC 33 holding that the benefits given by the Tariff Order cannot be taken away [Para 42].
- (c) State of M.P. v. Tikamdas, (1975) 2 SCC 100 holding that delegate cannot apply laws retrospectively, unless the parent Act authorizes the delegate [Para 5]. Electricity Act, 2003 lacks enabling provision allowing this Ld. Commission to apply Tariff Orders retrospectively.
- (d) Indian Metals & Ferro Alloys Ltd. v. State of Orissa, (1987) 3 SCC 189 [Para 5] and Kusumam Hotels (P) Ltd. vs. Kerala SEB (2008) 13 SCC 213 (Paras 23, 24 and 38) holding that fiscal benefits once given, cannot be snatched away retrospectively.
- (e) GUVNL v. Renew Wind Energy (Rajkot) Pvt. Ltd. & Ors., 2023 SCC OnLine SC 411 holding that new liabilities or incremental financial obligations through act of the regulator, cannot have retrospective effect [Para 66].

(f) *Bejgam Veeranna Venkata Narasimloo v. State of A.P., (1998) 1 SCC 563* holding that vested rights accrued pursuant to tariff/price orders, cannot be taken away [Paras 18-20].

12.3. The following impacts of the retrospective operation of the Wind Tariff Order 2024 would clearly show that applying the Wind Tariff Order retrospectively would fall in the teeth of the aforesaid settled legal precedents on the issue: -

(a) Concessional benefits withdrawn/reduced vis-a-vis open access charges for wind power developers and generators (under captive route), as was earlier provided in GERC's Wind Tariff Order 2020, viz:-

Sl. No.	Parameter	Tariff Order 2020	Tariff Order 2024	Net adverse financial Impact
1.	Wheeling Charges (captive)	50% exemption	No exemption	Rs. 0.07365/Unit
2.	Wheeling Losses (captive)	50% exemption	No exemption	4.25%
3.	Cross-Subsidy Surcharge	50% exemption	25% exemption	Rs. 0.38/Unit
4.	Additional Surcharge	50% exemption	25% exemption	Rs. 0.25/Unit
5.	Banking Charges	Nil	Rs. 1.5 per unit	Rs. 1.5 per Unit

(b) Retrospectively curtailed timeline qua Scheduled Commissioning Date (SCOD) of the evacuation infrastructure to be constructed by wind power developers and generators, for purposes of off-take of power viz. -

Sl. No.	Wind Capacity (in MW)	Commissioning timeline as per 2020 Wind Tariff Order	Commissioning timeline as per 2024 Wind Tariff Order
1.	1 - 100	15 months from the date of allotment of transmission capacity	12 months from the date of allotment of transmission capacity

2.	101 – 200	24 months from the date of allotment of transmission capacity	15 months from the date of allotment of transmission capacity
3.	201 – 400	30 months from the date of allotment of transmission capacity	18 months from the date of allotment of transmission capacity
4.	401 - 600	42 months from the date of allotment of transmission capacity	24 months from the date of allotment of transmission capacity

(c) Retrospectively imposed the following new conditions: -

- i. All wind power developers and generators to install Remote Terminal Units (RTUs) at each Wind Turbine Generator (WTG), alongside installing RTU at the pooling substation.
- ii. Levy of Banking Charges at the rate of Rs. 1.5 per unit.

(d) It is a settled position of law that oppressive laws cannot have retrospective applicability [Jayam & Co. v. Commr., (2016) 15 SCC 125 (Paras 14 and 19)]. Without cavil, the Wind Tariff Order 2024 by (a) reducing/withdrawing concessional benefits, (b) curtailing timeline for SCOD and (c) imposing new conditions viz. RTU installation and payment of banking charges, impacts the wind power developers adversely and tantamount to be 'oppressive' in nature.

12.4. It is submitted that during the intervening period, i.e., from 31.03.2022 till 30.08.2024, wind power generator supplied power and recovered cost of generation of power per norms prevailing under Wind Tariff Order 2020. Due to the retrospective operation of Wind Tariff Order 2024, there is bound to be an adverse financial impact on wind power developers and generators qua recovery of costs, on account of (a) curtailment of promotional measures, and (b) liability to pay

incremental and new charges etc. It is no longer res integra that the right of the generators to recover the costs cannot be curtailed retrospectively [Binani Zinc Ltd. vs. KSER & Ors. (2009) 11 SCC 244 (Para 36)].

12.5. Retrospective downward revision of timeline per SCoD for evacuation infrastructure has the following consequences:-

- a. An evacuation infrastructure which was otherwise commissioned within the timeline per Wind Tariff Order-2020, runs the risk of being retrospectively declared as a defaulting entity, if the timeline for commissioning for such projects, exceeded the timelines per Wind Tariff Order 2024. For instance:-
 - (i) Say a 200 MW project was commissioned on 01.01.2024 which is the 24th month from date of allotment of transmission capacity (as per Wind Tariff Order, 2020, the timeline for 101-200 MW projects is 24 months).
 - (ii) The Wind Tariff Order 2024 retrospectively reduces the timeline from 24 months to 15 months (01.04.2023)
 - (iii) As a result, the 200 MW project stands in default as its commissioning is now delayed by 9 months (from 01.04.2023) as per the Wind Tariff Order 2024.
- b. An evacuation infrastructure which is due to commission within the timeline per Wind Tariff Order 2020, runs the risk of being now declared as a defaulting entity, if the timeline for commissioning exceeds the timelines per Wind Tariff Order 2024. For instance: -

(i) Say a 200 MW project was likely to be commissioned on 01.06.2025 which is the 24th month from date of allotment of transmission capacity.

(ii) The Wind Tariff Order 2024 retrospectively reduces the timeline from 24 months to 15 months (i.e. 01.09.2024).

(iii) As a result, the 200 MW project stands in default as per the Wind Tariff Order 2024 as its commissioning would exceed 01.09.2024 and will only be commissioned with a delay of 9 months.

c. In the both the scenarios, the wind power developers and generators run the risk of being subjected to forfeiture/encashment of bank guarantees by GETCO, upon delay in commissioning.

d. It would lead to an absurd scenario, where Wind Power Developers and generators would be made liable to suffer irreparable financial injuries, for no default or reasons attributable to such wind power developers and generators.

12.6. It is submitted that until 31.08.2024 (i.e., till the Wind Tariff Order 2024 was passed), RTU was required to be installed only at pooling s/s. For the first time, on 31.08.2024, the Wind Tariff Order 2024, introduced a new requirement to install RTUs at each WTG, alongside installing at pooling s/s. Retrospective applicability of this new condition w.e.f. 06.06.2022 has adverse effects on (i) recently commissioned WTG(s)(b/w 06.06.2022 and 31.08.2024) and (ii) those who are on the verge of commissioning (i.e., commenced development prior to 31.08.2024). Implementation of such conditions, being imposed

through Wind Tariff Order 2024, not only entails higher project cost, but also operational and technical difficulties in their compliance viz.:-

(a) Qua WTGs commissioned recently, and WTGs on the verge of commissioning:

(i) The commercial terms agreed by wind power developers and generators for development of the WTGs during intervening period (i.e., from 31.03.2022 till 30.08.2024), factored in cost of installing RTU only at the pooling sub-station, and not at each WTGs.

(ii) The mandate to install RTU at each WTGs will now have to be borne by wind power developers and generators alone for such WTGs, which is an unforeseen and unfair financial burden, rendering the projects unviable.

(b) For the WTGs on the verge of commissioning: -

(i) While such WTGs have been erected, wind power developers and generators are not in a position to charge the WTGs.

(ii) For WTGs without the RTUs installed at each WTG along at the pooling sub-station, SLDC is not issuing NoC in absence of which, GETCO and DISCOMs cannot proceed to execute the agreements with customers of wind power developers and generators for selling/wheeling of electricity.

(iii) Compliance with new norms will take significant time [8 months] as wind power developers and generators will have to install requisite infrastructure and arrangements qua communication interface, data input and output adequacy,

cyber security etc. which additionally pose several operational and technical constraints. This will delay commissioning of projects.

12.7. The sole ground on which the Commission applied the Wind Tariff Order 2024 w.e.f. 06.06.2022 was to align it with date of coming into force of Ministry of Power's Green Energy Open Access Rules, 2022. It is submitted that this is an incorrect approach in view of the following:

- (a) The Commission notified GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024 (GEOA Regulations, 2024) to *inter-alia* implement the MoP's Green Energy Open Access Rules, 2022. Interestingly, as per Regulations 1.3 and 1.4 of the GEOA Regulations, 2024, the provisions of GEOA Regulations, 2024 would come into effect only on date of its notification i.e., 21.02.2024; i.e., prospectively. When the GEOA Regulations 2024 apply prospectively, it is incorrect to apply the Wind Tariff Order 2024 retrospectively w.e.f. 06.06.2022.
- (b) Notably, even GUVNL, had opposed the Commission's proposal to keep effective date of Wind Tariff Order 2024 as 06.06.2022 and prayed to apply it prospectively.
- (c) Even otherwise, retrospective applicability of Wind Tariff Order 2024 cannot be sustained in view of MoP's Green Energy Open Access Rules, 2022 being struck down as ultra-vires, the Electricity Act, 2003, which formed the basis of retrospectivity. In this regard, the following is noteworthy:-

- I. Hon'ble Karnataka High Court by judgment dated 20.12.2024 in Brindavan Hydropower Pvt. Ltd. v Union

of India & Ors. (W.P. No. 11235 of 2024) struck down MoP's Green Energy Open Access Rules, 2022 as being ultra-vires the provisions of the Electricity Act 2003.

II. Since MoP's Green Energy Open Access Rules, 2022 has been struck down as being illegal, the basis for this Ld. Commission to have retrospectively given effect to the Wind Tariff Order 2024 falls.

12.8. In view of the above, IWEA prayed the Commission to hold and declare that the Wind Tariff Order 2024 will have prospective applicability i.e., it shall apply w.e.f. 31.08.2024 onwards and direct that the provisions and stipulations provided in the Wind Tariff Order 2020 shall apply during the intervening period from 05.06.2022 to 30.08.2024.

13. The gist of Submissions filed by (1) Jay Bharat Energy Pvt. Limited (2) Sachin Infra Environment Limited and Palsana Enviro Protection Limited

13.1. The Objector viz., Jay Bharat Energy Private Limited, is a generating company in terms of Section 2(28) of the Electricity Act 2003 and has installed a Wind Turbine of 2.1 MW quantum in district Dev Bhoomi Dwarka, Gujarat.

13.2. The Objector viz., Sachin Infra Environment Limited, is a generating company in terms of Section 2(28) of the Electricity Act 2003 and has installed a Wind Turbine of 2.1 MW quantum in Village Moti Banugar, district Jamnagar, Gujarat

13.3. The Objector viz., Palsana Enviro Protection Limited, is a generating company in terms of Section 2(28) of the Electricity Act 2003 and has

installed a Wind Turbine of 2.6 MW quantum in Village Deri, District Jamnagar, Gujarat.

- 13.4. It is submitted that Jay Bharat Energy Private Limited has set-up its 2.1 MW Wind Power Project, which was commissioned on 30.07.2022, Sachin Infra Environment Limited has set up its 2.1. MW Wind Power Project, which was commissioned on 31.03.2023 and Palsana Enviro Protection Limited has set-up its 2.6 MW Wind Power Project, which was commissioned on 08.12.2023 during the subsistence of the Wind Policy 2016. Accordingly, it is the case of the Objectors that qua open access, it will be governed by the provisions of the aforesaid policy.
- 13.5. It is stated that the Commission had earlier issued the Wind Tariff Orders dated 30.04.2020 in Order No 02 of 2020 and 30.04.2020 in Order No. 02 of 2020. The said orders were applicable to the project commissioned during the Control Period specified in the said Orders i.e. up to 31.03.2022. However, the said Tariff Orders are not applicable to the Objectors as it commissioned its Wind Power Project on 30.07.2022, and therefore, the Objectors are governed by the Wind Policy 2016.
- 13.6. Contrary to the aforesaid, it is submitted that the Commission has passed the Wind Tariff Order dated 31.08.2024 in Order No 05 of 2024, wherein it was inter-alia directed as under:

“The Commission previously had issued Order No. 02 of 2020 dated 30.04.2020 read with Order No. 02 of 2020 dated 26.05 2020 on “Tariff Framework for Procurement of Power by Distribution Licensees from Wind Power Project and Other Commercial issues for the State of Gujarat”. The said Orders provides that it shall be applicable to the project commissioned during the Control Period specified in the Order i.e. up to 31.03.2022 Therefore, in order to give

effect to the provisions of Green Energy Open Access Rules 2022 notified by Ministry of Power, Government of India under the Electricity Act, 2003 as effective from 06.06.2022 and specifically when there was no tariff order of the Commission as on 06.06.2022 for tariff framework on Wind Power Project, the Commission decides to defined the control period of this tariff order to be made effective from 06.06.2022 in the discussion paper. The Wind Power Projects commissioned during the intervening period from 01.04.2022 to 05.06.2022 shall be governed by the provisions of Order No. 02 of 2020 dated 30.04.2020 read with Order No. 02 of 2020 dated 30.04.2020. Accordingly, the Control period of Order No. 2 of 2020 dated 30 04.2020 read with Order No. 02 of 2020 dated 30.04.2020, shall deemed to be extended up to 05.06. 2022”

- 13.7. Thus, on account of making the dispensation under the above Order applicable upon the Objectors retrospectively, the said Objectors were subjected to changed/ additional levies qua open access in terms of the above Wind Tariff Order, contrary to what was promised under the Wind Policy of the State of Gujarat.
- 13.8. As such, the Objectors were compelled to file an appeals before the Hon'ble APTEL, being Appeals No. 6 of 2025, 7 of 2025 and 79 of 2025. In the said appeals, the Hon'ble APTEL passed a final order dated 03.07.2025 and holding that the Wind Tariff Order cannot be made applicable upon the Objectors.
- 13.9. The Wind Tariff Order dated 31.08.2024 is passed by the Commission in exercise of its powers under Sections 3 (1), 61 (h), 62 (1) (a), and 86 (1) (b)& (e) of the Electricity Act, 2003, National Electricity Policy, 2005, and Tariff Policy, 2016.

13.10. All the aforesaid provisions of the Act and the policies framed thereunder do not confer any powers upon the Commission to make a tariff order apply retrospectively. Therefore, as long as the Statute does not provide for retrospective application, then certainly any action taken under the said statute cannot be applied retrospectively. In this regard, reliance is being placed upon on the following citations:

- i. Mahabir Vegetable Oils (P) Ltd. v. State of Haryana, (2006) 3 SCC 620.
- ii. Commissioner of Income Tax v. M.C. Poonose, (1969) 2 SCC 351.

13.11. In terms of the principles laid down in the above judgments, it is clear that once the Rules/Regulations which are framed under delegated legislative powers cannot be applied retrospectively, then certainly any Orders passed qua the said Regulations cannot be applied retrospectively.

13.12. In fact, even qua Tariff fixed under the coffers of the Electricity Act 2003, it has been held that such tariff cannot apply retrospectively. In this regard, reliance is being placed upon on the following judgements:

- i. Judgment of the Hon'ble Supreme Court in BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission, (2023) 4 SCC 788.
- ii. Judgment dated 25.04 2014, passed by the Hon'ble APTEL in I.A. No 92 of 2014 in Appeal No. 243 of 2012: Industrial Area Manufacturers Association v. UPERC and Ors.

13.13. Thus, it is absolutely clear that a tariff order passed by the Regulatory Commissions cannot be made applicable retrospectively. As such, on this count alone, the Wind Tariff Order dated 31.08.2024 cannot apply

from a past period i.e., from 06.06.2022, rather the same shall be become applicable only with effect from 31.08 2024.

13.14. It is submitted that the Commission vide Notification No. 08 of 2024 notified the GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024. Regulation 11 of the said Regulations prescribes that the RE generators shall continue to be governed by the relevant provisions of the Government Policy or the Order(s) of the Commission or Regulations notified by the Commission under the control period under which the RE generator (Green Energy Generator) was commissioned.

13.15. Hence, based on the aforementioned submissions, it is established that the Wind Tariff Order dated 31.08.2024 cannot be applied retrospectively, which means that the Objectors will be governed by the extant Wind Policy 2016, as stated in Regulation 11 of GEOA Regulations of the Commission.

13.16. It is submitted that in the event the Wind Tariff Order dated 31.08 2024 is applied retrospectively, then the following would be the impact upon the Objector:

(a) Concessional benefits withdrawn/reduced vis-à-vis open access charges for wind power developers and generators (under captive route), as was earlier provided in GERC's Wind Tariff Order 2020:

Sl. No.	Parameter	Wind Policy 2016	Tariff Order 2024	Net adverse financial Impact
1.	Wheeling Charges (captive)	50% exemption	No exemption	Rs. 0.07365/Unit
2.	Wheeling Losses (captive)	50% exemption	No exemption	4.25%
3.	Cross-Subsidy Surcharge	50% exemption	25% exemption	Rs. 0.38/Unit

4.	Additional Surcharge	50% exemption	25% exemption	Rs. 0.25/Unit
5.	Banking Charges	Nil	Rs. 1.5 per unit	Rs. 1.5 per Unit

(b) Retrospectively curtailed timeline qua Scheduled Commissioning Date (SCOD) of the evacuation infrastructure to be constructed by Wind Power Developers and generators, for purposes of off-take of power, which explained below:

Sl. No.	Wind Capacity (in MW)	Commissioning timeline as per Wind Tariff 2016	Commissioning timeline as per 2024 Wind Tariff Order
1.	1 - 100	18 months from the date of allotment of transmission capacity	12 months from the date of allotment of transmission capacity
2.	101 - 200	24 months from the date of allotment of transmission capacity	15 months from the date of allotment of transmission capacity
3.	201 - 400	30 months from the date of allotment of transmission capacity	18 months from the date of allotment of transmission capacity
4.	401 - 600	42 months from the date of allotment of transmission capacity	24 months from the date of allotment of transmission capacity (For 400 - 1000 MW)

(c) Retrospectively imposed the following new conditions: -

- (i) All Wind Power Developers and Generators to install Remote Terminal Units (RTUs) at each Wind Turbine Generator (WTG), alongside installing RTU at the pooling substation.
- (ii) Levy of Banking Charges at the rate of Rs. 1.5 per unit.

13.17. Therefore, it is reiterated that the aforesaid parameters of the Wind Tariff Order dated 31.08 2024, cannot be applied to the Objectors, as Regulation 11 of the GEOA Regulations 2024 of the Commission specifies qua the aforesaid parameters, amongst others that the

Objector shall be governed by the previous regime qua open access for its entire life, including the Wind Policy 2016 of the State.

13.18. It is stated that the vested rights of a party cannot be nullified by the retroactive application of the Wind Tariff Order. Legal principles governing vested rights assert that once a party has acquired certain rights under an existing policy (which in the present case are codified by way of Regulation 11 of the GEOA Regulations 2024), those rights cannot be arbitrarily revoked or diminished without due process. The retrospective alteration of policy provisions by way of the Wind Tariff Order dated 31.08.2024 not only undermines the expectations and interests of the affected parties but also raises significant concerns regarding fairness and legality. Therefore, any action that seeks to impair or extinguish these vested rights, particularly through retroactive/ retrospective measures, ought not be done by this Hon'ble Commission. In this regard, reliance is being placed upon the Judgment passed by the Hon'ble Supreme Court in the matter of Indian Metals & Ferro Alloys Ltd. v. State of Orissa, reported in (1987) 3 SCC 189.

13.19. It is stated that the Hon'ble Supreme Court in catena of judgments has categorically observed that prospective effect has to be given in cases where the parties have acted in furtherance of a previous policy passed by the Government, in order to avoid chaos and confusion. In the said context, reliance is being placed on the following Judgments:

- i. Jarnail Singh and Ors. v. Lachhmi Narain Gupta & Ors., (2022) 10 SCC 595.
- ii. Manish Kumar v. Union of India, (2021) 5 SCC 1,

13.20. Thus, in view of the above, for all purposes, the Wind Tariff Order cannot be applied retrospectively, so that the Wind Generators who

have commissioned their plants based on a promise/ assurance given to them under the extant Policies of the Government, is not taken away.

13.21. In fact, it is also material to note that the Wind Tariff Order cannot run contrary to the GEOA Regulations framed by the Commission under Section 181 of the Act. Regulation 1(4) of the GERC GEOA Regulations clearly provides that the said Regulations will come into force from the date of its Notification in the Official Gazette (i.e., 21.02.2024). However, the impugned tariff Order passed in terms of GERC GEOA Regulations have been made retrospectively applicable with effect from 06.06.2022. It is a settled principle of law that any order passed by the Regulatory Commission(s) cannot run contrary to the provisions of existing regulations, which have been notified pursuant to legislative powers of the Regulatory Commission(s). In this regard, reliance is placed on the Judgment of the Constitutional Bench of the Hon'ble Supreme Court in PTC India Limited v. CERC & Ors, reported in (2010) 4 SCC 603. The principle enunciated by the Constitution Bench of the Hon'ble Supreme Court in this Judgment also applies in the present proceedings, as the Commission is required to adhere to the Regulations framed by it under Section 181 of the Act. Therefore, by retrospectively applying the Wind Tariff Order, would in effect run contrary to the aforesaid GEOA Regulations.

13.22. Based on the above, Objectors prayed the Commission to clarify the following:

- (a) The Wind Tariff Order dated 31.08.2024 passed in Order No. 05 of 2024, shall not apply upon the Objectors, and
- (b) Once it is established that the said order does not apply, the Objectors shall be governed as per Regulation 11 of the GERC

(Terms and Conditions for Green Energy Open Access) Regulations, 2024, meaning thereby that it shall be governed by the Wind Policy of the Government of Gujarat, which prevailed at the time when the Objector commissioned their Wind Power Plant.

14. Submissions of Gujarat Urja Vikas Nigam Limited

- 14.1. It is submitted that the present remand proceedings are in terms of the Order dated 03.07.2025 passed by the Hon'ble APTEL in Appeal No. 06 of 2025 & Ors., wherein the Hon'ble Tribunal has set aside the Order No. 05 of 2024 dated 31.08.2024 in so far as the earlier Tariff Order was given retrospective effect from 06.06.2022 and accordingly remanded the matter back to the Commission for afresh consideration.
- 14.2. On 02.08.2016, the Government of Gujarat has issued Wind Policy, 2016 to facilitate the development of wind parks and evacuation facilities through private sector participation. The Policy obligated the developers to provide a bank guarantee of Rs. 5 lacs per MW to GETCO based on the allotment of transmission capacity. Further, GETCO is also entitled to encash the said bank guarantee in case of developers' delay/failure to commission the wind farm substation or transmission lines within the timelines as prescribed under Clause 22 of the Wind Policy, 2016.
- 14.3. On 30.04.2020, the Commission passed Order No. 02 of 2020 in the matter of "Tariff framework for procurement of power by Distribution licensees from wind turbine generators and other commercial issues for the State of Gujarat". The control period was defined as from 30.04.2020 to 31.03.2022, the tariff order was to be applicable for projects to be commissioned within the said control period. There was

no further Tariff Order passed by the Commission for either extending the Control Period of the Order dated 30.04.2020 or otherwise fresh terms and conditions for the period after 31.03.2022.

14.4. On 06.06.2022, Ministry of Power, Govt. of India has issued the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 inter alia laying down -

- (a) principles governing the grant of Open Access to consumers of 'Green Energy';
- (b) procedure for such a grant;
- (c) various charges to be levied on Green Energy Open Access consumers;
- (d) modalities of 'Banking' etc.

14.5. On 04.10.2023, Govt. of Gujarat has issued a new consolidated Policy titled "Gujarat Renewable Energy Policy, 2023", applicable to all types of RE projects in the State of Gujarat, including Rooftop solar, Mounted Solar, Wind, Wind-Solar Hybrid etc. In order to have operational ease, GUVNL had back then suggested to align the control period with Gujarat Renewable Energy Policy, 2023 and further, suggesting that to start the control period from 01.01.2024 with applicability for next 5 years. Thereafter, in the Gujarat Renewable Energy Policy, 2023, the operative period/control period for Wind Policy 2016 (covering the Wind Projects) was extended up to 31.12.2023.

14.6. On 21.02.2024, the Commission notified GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024 in order to facilitate non-discriminatory Open Access for Green Energy to licensees using intra-state transmission/distribution systems (including to the extent incidental to inter-state transmission of electricity), lay down the

methodology for determination of Open Access charges, Banking Charges etc. As stipulated in Clause 1.3, the Regulations were meant to come into effect only on the date of their notification i.e., 21.02.2024.

- 14.7. On 02.03.2024, the Commission has floated the Discussion Paper on the *“Tariff framework for procurement of power by Distribution licensees and others from wind power projects for State of Gujarat”* to be adopted subsequent to the expiry of Tariff Order 2020 and invited comments/suggestions from various stakeholders.
- 14.8. On 02.04.2024, GUVNL has submitted its comments and suggestions to the Commission's discussion paper to align the control period with Gujarat Renewable Energy Policy, 2023 for consideration while finalising the Order on Tariff framework for procurement of power by Distribution licensees and others from Wind Power Projects for State of Gujarat”. On 18.10.2024, GUVNL wrote to Commission requesting alignment of new tariff order control period with Gujarat RE Policy - 2023.
- 14.9. On 31.08.2024, the Commission has passed the Tariff Order 2024 pursuant to the provisions of GEOA Rules, 2022 and GEOA Regulations, 2024 and the same was made applicable for the period from 06.06.2022 to 31.03.2027.
- 14.10. The Wind Power Projects that have been commissioned prior to the extended date (i.e., before 31.12.2023) under the Gujarat Renewable Energy Policy, 2023, particularly those developers who have opted to remain under the framework of the old policies, have implemented metering systems in accordance with the technical and regulatory requirements prescribed under the then-prevailing tariff orders. These legacy metering systems, however, lacks the technical capability to

support 15-minute time-block energy accounting, which is now mandated under the Impugned Order.

14.11. During the course of implementation of the Earlier Tariff Order, the distribution licensees have encountered significant operational and technical difficulties in undertaking energy accounting for such projects having legacy metering systems. The absence of compatible metering infrastructure poses a practical challenge in their implementation and the energy accounting, as such old meters do not have the capability for energy accounting as per the methodology in the impugned order. Any change in the metering systems would also only resolve the issues for the future period. These issues have become evident from the implementation of the impugned order.

14.12. Envisaging the above difficulties, during the earlier proceedings with regard to the control period of the impugned Order, GUVNL through its comments & suggestions has submitted to the Commission that the Gujarat Renewable Energy Policy, 2023 has extended the control period of the Wind Policy, 2016 upto 31.12.2023 and in order to have operational ease, GUVNL has suggested to align the control period of the impugned Order with the Gujarat Renewable Energy Policy, 2023.

14.13. Since prior to 31.12.2023, DISCOMs have faced technical constraints with regard to the energy accounting and considering the legacy metering and the other system limitations, the Commission may consider starting the “control period” from 01.01.2024 with applicability for the next 5 years.

14.14. Office of the Commission has received an email dated 09.10.2025 stating that pursuant to hearing held on 19.09.2025, GUVNL has already filed a detailed reply submissions dated 18.09.2025 in the present

matter and the same may be considered for passing the Order in the present case. It is further stated that during the hearing, the counsel for GUVNL, on the aspect of retrospectivity, has relied on the following Judgments:

- a) Chhattisgarh State Power Distribution Co. Ltd. v. Chhattisgarh Biomass Energy Developers Association & Ors.(Appeal No. 164 of 2010, Judgment dated 08.02.2011);
- b) Sham Alloys Pvt. Limited & Ors. v. Joint Electricity Regulatory Commission for the State of Goa and Union Territories & Anr. (Appeal No. 111 of 2013, Judgment dated 22.08.2014), which in turn relied upon the Hon'ble Supreme Court's decision in Kanoria Chemicals & Industries Ltd. & Anr. v. State of U.P. & Ors. [(1992) 2 SCC 124].

14.15. It is submitted that the above Judgments, along with the reply filed by GUVNL on 18.09.2025, may be taken into consideration while passing the final Order in the present matter.

15. Submissions of Torrent Power Limited

15.1. Torrent Power Limited (TPL), i.e., the Objector No. 8 is a company incorporated under the provisions of Companies Act, 2013 and inter alia operates as a Wind Power Developer (WPD), and service provider in the State of Gujarat. TPL through its wholly owned subsidiary(ies) is in the process of commissioning 2 (two) upcoming projects i.e., (i) 102.3 MW project, at Bhatiya, Village-Bhatiya, Taluka-Kalyanpur, District Devbhumi Dwarka (31 WTGs progressive commissioning starting from February 2026 to June 2026) and (ii) 450 MW project at Bhogat, Village-Bhogat, Taluka-Kalyanpur District Devbhumi Dwarka (162 WTGs

planned progressive commissioning starting from March 2026 - June 2028). In the context of the foregoing WTGs, some of the developer permissions have been already received. Further, TPL has also applied for the connectivity with respect to the foregoing projects.

- 15.2. On 02.08.2016, the Government of Gujarat has notified and promulgated the 'Gujarat Wind Power Policy, 2016.
- 15.3. On 30.04.2020, the Commission has passed its Order No. 02 of 2020 i.e., the generic tariff Order for determining the tariff framework for procurement of power by Distribution Licensees and others from wind power projects, for the control period from 30.04.2020 to 31.03.2022.
- 15.4. On 04.10.2023, the Government of Gujarat, notified and promulgated the Gujarat Renewable Energy Policy, 2023 (Gujarat RE Policy 2023) and thereby superseding the earlier Gujarat Wind Power Policy, 2016.
- 15.5. It is stated that in terms of the aforesaid Wind Tariff Order 2020 as well as the Gujarat RE Policy 2023, installation of Availability Based Tariff (ABT) compliant meters and Remote Terminal Units (RTU) was required to be done only at the pooling sub-station and not at each WTG.
- 15.6. In pursuance of the GWP Policy, 2016, Wind Tariff Order 2020 and Gujarat RE Policy 2023, TPL had arranged its affairs accordingly for setting-up its upcoming projects. Further, the contractual negotiations were also carried out by TPL, in terms of the foregoing GWP Policy, Wind Tariff Order 2020 and Gujarat RE Policy, 2023.
- 15.7. On 31.08.2024, the Commission issued the Wind Tariff Order 2024 for the control period being 06.06.2022 to 31.03.2027, i.e., the said Wind Tariff Order has been made retrospectively applicable from 06.06.2022. The Commission vide the foregoing Wind Tariff Order, 2024 has for the

first time directed the WPDs to install RTU meters at each WTG instead of the earlier requirement of installation of RTU meter only at the pooling station.

- 15.8. On 03.07.2025, the Hon'ble APTEL has passed its judgment in Appeal No. 06 of 2025 & batch matters, wherein the Wind Tariff Order 2024 was challenged. The Hon'ble Tribunal vide the foregoing judgment has *inter-alia* held that in so far as the Wind Tariff Order 2024 was given a retrospective effect, the matter stands remanded back to the Commission, for considering the matter afresh in accordance with law.
- 15.9. On 29.08.2025, the Commission in pursuance of the foregoing remand order passed by the Hon'ble Tribunal, issued a daily order with respect to the *'Tariff Framework for Procurement of Power by Distribution licensees and Others from Wind Power Projects for State of Gujarat'*. The Commission vide the said daily Order has observed that a public notice required be issued for inviting the suggestions/objections/comments from the stakeholders and accordingly the staff of the Commission was directed to issue a Public Notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State and invite comments/suggestions/objections from the Stakeholders and also to upload the said notices on the Commission' website.
- 15.10. On 11.09.2025, in terms of the Commission's Daily Order dated 29.08.2025, Public Notice has been published in daily newspaper(s). Accordingly, TPL is filing the present submissions.
- 15.11. That the introduction of aforesaid new requirement regarding installation of the RTU meters at each WTG, that also on retrospective basis will add to the financial distress and impact the overall tariff structure, which would ultimately affect the consumers in the

concerned area. In this regard, it is pertinent to mention herein that as per Section 86(1)(e) of the Electricity Act, 2003, the generation of power through renewable energy needs to be promoted. Therefore, such compliances like installation of RTU metres at each WTG create hinderance in the development of the wind power projects, which in turn violates the objective of Electricity Act, 2003 as provided in Section 86(1)(e) of the said Act.

15.12. In the context of retrospective application of Wind Tariff Order 2024, the Hon'ble Tribunal has directed the Commission to reconsider the matter as per applicable law.

15.13. That as a settled principle of law, Tariff Orders/Rules/Regulations etc., passed by State Electricity Regulatory Commissions ought to be implemented prospectively and not retrospectively. In this regard, reliance is being placed upon the following judgments passed by the Hon'ble Supreme Court:

- (i) U.P. Power Corporation Ltd. vs. NTPC Ltd., (2009) 6 SCC 235; and
- (ii) Excise Commissioner. vs. Esthappan Cherian, (2021) 10 SCC 210.

15.14. That the RTU installation mechanism as directed by the Commission is also financially unviable as the cost to be incurred on the installation of the RTU mechanism in terms of Wind Tariff Order 2024 was never calculated and/or taken into consideration while entering into the Power Purchase Agreements / other contracts.

15.15. That to comply with the directions of the Commission with respect to installation of RTUs on each WTG, in addition to the additional unforeseen financial burden, it will take significant time as TPL will have to install requisite infrastructure and arrangements que

communication interface, data input and output adequacy, cyber security, etc. The requirement of such installation will pose several operational and technical constraints. The present commissioning schedule as approved by the Hon'ble Commission which has to be certified by Gujarat Energy Development Agency, is not sufficient to cater to the time required for any new project to follow and implement the RTU mandate at each WTG alongside installing RTU as pooling sub-station.

15.16. That TPL is also facing the following techno-commercial issues in complying with direction(s) of the Commission:

- (i) the continuous power supply to RTU when WTGs are not generating power is a primary challenge;
- (ii) connecting all individual RTUs of WTGs in one network will be a complex mechanism, which in turn will delay the data transfer respond time;
- (iii) the continuous connectivity in the remote areas is also an issue; and
- (iv) to accommodate load shedding from the grid, standby capacity for RTU's power supply would also have to be arranged.

15.17. That the Commission may consider invoking its powers to promote generation from renewable sources of energy under Section 86(1)(e) of the Electricity Act, 2003 and inherent powers under Section 86(1)(k) of the Act, 2003 read with Regulations 80 to 82 of the GERC (Conduct of Business) Regulations, 2004 to relax the directions contained in the Wind Tariff Order 2024 with respect to installation of RTU at each WTGs for Projects which are to be commissioned.

15.18. That without prejudice to the submissions made by TPL against retrospective applicability of the Wind Tariff Order 2024, given the financial and technical impediments to implementing the direction of the Commission regarding installation of RTU on each WTG, the Commission may also be pleased to take into account an alternative mechanism for future, where TPL may be allowed to enhance its existing Supervisory Control and Data Acquisition (SCADA) at each WTG in order to ensure that the data is transmitted to State Load Despatch Centre (SLDC) on real time basis in a more (i) time effective and (ii) cost efficient manner as compared to RTU. Such mechanism shall serve the same purpose as intended to be served through installing RTU at each WTGs, i.e., “monitoring of injection of energy by the SLDC on a real time basis.”

15.19. The aforesaid alternate compliance mechanism for data transfer is a proven technology across the country in all Inter State Transmission system projects as per Grid India (NLDC), Central Electricity Authority and Central Transmission Utility Procedures. CEA and CTU have already moved to SCADA system-based data transfers, and the data is transferred on real time basis to load despatch centres successfully.

15.20. By enabling real time transmission of data from WTGs to SLDC, the proposed alternate compliance mechanism would fulfil the objective and purpose of the RTU mandate at each WTG, i.e., to ensure real time monitoring of WTGs’ data by SLDC.

15.21. Based on the above submissions, it is prayed as under:

- (i) not implement the said Wind Tariff Order 2024 with retrospective effect.

- (ii) invoke its inherent powers to devise a mechanism to implement the Wind Tariff Order 2024 for all prospective WTG(s) to be developed in the State of Gujarat where TPL is permitted to enhance its existing SCADA at each WTGs in order to ensure that the data is transmitted to SLDC on real time basis in a more (a) time effective and (b) cost efficient manner as compared to installing RTU at each WTGs.

16. Submissions of Mr. Jitesh Ramesh Dodiya, as an Individual

- 16.1. The Hon'ble APTEL in its Order dated 03.07.2025 in Appeal No. 06 of 2025 & IA No. 1887 of 2024 and Ors., observed that since the issue regarding retrospectivity is short, the Commission (GERC) to hear and decide the matter with utmost expedition, preferably within a period of three months from the date of receipt of a copy of the Order.
- 16.2. The Commission has passed Tariff Order No. 5 of 2024 dated 31.08.2024 for Wind Power Projects. MoP's Green Energy Open Access Rules, 2022 is source for Tariff Framework for Procurement of Power by Distribution licensees and Others from Wind Power Projects for State of Gujarat *inter- alia* the provisions of GERC (Terms and Condition for Green Energy Open Access) Regulation 2024.
- 16.3. The Commission has decided control period of the tariff framework effective from 06.06.2022 to 31.03.2027. The Hon'ble APTEL has remanded matter to the Commission to decide the issue regarding retrospectivity in the matter of Tariff Order No.5 of 2024 dated 31.08.2024.
- 16.4. It is submitted that in case of repugnancy between the Central and State Laws, the Central Laws always prevails. In the present case, the Ministry

of Power (MoP) has decided the tariff framework since 06.06.2022. The Commission has decided tariff framework taking the cognizance of the merits of the MoP. Thus, MoP tariff framework prevails over the Tariff Order No. 5 of 2024 dated 31.08.2024 for Wind Power Projects. Therefore, the tariff as decided by the Commission for the control period effective from 06.06.2022 to 31.03.2027 cannot be changed or set aside.

- 16.5. The Central Rules and Regulations of MoP provides for transmission charges, transmission loss, wheeling charges, wheeling loss, cross subsidy charges, banking charges, additional surcharge etc., which came in force from the notification of MoP's Green Energy Open Access Rules, 2022 dated 06.06.2022. Accordingly, the aforesaid charges shall be applicable to all the kinds of renewable energy projects.
- 16.6. It is submitted that Order No. 2 of 2020 dated 30.04.2020 for Wind Power Project having control period up to 31.03.2022 and thereafter no extension in control period of said Order is granted.
- 16.7. It is further submitted that Ministry of Power on dated 06.06.2022 issued MoP's Green Energy Open Access Rules, 2022 and on the said date 06.06.2022, there was no Order of the Commission for a specific control period after the expiry of the control period dated 31.03.2022.
- 16.8. It is submitted that in light of the above averments, it is submitted that the Commission found it appropriate to adopt the policy and regulatory provisions outlined in MoP's Green Energy Open Access Rules, 2022 and defined control period of new tariff order to be made effective from 06.06.2022.

- 16.9. The Commission has decided new control period of this tariff framework effective from 06.06.2022 to 31.03.2027 which is apt, just and proper.
- 16.10. It is submitted that the Commission has framed tariff framework vide its Order No 5 of 2024 dated 31.08.2024 for procurement of power by distribution licensee and other from Wind Power Projects is derived from the policy and regulatory provisions outlined in MoP's Green Energy Open Access Rules, 2022. Hence, without amendment in the Principal/Central Regulation, the decided tariff vide the Commission's Order No. 5 of 2024 dated 31.08.2024 cannot be deviated.
- 16.11. It is stated that if any deviation caused in decided tariff in the Commission's Order may impact to the higher tariff payable by the large sector of the society like Agriculture, BPL, Commercial, Industrial and there would be huge burden in the hands of consumers.
- 16.12. Based on the above submissions, the stakeholder prayed as under:
- (a) To allow the present submissions of the stakeholder.
 - (b) The Commission has framed tariff framework vide its Order No. 5 of 2024 dated 31.08.2025 for procurement of power by distribution licensee and other from Wind Power Projects is valid and legal and does not require any modification up to the control period of 31.03.2027.
 - (c) If the provisions of the Commission' Order dated 31.08.2024 passed in Order No. 5 of 2024 changed shall be construed as a violation of MoP's Green Energy Open Access Rules, 2022.

Commission's Analysis and decision:

17. We have carefully considered the submissions made by the parties. We note that the Commission issued discussion paper on 'Tariff Framework for Procurement of Power by Distribution licensees and Others from Wind Power Projects for State of Gujarat', inviting comments/suggestions from the stakeholders. The Commission also conducted the public hearing in the present matter. After following due process of law and considering the comments/suggestions/objections of all the Stakeholders, the Commission issued the Wind Tariff Order No. 05 of 2024 on 31.08.2024. Some of the developers challenged the said Wind Tariff Order No. 05 of 2024 before the Hon'ble APTEL by filing (i) Appeal No. 06 of 2025 & IA No. 1887 of 2024, (ii) Appeal No. 07 of 2025 & IA No. 1876 of 2024, (iii) Appeal No. 38 of 2025 & IAs No. 1903 of 2024 & 547 of 2025, (iv) Appeal No. 79 of 2025 & IA No. 2001 of 2024 and (v) Appeal No. 164 of 2025 & IA No. 08 of 2025.
- 17.1. The Hon'ble APTEL has passed the Order dated 03.07.2025 in the aforesaid appeals wherein the Hon'ble APTEL remanded the matter back to the Commission on the limited aspects to decide afresh on the issue of retrospective applicability of the Order decided from 06.06.2022, after giving reasonable opportunity of being heard to all the parties.
- 17.2. We note that the gist of issues raised by the parties in present remand proceedings in regard to retrospective applicability of Order are under:
- (A) Some of the stakeholders have contended that the retrospective applicability of Order No. 05 of 2024 is legally impermissible specifically when the Order seek to impose various additional charges and conditions retrospectively on the Wind Power

Projects conceived prior to Order dated 31.08.2024, i.e., imposition of banking charges, reduction in exemptions in various charges such as cross subsidy surcharge, additional surcharge etc., altered SCOD timelines, directives for installation of RTU on each WTG etc., on projects commissioned prior to the Order No. 05 of 2024 dated 31.08.2024.

- (B) Some of the stakeholders have contended that MoP's Green Energy Open Access Rules did not, *per se*, provide for retrospective applicability of the Commission' Order. On the contrary, the Rules envisages to frame model Regulations within four months for implementation of Rules, which yet not notified at that time. It was further pointed out that Regulation 11 of GERC Green Open Access Regulations, 2024, is expressly provides that the Green Energy Projects commissioned prior to the Notification of GERC Green Energy Open Access Regulations shall be governed by the provisions of the Order/Regulation of the Commission applicable as on date of commissioning of such projects.
- (C) Some of the stakeholders have submitted that Gujarat Wind Power Policy 2016, was extended up to 30.09.2023 and superseded only by Gujarat Renewable Energy Policy 2023. Therefore, Wind Projects commissioned prior to 31.12.2023, must be governed by the provisions of previous Orders/Policies.
- (D) Some of the stakeholders have contended that the retrospective application of tariff conditions violates legitimate expectations of Wind Project Developers and alters vested commercial rights. It emphasized that Section 62 of the Electricity Act, 2003 contemplates tariff determination for future transactions only.

(E) Some of stakeholders have submitted that the retrospective operation of Order No. 05 of 2024 is contrary to the principle that delegated legislation cannot operate retrospectively unless expressly authorized by statute. It is submitted that the retrospective effect of Order from 06.06.2022 is ultra vires the provisions of the Electricity Act, 2003, which contains no enabling provision permitting retrospective tariff determination. The Commission's Wind Tariff Order, 2020 itself states that retrospective application of tariff dispensation is "not appropriate." In this regard, the parties have placed their reliance on the following citations:

- (i) BSES Rajdhani Power Ltd. v. DERC, (2023) 4 SCC 788;
- (ii) DERC v. BSES Yamuna Power Ltd., (2007) 3 SCC 33;
- (iii) State of M.P. v. Tikamdas, (1975) 2 SCC 100;
- (iv) Indian Metals & Ferro Alloys Ltd. v. State of Orissa, (1987) 3 SCC 189.
- (v) PTC India Limited. v. CERC, (2010) 4 SCC 603 .

(F) Some of the stakeholders have submitted that the Regulation 1(4) of GERC (GEOA) Regulations 2024 provides that the Regulations shall come into force only from their date of Notification, i.e. with effect from 21.02.2024. Accordingly, any order deriving its authority therefrom cannot have an earlier effective date. The jurisprudence in *Indian Metals & Ferro Alloys* and *Mahabir Vegetable Oils* supports this position.

(G) Some of the stakeholders submitted that the premise that tariff and commercial dispensation can ever be made effective from a past date is legally inaccurate. The Commission may define the

control period retrospectively in order to avoid a regulatory vacuum which need to be in nature of continuity-preserving and not as punitive to the Wind Projects. Further, the contractual arrangements (BPTA, wheeling arrangements) are necessarily subject to the provisions of prevailing Orders/Regulations.

(H) Some of the stakeholders, while supporting that the retrospective applicability of Order is permissible under the law, have submitted that due to some technical issue regarding metering etc. the effective date of the Order need to be specified from 01.01.2024 in alignment with the Gujarat RE Policy 2023.

(I) Some of the stakeholders submitted that the new tariff order was required to be made effective from date of order and for avoidance of regulatory vacuum, the control period of previous Wind Tariff Order, 2020 was required to be extended upto the date of new wind tariff order.

17.3. In view of the aforesaid submissions made by the stakeholders, in the present remand proceedings the issues arise for the consideration of the Commission are, as to whether there is any bar or embargo or restriction or legal impediment for giving retrospective applicability of Wind Tariff Order No. 05 of 2024 dated 31.08.2024 issued by the Commission and if not so, whether it is valid, justified and correct to make the Order No. 05 of 2024 dated 31.08.2024 effective from 06.06.2022 in given facts and circumstances of the case.

17.4. As regard to the contention of some of stakeholders on the principle that the retrospective applicability of Order is not tenable in eyes of law is concerned, it is imperative to refer relevant provisions of the Electricity Act. 2003:

Section 61. (Tariff regulations):

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 following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

1[(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;]

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

Section 62. (Determination of tariff): ---

(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of

shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity ;

(c) wheeling of electricity;

(d) retail sale of electricity: Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

.....

Section 64. (Procedure for tariff order): ---

(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force: Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

.....

Section 86. (Functions of State Commission): ---

(1) The State Commission shall discharge the following functions, namely:

- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(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;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote co-generation 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;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

(k) discharge such other functions as may be assigned to it under this Act.

.....

We note that Section 62 (4) of the Electricity Act, 2003 provides that no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. Thus, Section 62 (4) bars amendment of tariff more than once in a financial year. It does not say that a tariff order necessarily be prospective. On a contrary, retrospectivity is permissible in certain facts and circumstances. We also note the scope and ambit of

Section 64 (3) and Section 64 (6) of the Act which does not disentitle or prohibit retrospective enforcement of order passed by the Commission.

- 17.5. We also referred to the Judgement of the Hon'ble APTEL relied by GUVNL in support that the retrospective applicability of tariff order *per se* is not prohibited under the Act, particularly, (i) judgement dated 08.02.2011 in Appeal No. 164 of 2010 in case of Chhattisgarh State Power Distribution Co. Limited V/s. Chhattisgarh Biomass Energy Developers Associations & Ors., and (ii) judgement dated 22.08.2014 in Appeal No. 111 of 2013 in case of Sham Alloys Pvt. Limited & Ors. V/s. JERC & Ors.

The relevant portion of judgement dated 22.08.2014 in Appeal No. 111 of 2013 in case of Sham Alloys Pvt. Limited & Ors. V/s. JERC & Ors., is reproduced below:

“.....

6. Keeping in view the rival contentions of the parties, the following questions would arise for our consideration:

.....

iv) Whether the Joint Commission has erred in making the tariff effective retrospectively?

.....

34. The last issue is regarding retrospective option of the impugned order.

35. We find that the impugned tariff order was issued on 10.04.2013 and was made effective from 01.04.2013.

36. This issue has already been covered by this Tribunal's judgment dated 31.05.2013 in Appeal no. 179 of 2012 in the matter of Kerala High Tension and Extra High Tension Industrial Electricity Consumer's Association v. KSERC

“81. We do not find that the Commission was wrong in its approach by giving effect to the tariff order from the aforesaid retrospective date as the tariff was fixed for the tariff year 2005-06, which commenced on 1st April, 2005. If the submission of the Industrial Consumers is accepted, a consumer could initiate some proceedings in a Court against the Commission with a prayer for seeking an interim order restraining the Commission from revising the tariff on some ground or the other. This could delay the passing of the tariff order in case an interim order interdicting the determination of tariff is passed pending the proceedings. In such a contingency, it is only after the interim order is lifted by the Court that the Commission would be in a position to pass the tariff order. Obviously, it would only be just and fair that the tariff order relates back to and commences on the first day of the year for which the tariff determination is made. In Kanoria Chemicals & Industries Ltd. v. State of U.P. (1992) 2 SCC 124, a question was raised with regard to the competence of the Electricity Board to determine tariff with retrospective effect. The Supreme Court was of the view that retrospective effect to the revision of tariff was clearly envisaged in law. In this regard, the Supreme Court held as follows:

“A retrospective effect to the revision also seems to be clearly envisaged by the section. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and State from revising the rates, on one ground or other, and thus getting the revision deferred indefinitely. Or, again, the revision of rates, even if effected promptly by the Board and State, may prove infructuous for one reason or another. Indeed, even in the present case, the Board and State were fairly prompt in taking steps. Even in January 1984, they warned the appellant that they were proposing to revise the rates and they did this too as early as in 1985. For reasons for which they cannot be blamed this proved ineffective. They revised the rates again in March 1988 and August 1991 and, till today, the validity of their action is under challenge. In this State of affairs, it would be a very impractical

interpretation of the section to say that the revision of rates can only be prospective”.

82. Section 62, which provides for determination of tariff by the Commission, does not suggest that the tariff cannot be determined with retrospective effect. In the instant case, the whole exercise was undertaken by the PSERC to determine tariff and the annual revenue requirement of the PSERB for the period April, 1, 2005 to March 31, 2006, therefore, logically tariff should be applicable from April 1, 2005.

83. According to sub-section (6) of Section 64 of the Act of 2003, a tariff order unless amended or revoked continues to be in force for such period as may be specified in the tariff order. Thus the Commission is vested with the power to specify the period for which the tariff order will remain in force. The Commission deriving its power from Section 64(6) has specified that the order shall come into force from April 1, 2005. No fault can be found with such a retrospective specification of the Commission.

84. The learned counsel for the industrial consumers relied on the decision of the Supreme Court in Sri Vijay Lakshmi Rice Mills v. State of Andhra Pradesh, (1976) 3 SCC 37 : AIR 1976 SC 1471, wherein it was held that a notification takes effect from the date it is issued and not from a prior date unless otherwise provided by the statute, expressly or by appropriate language from which its retrospective operation could be inferred. This decision is of no avail to the industrial consumers, in view of the provisions of Section 64(6) of the Act of 2003, which empowers the Commission to specify the period for which the tariff order will remain in force. In other words, the Commission is empowered to specify the date on which the tariff order will commence and the date on which it will expire.

85. The Board in consonance with the cost plus regime is entitled to recover all costs prudently incurred for providing service to the consumers. Besides, the Board is entitled to reasonable return. Since the cost prudently incurred has to be recovered, therefore, in the event of the tariff order being delayed, it can be made effective from the date tariff year commences or by annualization of the tariff so that deficit, if any, is made good in the remaining part of the year or it could be recovered after truing up exercise by loading it in the tariff of the next year. All these options are available with the Commission

86. There is one more aspect which needs to be considered. In case the Commission had lowered the tariff rates, relief to the consumers could not be denied on the ground that the tariff order is being operated retrospectively.

87. For all these reasons we hold that the Commission had the jurisdiction to pass the tariff order with retrospective effect. Therefore, we reject the submission of the learned counsel for the industrial consumers that the tariff cannot be fixed from a retrospective date.

75. In the above judgment the Tribunal has relied on the findings of the Hon'ble Supreme Court in (1992) 2 SCC 124 in the matter of Kanoria Chemical Industries v. State of UP in which the Hon'ble Supreme Court upheld the retrospective revision of tariff. The findings of the Tribunal in the Siel case will be applicable to this case also.

.....

77. If the tariff is made applicable from the date of order i.e. 25.7.2012, the revenue gap in the ARR due to short recovery of the

approved revenue will have to be allowed in the ARR and tariff of the subsequent year with carrying cost which will unnecessarily burden all the consumers with the carrying cost.

78. In any case the bills for the month of July 2012 at the revised tariff have to be raised only in the month of August 2012, i.e. after the date of the impugned order. Thus, there will not be any recovery of past arrears by the distribution licensee from the consumers on account of revision in tariff w.e.f. 1.7.2012.

*79. In view of above, this issue is decided as against the Appellant.”
.....”*

Thus, in the above judgement, Hon'ble APTEL has categorically upheld that there is no restriction/embargo in deciding the retrospective applicability of tariff order passed by the Commission.

- 17.6. Furthermore, it is also relevant to note that the Commission had issued Draft Order, 2020 in the matter of determination of Tariff for procurement of power by the Distribution Licensees and others from **Biomass-based power projects and Bagasse-based Cogeneration Projects** for the Control Period from FY 2020-21 to FY 2022-23 and uploaded the aforesaid Draft Order 2020, dated 11.03.2020 on the website of the Commission for inviting comments/suggestions from the stakeholders/public by issuing public notice in the Newspaper. In meantime, some of project developer challenged the earlier Biomass / Bagasse Tariff Order No. 01 of 2018 of the Commission before Hon'ble APTEL by filing Appeal being Appeal No. 277 of 2021. In the said Appeal, the Appellants had challenged the decision of the Commission with regard to various operation parameter already considered and decided by the Commission in its Biomass / Bagasse Tariff Order No. 01 of 2018. While noting the submission of the Appellant, the Hon'ble APTEL

decided the Appeal vide Order dated 15.11.2021 and directed the Commission to take a final decision on the Draft Biomass /Bagasse Tariff Order published by the Commission on 11.03.2020 after hearing all interested parties on all issues in accordance with law expeditiously and further directing that the control period of such new Biomass / Bagasse Tariff Order shall be effective from 01.04.2020. The relevant portion of the aforesaid the Order dated 15.11.2021 in Appeal No. 277 of 2021 is reproduced as under:

“

“8 In above view, with the consent of learned counsel on all sides, they having taken instructions, we dispose of this appeal by directing the State Commission to take a final decision, after hearing all interested parties on all issues in accordance with law on the draft order published on 11.03.2020 expeditiously, at an early date, preferably within two months of this judgment.

9. Needless to add the Commission will pass a clear express order for the control period beginning 01.04.2020. The parties will have the liberty to submit detailed written submissions before the Commission.

.....”

In the aforesaid Order Hon’ble APTEL had directed to decide the effective date of Biomass Tariff Order with retrospective from 1.04.2020 i.e. after completion of earlier tariff order control period.

17.7. In compliance with the aforesaid directives of the Hon’ble APTEL’ vide order dated 15.11.2021, the Commission has passed Biomass Tariff Order No. 03 of 2022 dated 27.06.2022 and decided that control period of Biomass Tariff Order No. 03 of 2022 with retrospective effective from 01.04.2020.

17.8. Thus, Hon’ble APTEL in its Order dated 15.11.2021 also, clearly lays down that retrospective application of tariff Order is not prohibited

under the law. It is decided and directed by Hon'ble APTEL to pass tariff order from specified date which was retrospective applicability of order. The Commission, being a quasi-legislative body, may exercise its powers and decide the effective date of tariff order retrospectively in certain circumstances such as to remove regulatory vacuum, ensure parity, and to fulfil the statutory objectives enshrined under the Electricity Act, 2003.

- 17.9. We note that while tariff orders are legislative orders and order passed in consideration of the provision of law and based on maintaining continuity in subject matter without creating vacuum in tariff and commercial aspects. It is fact that certain circumstances, tariff order is required to be made applicable retrospectively consistent with the provisions of the Electricity Act, 2003 to remove regulatory vacuum. Thus, the principle of retrospective applicability of tariff order is well recognised if it serves to fill a regulatory void and furthers the objectives enshrined under Sections 61(h) and 86(1)(e) of the Electricity Act, 2003. While, deciding the applicability of Order No. 05 of 2024 date 31.08.2024 fully satisfies those criteria.
- 17.10. We note that the Hon'ble APTEL in its another judgement dated 08.02.2011 in Appeal No. 164 of 2010 in case of Chhattisgarh State Power Distribution Co. Limited V/s. Chhattisgarh Biomass Energy Developers Associations & Ors., has also upheld the principles that there is no embargo or restriction to make retrospective applicability of tariff order passed by the Commission.
- 17.11. We have gone through various judgements referred to by various parties in support of their contentions that the retrospective applicability of tariff order is impermissible and law requires for

prospective applicability. We note that these judgements referred by the parties are on different and distinct factual matrix and therefore, not applicable in the present case.

The tariff order passed by the Commission in exercise of regulatory function is different and distinct than order passed by the Commission in exercise of its adjudicatory jurisdiction deciding the dispute between the parties. Therefore, the present case is to be considered on different footing than adjudicatory order of the Commission.

We also note that if the contention of the objectors are accepted that the tariff order passed by the Commission be effective from the date of order in that case there is regulatory vacuum between the time period of 01.04.2022 to the new Order date of 31.03.2024. It was fact that the Order No. 05 of 2024 passed by the Commission and there was no valid tariff order after 31.03.2022. In such a case the agreement or commercial aspects agreed between the parties based on earlier tariff order no. 02 of 2022 dated 30.04.2020 is not legal as the same are in contravention of previous order on the date of such agreement, if any.

In the present case, the control period of previous wind tariff Order No. 02 of 2020 dated 30.04.2020 was expired on 31.03.2022 and no order of the Commission was available after 31.03.2022. The relevant portion of the said Order is reproduced below:

“3.2 General Principles

a. Control Period

The new Control Period for the Tariff Framework approved in this Order shall be effective from the date of this Order to 31st March, 2022.”

Thus, it is clear that the aforesaid Order consist of tariff rates and other commercial aspects were available only upto 31.03.2022. Further there

in no provision provided in the aforesaid Order for its applicability after expiry of control period on 31.03.2022.

In meantime, MoP notified statutory Rules under the provisions of the Act to promote Open Access from renewable energy projects. These Rules notified by MoP is effective from the date of its Notification, i.e., 06.06.2022. In the given facts and circumstances, the Commission deemed it appropriate to align the new regulatory framework for wind projects with the provisions of statutory Rules notified by MoP and decided the effective date of new tariff framework for wind power project from effective date of MoP Rules. Further, the Commission also decided to extend the control period of earlier Order from 01.04.2022 to 05.06.2022 so as to avoid any regulatory vacuum concerning to wind power project after expiry of control period of previous wind tariff order on 31.03.2022.

Therefore, we are of the view that various judgments relied upon by some of the stakeholders are on different facts and applicable in the facts of present case.

17.12. We note that the provisions of the Electricity Act, 2003 which empowers the Commission to determine the tariff and also as per the principle decided by the Hon'ble APTEL in the aforesaid judgements, do not suggest that the tariff order cannot be applied retrospectively. The Commission is vested with the power to specify the period for which the tariff order will remain in force. In other words, the Commission is empowered to specify the date on which the tariff order will be effective and the date on which it will expire. With consideration of the above, we reaffirmed that the Commission has the jurisdiction to pass the wind Tariff Order with retrospective effect under the provisions of the Electricity Act, 2003 and therefore, we reject the submissions of the

parties that the applicability of wind tariff framework with retrospective effect is impermissible under the law.

17.13. Now we deal with the issue as to whether the effective date of Wind Tariff Order No. 05 of 2024 dated 31.08.2024 from 06.06.2022 or any other date with consideration of the provisions of law.

17.14. We note that the Commission issued Wind Tariff Order dated 30.04.2020 in the matter of tariff framework for Wind Power Projects and other commercial issues in the State of Gujarat. The control period of said Order was upto 31.03.2022 and there was no tariff order of the Commission concerning to Wind Power Projects after 31.03.2022. Further, Ministry of Power notified the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 on 06.06.2022 outlining the policy and regulatory provisions for promotion of renewable sources of energy through Open Access. In the absence of extension of control period of Wind Tariff Order, 2020 beyond 31.03.2022, the Commission deemed it appropriate to align its regulatory tariff framework with the effective date of the MoP' Rules to serve the dual purposes, viz, to give effect to the statutory Rules notified by the MoP relating to promotion of Open Access for availing power from renewable energy projects and to fulfil regulatory vacuum upon expiry of control period of earlier Wind Tariff Order, 2020 on 31.03.2022.

17.15. The Commission notes that tariff determination under the provisions of the Electricity Act, 2003 is a sub-legislative function. Once the Commission determines tariff for a defined period or "control period," the aforesaid tariff order attains the character of subordinate legislation and remains operative for the duration specified in the said Order

unless the Order itself or the applicable Regulations provided for its continuation even after expiry of its applicability.

17.16. In the present case the Wind Tariff Order No. 2 of 2020 has specified a definite period of applicability up to 31.03.2022 and there was no express provision for extension or continuation. Any such extension would, in effect, amount to fresh tariff determination without following the due process prescribed under Sections 62 and 64 of the Act, which mandates public notice, stakeholder hearing, and a reasoned order.

17.17. The Hon'ble Supreme Court in PTC India Ltd. v. CERC [(2010) 4 SCC 603] has held that tariff fixation by the Commission is a legislative function and any modification or extension thereof must be within the ambit of the parent statute or the regulations framed thereunder. Similarly, in GUVNL v. EMCO Ltd. [(2016) 11 SCC 182] and BSES Ltd. v. Tata Power Co. Ltd. [(2004) 1 SCC 195], it has been affirmed that once the period of a tariff order has expired, it cannot be extended retrospectively or prospectively in the absence of express statutory authority.

17.18. The Commission has observed that the Ministry of Power, Govt. of India notified Green Energy Open Access Rules, 2022 wherein it has been specified various charges applicable to the Green Energy Open Access consumers, banking and other facilities etc. as part of commercial aspects provided for availing Green Energy Open Access by consumers. The Commission has taken cognizance of these Rules, which are statutory in nature. Accordingly, while issuing the discussion paper, the Commission has considered the provisions of said Rules and also the provisions of earlier Tariff Order No. 02 of 2020 dated 30.04.2020.

17.19. Accordingly, the Commission observe that tariff determined for a completed period cannot be extended unless such continuation is expressly provided in the tariff order itself, or in the Regulations framed by the Commission, or under specific direction of the Commission with recorded reasons. In the absence thereof, the tariff order shall cease to have operative effect upon expiry of its defined term.

17.20. The Commission while passing the Tariff Order dated 31.08.2024, the retrospective effective date of Wind Tariff Order from 06.06.2022 is not arbitrary but seek to implement MoP's Green Energy Open Access Rules, 2022, which is statutory in nature and seek to promote Renewable Energy through Open Access from RE Projects. Thus, the retrospective effect of Wind Tariff Order is intended to align the regulatory framework with provisions enshrined under the statutory rules notified by MoP, Govt. of India under the provisions of the Electricity Act, 2003 and also avoid a regulatory vacuum during intervening period. Therefore, we are of the view that various judgements of the Hon'ble APTEL squarely supports the Commission's view that retrospective applicability of tariff order is both lawful and desirable and does not it impair any vested contractual right.

17.21. The Commission further notes that during the period between 01.04.2022 and 31.08.2024, there was no operative tariff order of the Commission concerning to wind power projects as the control period of earlier Order No. 02 of 2020 was expired on 31.03.2022. Once the Commission determines tariff for a defined period or "control period," the said tariff order remains operative for the time duration specified in the said Order unless the Order itself or the applicable Regulations provided for its continuation even after expiry of its applicability. In the present case, there was no express provision for extension or

continuation of Order No. 2 of 2020. Further, MoP, Govt. of India notified the GEOA Rules effective from date of its notification, i.e., 06.06.2022. It is to be noted that in case new wind tariff framework is not made applicable from effective date of MoP Rules, in that case, it should have required to extend the control period of previous order upto 30.08.2024 by overlooking the provisions of statutory Rules notified by MoP, which is also not valid and justified. The statutory Rules notified by MoP and made applicable from 06.06.2022 cannot be ignored by way of retrospectively extending the control period of previous order as sought to be argued by some of the stakeholders. Otherwise it would have created regulatory vacuum and would have disrupted the statutory mandate of promotion of renewable energy. Therefore, in order to maintain regulatory certainty and parity between statutory Rules notified by the MoP under the Electricity Act and regulatory framework of the Commission, it was found appropriate and justifiable to take cognizance of statutory Rules and apply the Order No. 05 of 2024 retrospectively from effective date of MoP Rules, specifically when no Wind Tariff Order of the Commission was available after expiry of control period of previous wind tariff order on 31.03.2022. In the given facts and circumstances, the Commission taken a considered view to align the control period of new wind tariff order with effective date of statutory Rules notified by MoP under Act and also decided to extend the control period of previous wind tariff order upto 05.06.2022 so as to avoid regulatory vacuum.

17.22. Thus, intervening regulatory vacuum after expiry of control period of previous wind order on 31.03.2022 created a necessary situation to align the new wind tariff order with provisions of statutory Rules notified by the Government of India, so as to harmonize the regulatory

framework for Wind projects related to banking facilities, applicability of Open Access charges, Energy Accounting mechanism etc. The harmonised regulatory framework applicable for wind projects commissioned on/after 06.06.2022 up to 31.03.2027 seek to enhance regulatory certainty and advances the objectives of the Electricity Act, 2003 to promote renewable energy projects.

17.23. We note that some of the stakeholders have contended that the Ministry of Power rules were set aside by the Hon'ble High Court of Karnataka vide its judgement dated 20.12.2024 in Writ Petition No.11235 of 2024. While some of the objectors have stated that the Green Energy Open Access Rules framed by Ministry of Power which are central rules framed under the Electricity Act,2003 are binding to this Commission and any change in the effective date of order No.5 of 2024 shall be construed as violation of MoP Rules 2022. As regards the contention of some of the stakeholders that the Ministry of Power Rules on which relied by the Commission and considered the effective date of Order No.5 of 2024 from 6.6.2022 is not legal and valid pursuant to judgment of Hon'ble High Court of Karnataka is concerned, it is fact that each Hon'ble High Court having territorial jurisdiction and their judgements are binding in their jurisdiction. It is fact that the Ministry of Power, Government of India Green energy open access rules 2022 are not challenged before Hon'ble High Court of Gujarat and Hon'ble High Court of Gujarat has not passed any order declaring the said rules are ultra vires nor the order of Hon'ble High Court of Karnataka has been confirmed by the Supreme Court of India. In this situation, we are of the view that the Rules framed by Ministry of Power under the Electricity Act,2003 which are not declared ultra vires by the High Court of Gujarat, the said rules are binding to this Commission.

17.24. In this regard, it is relevant to refer the judgment of Hon'ble Supreme Court of India in case of *East India Commercial Co. Ltd. v. Collector of Customs* AIR 1962 SC 1893, wherein the Hon'ble Supreme Court held that the law declared by the Supreme Court is binding on all courts in India, whereas a High Court's judgment binds only courts and authorities within its own territorial jurisdiction only. The relevant part of aforesaid judgment read as under:

"29 -Article 215 declares that every High Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. Article 226 empowers every High Court to issue to any person or authority within its territorial jurisdiction appropriate writs, orders or directions. The law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and they cannot ignore it either in initiating proceedings or deciding on rights involved in such a proceeding. It should be remembered that under Article 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It follows that the law declared by the High Court is binding on all subordinate courts and authorities or tribunals within the territories in relation to which it exercises jurisdiction. They cannot ignore it on the ground that some other High Court has taken a different view on the same point."

Accordingly, the Commission, being a quasi-judicial body functioning under the jurisdiction of the State of Gujarat, is guided by the pronouncements of the Hon'ble Supreme Court and not directly bound by a High Court judgment of another State.

17.25. We also note that the Commission has also relied on the aforesaid MoP Rules framed Green Energy Open Access Regulation which are also not challenged by any person and the same are in force. Hence, the contention of the stakeholder that the MoP Rules which are declared as ultra vires by the Karnataka High Court, the Commission may reconsider its earlier decision wherein the Commission has decided the effective date of order No.5 of 2022 is from 6.6.2022 is not legal and valid and therefore, we are of the view that there is no force in the objection and the same is rejected.

17.26. With regard to the Objections raised by some of the Stakeholders that the Commission itself in its previous Wind Tariff Order 2020 do not affirm the retrospectivity applicability of tariff order, is concerned, we note that in the Wind Tariff Order 2020, the observation with respect to retrospective applicability of tariff order was made in a different factual matrix, specifically at that time, statutory Rules notified by the Central Government was not in place. However, in the present case, the control period of previous order of the Commission was not extended beyond 31.03.2022. Further, MoP, Govt. of India notified GEOA Rules for promotion of Open Access from green energy based project and made effective such Rules from its notification i.e. 06.06.2022. In the circumstances, specifically when no wind tariff order of the Commission was available after 31.03.2022 and MoP's statutory Rules were effective from 06.06.2022. In the given facts, the Commission has taken a considered view by deciding the control period of new order in alignment with effective date of MoP Rules and also extended the applicability of previous order up to 05.06.2022 so as to ensure that there is no regulatory vacuum exist and at the same time, the provisions of statutory Rules notified by Govt. of India be given effect to after its

effective date. Therefore, the Objections as raised in this regard is not accepted and the same are rejected.

17.27. As regards the submissions of some of the Stakeholders contending that the control period of previous Wind Tariff Order, 2020 was required to be extended upto the date of new wind tariff order and new tariff order is required to be made applicable from date of its issuance by the Commission is concerned, we note that the control period of Wind Tariff Order 2020 was expired on 31.03.2022 and same was not extended by the Commission beyond 31.03.2022. In case, the arguments of the parties is accepted, it will led to extension of control period of previous order retrospectively in the proceedings initiated for publication of new Wind Tariff Order. Thus, it will also involves the retrospective extension of control period of previous order in the new tariff order proceedings without following the Principal of issuance of public notice inviting comments/suggestion from the public/stakeholders, giving an opportunity of hearing and considering the prevailing provisions of law, i.e. Act, Rules and Regulations framed therein and come in force which need to be examined with legal aspects. Therefore, the principle contended by the Stakeholders that the retrospective applicability of new tariff order is impermissible under the law, shall equally prohibit the retrospective extension of control period of previous wind tariff order. This will lead to a situation of regulatory vacuum between the period of expiry of control period of previous wind tariff order and date of issuance of new tariff order which will in turn adversely impact the development and promotion of wind projects in the State which is contrary to objectives of the Act. Therefore, we do not find any merit in the submission of the stakeholders that the control period of previous wind tariff order was

required to be externalized upto the date of issue of new wind tariff order and hence rejected.

17.28. As regard submissions of some of the stakeholders that new wind tariff order imposes different norms with regard to submission of BG, open access charges, banking facility, energy accounting mechanism etc are concerned, we note that the levy of open access charges, banking facility, energy accounting mechanism etc in the Wind Tariff Order, 2024 is sought to align with MoP's Green Energy Open Access Rules, which have statutory nature read with provisions of GoG Policy and GERC GEOA Regulations. The provisions related to submission of BG amount for grid connectivity of wind power projects, completion timeline etc, are provided in the Wind Tariff Order 2024 after independently analysing various aspects by the Commission and considering views /suggestions of stakeholders. We note that any concession/relaxation in charges/norms being made available in a tariff order are ever involving process and cannot create vested rights in favor of any party. The concession/relaxation in charges/norms provided in a given tariff order may be relevant with consideration of various factors and situations prevailing at that time and the same may not be considered worth to continue with in the succeeding tariff order. Similarly, new tariff order may contain different concessions/benefits/relaxation different than norms provided in previous orders with consideration of various enabling factors. Therefore, it is not correct to claim continuity of such benefits/relaxation as a matter of right. In case, the Commission provides certain new exemption/benefits/relaxation in the new tariff order, the relief to the beneficiaries could not be denied merely on the ground that the tariff order is being made operative retrospectively. Similar is the case if new tariff order removed/lowered certain exemptions/benefits/relaxation,

the beneficiary cannot claim continuity of such exemptions/benefits/relaxation on the ground that the tariff order is being operated retrospectively. Hence, the submission of the stakeholders that the new tariff framework cannot be made effective retrospectively as it withdrew / reduced certain exemptions/ benefits, is without any merit and therefore not accepted by the Commission.

17.29. The Commission also noted the concerns raised by some of the Stakeholders that the new tariff framework put onerous conditions which are difficult to implement for the wind projects conceived / commissioned prior to 2024 such as the mandate for installation of RTU on each WTGs, reduced project completion timeline etc. Here, it is important to note that the Wind Projects commissioned after 31.03.2022 to 31.08.2024, i.e., date of Order No. 05 of 2024 dated 31.08.2024 consist of WTGs projects installed/commissioned based on the selection in the Competitive Bidding Process, wherein various terms and conditions provided for bidders to fulfil and WTGs projects commissioned under other than Competitive Bidding Process are governed by the prevailing generic tariff order of the Commission. It is fact that on 01.04.2022 onwards, there was no tariff order (generic) of the Commission. In absence of such Order, a generic techno commercial terms shall apply to such project as made applicable by the Commission, it is not permissible to apply earlier terms and conditions which are not in existence nor any contract on that basis is permissible because such terms and conditions or provisions which are sub-legislative in nature are not exist. Further, the persons, i.e., WTGs owner if faces any issues, they have to approach the Commission in this regard. We are also of the view that while commissioning of WTGs, it is also necessary to follow the technical standards/Rules which are existing to follow. Hence, the contentions of the parties need to be seen in this

background with consideration of facts of each case independently and it is not permissible to decide at this juncture. We note that in any case, these concerns, if any, are implementation related issues and cannot be considered as legal impediments. These issues cannot invalidate the Commission's power to decide the effective date of Order from 06.06.2022. Further, under the provisions of Electricity, Act, 2003, the Commission has adequate power to issue appropriate directions on its own or on the application filed by any affected parties and give relaxation in case of difficulties, if any, in the implementation of provisions of wind Tariff Order. However, this cannot be a ground to alter the effective date of the Wind Tariff Order passed by the Commission.

- 17.30. With regard to the contention of GUVNL that while retrospective applicability of Order is permissible under the law, however, due to some technical issue regarding metering etc., the effective date of the new wind tariff Order need to be specified from 01.01.2024 in line with the Gujarat RE Policy 2023, is concerned, we note that while making these submissions GUVNL has not placed on record any details and particulars, neither in the present remand proceedings nor in the original proceedings initiated by the Commission. Further, no submissions are made with regard to nature of technical issue in meter, when it was encountered while giving effect to the energy accounting mechanism provided in the wind tariff order, what actions it has taken and when and how such issues are resolved etc. As rightly pointed out by the other stakeholders, it is not clear as to how the metering issues were claimed to be prevailing as on 31.03.2024 and how such issues have been claimed to be resolved one day later on 01.04.2024. We are of the view that in absence of such details/particular, it is not appropriate to take any cognizance of such submissions.

17.31. As regard to submissions of some of the stakeholders that the retrospective application of tariff conditions violates legitimate expectations of Wind Project Developers and alters vested commercial rights is concerned, we note that as recorded earlier, the Commission is empowered to decide the applicability of tariff order and specify the control period of such orders. The benefits/exemption/relaxation if any under previous tariff order which control period already expired cannot create any perpetual vested rights against supervening statutory tariff framework. Further, legitimate expectation cannot defeat the statutory functions of the Commission and requirement to align the regulatory framework with the statutory Rules notified by Govt. of India under the provisions of the Electricity Act, 2003. The agreements, if any, done by the parties, are required to be aligned with the provisions of law and not contravention of the same.

17.32. We also note that the vested rights cannot arise in a regulatory vacuum i.e., the period after 01.04.2022 as no tariff order of the Commission was available after 01.04.2022. Hence, projects commissioned thereafter were necessarily subject to regulatory framework decided by the Commission and made applicable from effective date decided by the Commission. In *PTC India Limited v. CERC* (2010) 4 SCC 603, the Hon'ble Supreme Court has clarified that tariff determination is a legislative function and licensees or generators cannot claim perpetual entitlement to concession available under an earlier regulatory framework. Thus, retrospective effect of Wind tariff Order which seek to align with the statutory MoP Rules, 2022 cannot be said to violate vested rights as it merely harmonizes the regulatory framework with statutory Rules notified by the Central Government under the Act. The Projects commissioned between 06.06.2022 and 31.08.2024 were

admittedly under a regulatory vacuum as no wind tariff order was existed post 31.03.2022. Therefore, these projects could not have said to be acquired vested rights contrary to the MoP Rules. Accordingly, aligning the control period from 06.06.2022 ensures that all such projects are governed under a uniform regulatory framework and preventing regulatory uncertainty.

17.33. We further note that the instances of agreements referred to by various stakeholders are in nature of private contracts involving two private parties. The private contracts cannot override the statutory provisions notified by the statutory authority. It is rather required to align the provisions of the contracts, with the applicable regulatory frameworks notified by the Commission. Therefore, the submission of the Stakeholders are not accepted and rejected accordingly.

17.34. Some of the Stakeholders have submitted that the Regulation 1(4) of GERC (GEOA) Regulations 2024 provides that these Regulations shall come into force only from their date of Notification, i.e. with effect from 21.02.2024. Accordingly, any order deriving its authority therefrom cannot have an earlier effective date, is concerned, we note that the Commission published the discussion paper on tariff framework for Wind Power Project on 02.03.2024 wherein control period was specified from 06.06.2022 to 31.03.2027 i.e. effective date of tariff framework was specified to be in alignment with MoP Rules, 2022. The power of the Commission to regulate open access, issue directions, and determine tariff framework flows from Sections 42, 61, 62, 64 86(1)(a), 86(1)(c) and other enabling provisions of the Electricity Act, 2003. Therefore, any order of the Commission issued before or after effective date of GERC Green Energy Open Access Regulations derives its authority primarily from the Act, not only from the Regulations

themselves.. Hence, it is legally untenable to argue that the Commission could not issue an order effective prior to 21.02.2024, since its jurisdiction and power existed under the Act itself. Further, as decided by Hon'ble Supreme Court in PTC India case, the notification of the Regulations is not pre-requisite for the Commission to discharge its functions stipulated under the Section 86 of the Act. The only requirement is to follow the Regulations once it is notified. In the present case, the tariff framework notified by the Commission seek to incorporate the provisions of the MoP Rules as well as provisions of the Regulations notified by the Commission. Hence, the wind tariff framework is consistent with the MoP Rules as well as Regulations notified by the Commission. Accordingly, we do not see any merit in the aforesaid submissions of the parties and hence the same is rejected.

17.35. We note the submission of some of the Stakeholders that MoP's Green Energy Open Access Rules did not, *per se*, provide for retrospective applicability of the Commission' Order. On the contrary, the Rules envisages to frame model Regulations within four months for implementation of Rules, which yet not notified at that time is concerned, we note that the effective date of MoP Rules is from the date of its Notification i.e., 06.06.2022 and its effective date is not subject to any condition such as framing Model Regulation etc. The reference to framing of Model Regulations provided under the Rules is in different context, without impacting the applicability of said Rules. Therefore, it is incorrect to say that the MoP Rules shall not be effective in the absence of Model Regulations to be framed by Forum of Regulators.

17.36. As regard to submissions of some of the Stakeholders that Gujarat Wind Power Policy 2016, was extended up to 30.09.2023 and superseded only by Gujarat Renewable Energy Policy 2023. Therefore, Wind

Projects commissioned prior to 31.12.2023, must be governed by the provisions of previous Policies is concerned, we note that the Gujarat Wind Policy, 2016, though extended till 30.09.2023, is purely an executive policy framework and could not and cannot override the statutory framework notified under the Electricity Act, 2003. Therefore, the MoP Rules of 2022, being statutory delegated legislation, shall prevail and serve as the operative legal basis for alignment of the control period of Order No. 05 of 2024 with effective date of MoP Rules, i.e., 06.06.2022. Thus, the submissions of the parties relying on Gujarat Wind Power Policy is not accepted.

18. Having examined the legal and factual position afresh and submissions made by the parties in this remand proceedings in detail and as per the above discussion, we decide and reaffirm that the effective date of the Order No. 05 of 2024 shall be from 6.6.2022 to 31.3.2027.

ORDER

19. We decide and reaffirm that the effective date of the Order No. 05 of 2024 shall be from 6.6.2022 to 31.3.2027.
20. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 03/11/2025.