

3. The matter was kept for hearing on 03rd May, 2021. Shri Chetan Bundela, on behalf of the Petitioner, mentioned the facts as stated in para 2 above.
4. We have considered the submissions made by the Petitioner. The Petitioner has filed the present Petition seeking approval for Short Term Round the Clock (RTC) Power Purchase Arrangement for the period from 01st April, 2021 to 31st March, 2022 in two phases with same quantum i.e. 50 MW from 01st April, 2021 to 30th September, 2021 and 50 MW from 01st October, 2021 to 31st March, 2022. We also note that the Petitioner, being a distribution licensee, has the Universal Service Obligation to ensure uninterrupted electricity supply to the consumers within the licensee area as provided under Section 43 of the Electricity Act, 2003.
- 4.1 The Petitioner has prayed to grant the approval for procurement of 50 MW RTC power during (i) 1st April, 2021 to 30th September, 2021 and (ii) during 1st October, 2021 to 31st March, 2022 at the rate of Rs. 3.69/unit (at GETCO periphery) in accordance with the provisions of the Guidelines for Power Procurement by the Distribution Licensee issued by the Commission vide Notification No. 02 of 2013 dated 14th August, 2013 read with the Section 86 (1) (b) of the Electricity Act, 2003. It is, therefore, necessary to refer the relevant provisions of Section 86 (1) (b) of the Electricity Act, 2003 and the guidelines issued by the Commission:

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86. Functions of State Commission, --

(1): - The State Commission shall discharge the following function:

.....

(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;

..... ”

As per the aforesaid provision, it is the function of the Commission to regulate the electricity purchase and procurement process of the Distribution Licensee including price quantum and agreement.

4.2 Clause 13, 14, 15 and 16 of the Procurement of Power through Competitive Bidding Guidelines dated 14th August, 2013 issued by the Commission are reproduced below:

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13. Where the Distribution Licensee is to procure power on a short-term basis or there is a shortfall due to any reason whatsoever, or failure in the supply of electricity from any approved source of supply during the year, for any reason whatsoever, the licensee may enter in to a short-term arrangement or agreement for procurement of power through power exchanges or through a transparent process of open tendering and competitive bidding.

14. In case of procurement of power through competitive bidding, the Distribution Licensee shall initiate the process for short-term power procurement in accordance with the Ministry of Power's Guidelines for Short Term Procurement of Power by Distribution Licensees through Tariff based bidding process' notified by the Ministry of Power on 15/05/2012 and in force from time to time. As provided in the MoP Guidelines:

a) The bid documentation shall be prepared in accordance with the MoP guidelines and the approval of the GERC shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government.

b) Generally, no deviation shall be allowed from these Guidelines. However, if it is essential to have the deviation from these Guidelines, the same could be done with the prior approval of the GERC.

c) The Procurer(s) shall procure short-term power as per the plan approved by the GERC or appropriate body as may have been constituted for the purpose by the GERC. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the GERC.

d) In case procurement of short-term power exceeds the approved annual short-term procurement plan, the Procurer(s) shall obtain prior approval from the GERC or any appropriate body as may have been constituted for the purpose by the GERC.

15. For procurement on short-term basis, a single-stage bid process by inviting Request for Proposal (RFP) shall be adopted. Procurer or authorized representative shall prepare bid document in line with these Guidelines. The Procurer shall publish an RFP notice in at least two national newspapers and upload the same on company website to accord it wide publicity. The bidding shall necessarily be by way of competitive bidding.

16. The PPA shall be signed with the selected bidder(s) consequent to the selection process.

a. After the conclusion of bid process, the Standing Committee constituted for evaluation of RFP bids shall provide appropriate certificate on conformity of the bid process evaluation to the provisions of the RFP document. The Procurer shall provide a certificate on the conformity of the bid process to these Guidelines to the GERC.

b. If the quantum of power procured and tariff determined are within the overall approval granted by the GERC in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the GERC.

In all other cases, the Procurer(s) shall submit a petition to the GERC for adoption of tariff within two days from the date of signing of PPA. The GERC should communicate the decision within seven days from the date of submission of petition.

.....”

As per Clause 13 of the aforesaid guidelines, when the Distribution Licensee needs to procure the power to meet the demand of the consumers on the short-term basis, the Distribution Licensee may do so through energy exchange or through transparent process of open tendering and competitive bidding.

Clause 14 of the aforesaid Guidelines provides that in case of procurement of power through the competitive bidding, the Distribution Licensee shall initiate the process for Short-Term Power Procurement in accordance with the Guidelines for Short-Term Procurement of Power by the Distribution Licensee through tariff based bidding process notified by the Ministry of Power, Government of India on 15th May, 2012. The bid documents submitted by the Petitioner are as per the MoP guidelines consist of the deviations earlier approved by the Commission. Thus, the bid documents are in accordance with the MoP guidelines.

Sub-clause (b) of Clause 14 of the aforesaid Guidelines provides that whenever there is any deviation from these Guidelines, the same could be done with prior approval of the Commission. Further, sub-clause (c) of the Clause 14 of the aforesaid Guidelines provides that the procurer shall procure the short term power as per the plan approved by the Commission.

Clause 15 of the said Guidelines provides that for Procurement of Power on short-term basis a single stage bid process by inviting Request for Proposal (RFP) shall be adopted. Further, it is also provided that the procurer/distribution licensee shall publish an RFP notice in at least 2 national newspapers and upload the same on the company's website to accord wide publicity. The bidding shall necessarily be by way of competitive bidding.

Sub-Clause (a) of Clause 16 of the aforesaid Guidelines provides that the Standing Committee needs to be constituted for evaluation of RFP bids who shall provide appropriate certificate on conformity of the bid process evaluation to the provisions of RFP document and conformity of the bid process to these guidelines to the Commission.

Sub-Clause (b) of Clause 16 of the aforesaid Guidelines provides that if the quantum of power procured and tariff determined are within the overall approval granted by the Commission in the Aggregate Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the Commission.

- 4.3 We note that the Petitioner had published the tender notice on 9th February, 2021 in the Business Standard (All India edition) and Mint (All India edition) newspapers for procurement of 50 MW RTC power from 1st April, 2021 to 30th September, 2021 and 50 MW RTC power during the period 1st October, 2021 to 31st March, 2022. Thus, the

tender notice issued by the Petitioner in 2 (two) newspapers is in compliance with Clause 15 of the Guidelines for Procurement of Power issued by the Commission.

4.4 As per the aforesaid Public Notice, it transpires that the bidders have to submit their offers on MSTC's website (DEEP Portal). The Petitioner has also uploaded the RFP and draft PPA on their website. The last date of submission of bids was 13th February, 2021.

4.5 We further note that the Petitioner has constituted a Standing Committee as per Clause 6 of the Guidelines for Procurement of Power by the Distribution Licensee issued by MoP. The Standing Committee comprises of following persons:

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| 1. Shri Naimesh Shah, Vice President | Chairman |
| 2. Shri Mayank Gupta, Vice President | Member |
| 3. Shri Dhiraj Bengani, General Manager | Member |

The Petitioner submitted a certificate dated 26th February, 2021 of Standing Committee. The certificate dated 26th February, 2021 issued by the Standing Committee is reproduced below:-

"..... Torrent Power Limited (TPL) decided to invite bids for RTC Power for its license areas of Dahej SEZ and Dholera SIR for following quantity and duration vide its tender no "Torrent Power Limited/Short/20-21/ET/88" dated 8th February 2021:

<i>Requisition</i>	<i>Period</i>	<i>Time Slot</i>	<i>Total Quantum (MW)</i>
<i>1</i>	<i>01-04-2021 to 30-09-2021</i>	<i>00 Hrs to 2400 Hrs</i>	<i>50</i>
<i>2</i>	<i>1-10-2021 to 31-03-2022</i>	<i>00 Hrs to 2400 Hrs</i>	<i>50</i>

Publication of tender

TPL issued tender on DEEP portal on MSTC website on 8th February 2021 and published the tender notice on 9th February 2021 for procurement of Power on short term basis during 1st April 2021 to 31st March 2022 in following newspapers: