

**BEFORE THE GUJARAT ELECTRICITY REGULATORY
COMMISSION
GANDHINAGAR**

Petition No. 1969/2021.

In the Matter of:

Petition in accordance with the GERC (Conduct of Business) Regulations, 2004 for approval and necessary direction of the GERC with regard to the Procurement of Power for meeting the base load requirement by extension of existing PPA with M/s PTC India Limited for supply of power under Medium Term Open Access from M/s Adani Power – Mundra.

Petitioner : GIFT Power Company Limited,
Represented By : Shri Arvind Kumar Rajput, Shri Prashant
Dadheech and Shri Rakesh Inala

CORAM:

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

Date: 16/06/2021.

ORDER

1. This Petition has been filed seeking permission for procurement of power through MoU route as specified in 'Guidelines for Procurement of Power by Distribution Licensees'.
2. Facts mentioned in the Petition are detailed below:
 - 2.1. The Petitioner, GIFT Power Company Limited (GIFT PCL) is a 100% subsidiary company of Gujarat International Finance TEC-City Company Limited incorporated under the provisions of the Companies Act 1956 having its registered office at EPS - Building No. 49A, Block 49, Zone 04, Gyan Marg, GIFT City, Gandhinagar. GIFT PCL is a distribution licensee for the supply of electricity in the GIFT City area. The Commission has granted the license for distribution of electricity vide its Order dated 06.03.2013 in the License Application No. 1/2012

to GIFT Power Company Limited for catering the power requirement of GIFT City which includes both Special Economic Zone and DTA zone areas.

- 2.2. It is submitted that as per Section 86 (1) (b) of the Electricity Act, 2003, the State Commission shall regulate electricity purchase and procurement process of distribution licensees and its 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.
- 2.3. The Commission has notified the 'Guidelines for Procurement of Power by Distribution Licensees in the State of Gujarat' vide Notification No. 2 of 2013 dated 14.08.2013 in terms of the powers conferred under Section 86 (1) (b) of the Electricity Act 2003.
- 2.4. The Petitioner as a distribution licensee had initiated Power Procurement through Open Access from 10.05.2019 onwards, by having a mix of Power Purchase Agreement and Power Exchange transactions. The details of present power procurement arrangement are as follows:
 - (a) Petitioner has executed a Power Purchase Agreement (PPA) through MoU route after approval from the Commission with M/s PTC India Limited for supply of 1.5 MW Round-the-Clock (RTC) power on medium term basis from M/s Adani Power-Mundra in order to meet the base load requirement of the license area.
 - (ii) Petitioner also procures power from Power Exchanges as and when need arises for meeting the unanticipated and peak load requirement.
- 2.5. It is submitted that GIFT City is a greenfield area and still in development stage, the demand is increasing in a phased manner and load is yet to be fully stabilized. Considering the nature of licensee area and demand growth, the Petitioner has estimated the base demand which is required to be tied up for a period of one year to two years.

- 2.6. It was observed that after rigorous demand analysis, the base demand is 2 MW which was 1.5 MW earlier and peak demand is reaching from 6 MW to 6.5 MW. The observations are based on present consumer demand and upcoming consumer demand as few prominent consumers are on the verge of beginning their operations. However, peak demand is dependent upon percentage of occupancy which has been impacted due to Covid-19 pandemic.
- 2.7. Based on the Demand Analysis, the Petitioner decided to increase the present quantum of PPA from 1.5 MW to 2.0 MW as the base load requirement has also been increased from 1.5 MW to 2.0 MW. The Petitioner is accordingly planning to extend the duration of existing Power Purchase Agreement for further period of one year or two years with M/s PTC India Limited for supply of 2 MW.
- 2.8. The salient features of the existing PPA filed with the Petition are as under:
- (i) The Contracted Quantum was 1.5 MW Round the Clock (RTC) (00:00 Hours to 24:00 Hours) Power from 01.06.2020 to 31.05.2021 under Medium Term Open Access (MTOA) Booking.
 - (ii) The Delivery Point for the contracted quantum is GETCO Periphery.
 - (iii) The Tariff at Delivery Point is Rs. 3.38perKwh.
 - (iv) For the supply of power during a month, PTC raises monthly bills for the power supplied in previous month based on the daily schedule indicative in Gujarat SLDC portal.
 - (v) The parties can mutually agree to extend the period of agreement or can be modified vide an amendment only by mutual consent.
- 2.9. The recent price of RTC bids discovered on DEEP Portal for power procurement by various utilities submitted by the Petitioner are as under:

Sr. No.	Distribution Licensee	Delivery Point	Period of Supply	Total Quantum (MW)	Discovered Price (Rs./Unit)
1	KRC Infrastructure and Projects Pvt Ltd.	Maharashtra Periphery	01.04.2021 to 30.06.2021	4	3.39
2	Tata Power Company Limited, Mumbai	Maharashtra Periphery	01.04.2021 to 31.03.2022	100	3.27

3	Torrent Power Limited	GETCO Periphery	01.04.2021 to 31.03.2022	50	3.69
4	GUVNL	GETCO Periphery	01.03.2021 to 31.07.2021	700	2.81 to 3.10
5	Jawaharlal Nehru Port Trust	Maharashtra Periphery	01.02.2021 to 31.12.2021	2	3.60
6	Laxmipati Balaji Supply Chain Management Ltd., Maharashtra	Delivered	01.12.2020 to 30.11.2021	1	4.47
7	Mangalore Special Economic Zone Ltd., Karnataka	Delivered	01.11.2020 to 30.04.2021	2	3.82
8	Laxmipati Balaji Supply Chain Management Ltd., Maharashtra	Delivered	01.10.2020 to 30.09.2021	1	5.64
9	EON Kharadi Infrastructure Pvt Ltd., Maharashtra	Delivered	01.10.2020 to 30.09.2021	3	4.13
10	EON Kharadi Infrastructure Pvt Ltd., Maharashtra	Delivered	01.10.2020 to 30.09.2021	7	3.97

2.10. It is submitted that from the above table, it is observed that the power purchase prices discovered in recent tenders on DEEP portal are in the range of Rs. 3.27 – Rs. 5.64 per unit, except for GUVNL’s tender, wherein the prices are in the range of Rs. 2.81 – Rs. 3.10 per unit. It was also submitted that for quantum of 50 MW and above, the prices discovered are less than Rs. 3.69 per unit whereas in case of low quantum of power i.e., 10 MW and below, the lowest price discovered is Rs. 3.39 per unit.

2.11. It is submitted that the power prices discovered on power exchange platform are extremely volatile and are hovering in the range of Rs. 3.50 to Rs. 4.60 per unit. The average market clearing price discovered on IEX from January’ 2021 to March’ 2021 is Rs. 3.55 per unit at regional periphery.

2.12. It is further submitted that based on the above facts and after evaluating various parameters like reliability and commercial prudence, the Petitioner has decided to continue as per present power procurement arrangement and extend the duration

of the contract for further period of one year or two years as per the existing PPA with M/s PTC India via amendment for supply of 2 MW with PTC India Limited from M/s Adani Power -Mundra on the same terms and conditions. The existing tariff is of Rs. 3.38 per unit at GETCO periphery of existing PPA is comparatively lower than the prices discovered during the recent bids auctioned at DEEP portal for power procurement by various similar distribution licensees and even compared from Power Exchanges. However, the Petitioner will try to negotiate with PTC/Adani for reduction of PPA rate in comparison to the existing tariff and the same will be communicated to the Commission after execution of PPA.

- 2.13. It is further submitted the Clauses 6 and 17 of 'Guidelines for Procurement of Power by Distribution Licensees' notified by the Commission vide Notification No. 2 of 2013 dated 14.08.2013 are as under:

“

6. The Distribution Licensee shall normally endeavor to procure power through competitive bidding. In case of any proposal for procurement of power through MoU route, the Distribution Licensee shall obtain prior approval of the GERC.

.....

17. The GERC may permit any Distribution Licensee to make purchase of power without requiring that such purchase be subject to Competitive/Open Process in the event of an unforeseen and an exceptional situation. However, the Distribution Licensee shall not, thereby, be exempted from demonstrating the need and the reason for departure from a competitive process together with the economic justification for the purchase, the means, whereby, in the absence of competition, the Distribution Licensee proposes to secure the best possible terms and such other information as the GERC may require.”

- 2.14. It is submitted that as per above Clauses of the Guidelines, the distribution licensee shall obtain prior approval of the Commission for procurement of power through MoU route. It also states that the Commission may permit the distribution licensee to undertake purchase of power without competitive bidding by specifying economic justification to secure the best possible terms.
- 2.15. Accordingly, the Petitioner has prayed to approve the Power Purchase Arrangement for purchase of power through MoU route by extending the existing

PPA with due amendments in accordance with the Clauses 6 and 17 of the 'Guidelines for Procurement of Power by Distribution Licensees' issued by the Commission.

3. The present matter was listed for hearing on 17.05.2021 through virtual hearing by Video Conferencing on account of prevailing COVID 19 pandemic.
4. Shri Arvind Kumar Rajput and Shri Rakesh Inala appearing on behalf of the Petitioner GIFT Power Company Limited while reiterating the above aspects of the Petition submitted that:
 - 4.1. Petitioner has executed a Power Purchase Agreement through MoU route after approval from the Commission with M/s PTC India Limited for supply of 1.5 MW Round-the-Clock (RTC) power at the rate of Rs. 3.38 per unit on medium term basis from M/s Adani Power-Mundra in order to meet the base load requirement of the license area. The delivery point under the said PPA is GETCO periphery and considering the GETCO transmission charges & losses of around 20 paise per unit & 12-14 paise per unit respectively, the landed cost of power works out to Rs. 3.75 per unit.
 - 4.2. Petitioner carried out rigorous demand analysis of present consumer demand as well as upcoming consumer demand including few prominent consumers who are on the verge of beginning their operations and based on the same it emerged that, the base demand is around 2 MW which was earlier 1.5 MW and peak demand is reaching from 6 MW to 6.5 MW depending upon occupancy percentage, which is also impacted due to COVID-19 pandemic.
 - 4.3. Accordingly, considering increase in base load demand from 1.5 MW to 2 MW, reliability as well as based on commercial & economic prudence, the Petitioner has decided to increase the present quantum of PPA from 1.5 MW to 2.0 MW and also extend the duration of existing Power Purchase Agreement for further period of one year with M/s PTC India Limited for supply of 2 MW and has filed the present Petition seeking approval of the Commission.

- 4.4. As per recent price of RTC bids discovered on DEEP Portal for power procurement by various utilities, tariff discovered is less than PPA rate of Rs. 3.38 per unit in case of two utilities only i.e. GUVNL (in range of Rs. 2.81 – 3.10 per unit for 700 MW) and Tata Power Company Limited (Rs. 3.27 per unit for 100 MW). Also, one of the reason for such lower tariff is that, for any distribution licensees having long term or medium-term agreement/contract with Inter-State entity, the charges for short term or medium term almost waived off in terms of CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 from November 2020. Even, in the bids invited by Torrent Power Limited the tariff discovered is Rs. 3.69 per unit quoted by L1 bidder M/s Adani Power at GETCO periphery for power supply for period from 01.04.2021 to 31.03.2021.
- 4.5. Further, the tariff discovered on DEEP portal is in the range of Rs. 3.27 – Rs. 5.64 per unit and comparing with average tariff of Rs. 3.59 per unit at regional periphery of Power Exchanges for the period between January to April and accounting the additional transmission charges and losses of around Rs. 1.20 - 1.50 per unit which the landed cost at GIFT Periphery comes to around Rs. 4.79 per unit. Therefore, after evaluating various parameters and economic consideration to secure the best possible terms, the Petitioner wants to continue with present power procurement arrangement by extending the PPA for further period of one year with M/s PTC India for supply of 2 MW from M/s Adani Power – Mundra at the existing tariff of Rs. 3.38 per unit at GETCO Periphery.
- 4.6. Also, in terms of Section 86(1)(b) of the Electricity Act, 2003, the Commission has powers to regulate electricity purchase and procurement process of distribution licensees for distribution and supply including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreement. Further, as per Clause 6 of 'Guidelines for Procurement of Power by Distribution Licensees' notified by the Commission vide Notification No. 2 of 2013 dated 14.08.2013, the distribution licensee is required to normally endeavor to procure power through competitive bidding and in case of any proposal for procurement of power through MoU route, prior approval of the Commission to be obtained. Accordingly, since last two years the Petitioner has taken prior approval of the Commission for procurement of power through MoU

route. He further referred Clause 17 of the said Notification and submitted that the best economic power purchase is through existing PPA because even if the Petitioner undertakes competitive bidding process, the tariff for procurement of power might be higher than the rate of existing PPA and therefore, the Commission may approve procurement of power through MoU route by extending and allowing extension of existing PPA for period of one year and quantum of 2 MW.

- 4.7. In response to query as to why the Petitioner is proposing extension of existing PPA for only one year and not considering to extend the same for longer duration of 2-3 years for load demand of 2 MW, the representative of the Petitioner submitted that they had approached and discussed regarding the possibility of extension of more than one year with M/s PTC India Limited but it was informed that the generators are not ready to tie up capacity beyond 1 year and are not agreeing for two years. However, the Petitioner will once again explore the possibility for the same.
- 4.8. With regard to Clause 11 of the existing PPA pertaining to 'Dispute Resolution Mechanism' providing for 'Arbitration' in contravention of Section 86(1)(f), Shri Arvind Rajput agreed that the said Clause needs to be aligned with the provision of Section 86(1)(f) and the Petitioner will ensure that the same is suitably changed/amended in the PPA / Supplemental PPA to be executed between the Petitioner and M/s PTC India Limited.
5. Pursuant to the aforesaid hearing, the Petitioner has filed additional submissions vide affidavit dated 02.06.2021 as under:
 - 5.1. The Petitioner approached M/s PTC India for extending the existing PPA with feasibility of extension for 2 years and modification of Clause 11 as directed by the Commission but it was conveyed by M/s PTC India that the generator M/s Adani Power-Mundra has denied to supply the power further at existing rate due to increase in coal prices and other uncertainties in the market and the relevant communication dated 21.05.2021 regarding denial of extending the PPA is filed.

- 5.2. Since, the PPA extension was denied at existing tariff, the Petitioner informed M/s PTC India to search for another generator who shall supply 2 MW RTC for a period of 1 year or 2 years at a competitive rate. Accordingly, M/s PTC India after exploring other options vide communication dated 28.05.2021 conveyed to the Petitioner that M/s Phillips Carbon Black Limited, Mundra Unit has agreed to offer 2 MW RTC power for a period of 1 year at the rate of Rs. 3.30 per unit and at the rate of Rs. 3.40 per unit for a period of 2 years starting from 01.07.2021. It is submitted that M/s Phillips Carbon Black being a Captive Generator has agreed to supply power to the Petitioner at rate lower than M/s Adani Power due to prevailing low clearing prices at IEX and other uncertainties in the market due to COVID-19 outbreak.
- 5.3. The Petitioner has exercised the commercial prudence of the offer received from M/s PTC India and it economical to execute a PPA for a period of 1 year at the rate of Rs. 3.30 per unit rather than executing for a period of 2 years based on the following cost details calculated for a PPA period of 1 year viz-a-viz 2 years:

Particulars	PPA For 1 year		PPA For 2 years	
	100% Availability	95% Availability	100% Availability	95% Availability
Quantum	2 MW	2 MW	2 MW	2 MW
PPA Rate (Rs/KWh)	₹ 3.30	₹ 3.30	₹ 3.40	₹ 3.40
Total Units (KWh) Purchased in a year	17,520,000	16,644,000	17,520,000	16,644,000
Total Power Cost for a year (in Rs. Lakhs)	₹ 578.16	₹ 549.25	₹ 595.68	₹ 565.90
Cost Saving if PPA is tied for 1 year instead of 2 years (in Rs. Lakhs)	₹ 17.52	₹ 16.64	N.A	N.A

- 5.4. Based on the above table and the PPA rate being competitive, the Petitioner finds it prudent to execute the Power Purchase Agreement with M/s PTC India for a period of 1 year at the rate of Rs. 3.30 per unit and Draft Power Purchase Agreement to be executed by Petitioner with M/s PTC India for supply of 2 MW RTC for a period of 1 year at a rate of Rs. 3.30 per unit from the ultimate seller M/s Phillips Carbon Black–Mundra is filed. Accordingly, the power purchase of 2 MW

RTC through M/s PTC India Limited from ultimate seller M/s Phillips Carbon Black Limited for a period starting from 01.07.2021 to 30.06.2022 at a rate of Rs. 3.30 per unit be approved by the Commission.

6. We have considered the submissions made by the Petitioner. The Petitioner has filed the present Petition seeking approval for procurement of 2 MW power for a period of one year / two year by amending and extending the existing PPA dated 04.05.2020 executed earlier through MoU route in terms of Section 86(1)(b) and provisions of 'Guidelines for Procurement of Power by Distribution Licensees' notified by the Commission vide Notification No. 2 of 2013. Subsequently, Petitioner vide affidavit dated 02.06.2021 has submitted that M/s PTC India was approached for extending the existing PPA with feasibility of extension for 2 years and modification of Clause 11 as directed by the Commission but M/s PTC India conveyed that the generator M/s Adani Power-Mundra has denied to further supply the power at existing rate due to increase in coal prices and other uncertainties in the market. Hence, the Petitioner asked M/s PTC India to lookout for another generator who can supply 2 MW RTC for a period of 1 year or 2 years at a competitive rate and after exploring various options M/s PTC India vide communication dated 28.05.2021 conveyed the Petitioner that M/s Phillips Carbon Black Limited, Mundra Unit has agreed to offer 2 MW RTC power for a period of 1 year at the rate of Rs. 3.30 per unit and at the rate of Rs. 3.40 per unit for a period of 2 years starting from 01.07.2021. Considering commercial prudence on basis of cost saving in signing the PPA for period of 1 year instead of 2 years and the tariff of Rs. 3.30 per unit being lower than Rs. 3.38 per unit, the Petitioner has vide affidavit dated 02.06.2021 submitted that the power purchase of 2 MW RTC through M/s PTC India Limited from ultimate seller M/s Phillips Carbon Black Limited for a period starting from 01.07.2021 to 30.06.2022 at a rate of Rs. 3.30 per unit be approved by the Commission.

- 6.1. We 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.

- 6.2. The Petitioner is seeking approval for procurement of power for distribution and supply within its license area and therefore, it is necessary to refer the relevant provisions of Section 86 (1) (b) of the Electricity Act, 2003 and provisions of the 'Guidelines for Power Procurement by the Distribution Licensee' issued by the Commission vide Notification No. 02 of 2013 dated 14.08.2013. Section 86 (1) (b) of the Electricity Act, 2003 reads as under:

“

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, the Commission has to regulate the power procurement of the Distribution Licensees, including the procurement process, the price at which electricity shall be purchased from the generating company or the Licensees or through other sources through agreement for purchase of power for distribution and supply within the State. Thus, it is apparent from the aforesaid provisions that the present Petition filed by the Petitioner is within the purview of the Commission's jurisdiction and in terms of the powers vested by the Electricity Act, 2003 and Regulations framed thereunder, the Commission decides to admit the Petition.

- 6.3. Clauses 6 and 17 of the 'Guidelines for Power Procurement by the Distribution Licensee' dated 14.08.2013 issued by the Commission are reproduced below:

“

6. The Distribution Licensee shall normally endeavor to procure power through competitive bidding. In case of any proposal for procurement of power through MoU route, the Distribution Licensee shall obtain prior approval of the GERC.

.....

17. The GERC may permit any Distribution Licensee to make purchase of power without requiring that such purchase be subject to Competitive/Open Process in the event of an unforeseen and an exceptional situation. However, the Distribution Licensee shall not, thereby, be exempted from demonstrating the need and the reason for departure from a competitive process together with the economic justification for the purchase, the means, whereby, in the absence of competition, the Distribution Licensee proposes to secure the best possible terms and such other information as the GERC may require.

.....”

As per aforesaid Clause 6 of the guidelines, in case, if the distribution licensee desires to procure the power through MoU route other than competitive bidding, then the Distribution Licensee needs to obtain prior approval of the Commission for such power procurement.

Clause 17 of the aforesaid Guidelines provides that the Commission may grant permission to the Distribution Licensee to procure power without following Competitive/Open Process in the event of an unforeseen and an exceptional situation, subject to the Distribution Licensee demonstrating the need and reason for such departure from the competitive process together with the economic justification for the purchase. It also states that in the absence of competition, the Distribution Licensee proposes to secure the best possible terms and such other information as the Commission may require.

- 6.4. We note that the Petitioner GIFT Power Company Limited as distribution licensee has started to procure the power through Open Access from 10.05.2019 for distribution and supply within its SEZ and DTA license area. The Petitioner executed a Power Purchase Agreement dated 10.05.2019 with M/s PTC India through MoU route for supply of 1.5 MW RTC power on medium term basis from M/s Adani Power - Mundra to meet the base load requirement of its licensee area. The Petitioner is also procuring power from Power Exchange on ‘As and when’ required basis for meeting its unanticipated and peak load requirement. We also note that the PPA also provides that the Petitioner and M/s PTC India Limited may mutually agree to extend the period of agreement by way of written addendum. Accordingly, the parties executed the new PPA dated 04.05.2020 for extension of

period from 01.06.2020 to 31.05.2021 for 1.5 MW RTC at the tariff of Rs. 3.38 per unit under Medium Term Open Access at GETCO periphery which is filed with the present Petition.

- 6.5. We also note that since the licensee area of the Petitioner is greenfield area and still in development stage, its demand is increasing in a phased manner and accordingly as per Petitioner's submission its base demand has increased from 1.5 MW to 2 MW and peak demand is also reaching around 6 MW to 6.5 MW. The reason for such proliferation is due to the demand of its existing consumers and demand of its forthcoming consumers likely to start their operations. Therefore, the Petitioner decided to increase its base load requirement from 1.5 MW RTC power to 2 MW RTC Power and to further extend the duration of existing Power Purchase Agreement dated 04.05.2020 with M/s PTC India for supply of 2 MW RTC power at the tariff of Rs. 3.38 per unit at GETCO periphery under Medium Term Open Access because even after factoring the GETCO transmission charges & losses of around 20 paise per unit & 12-14 paise per unit respectively, the landed cost of power works out to Rs. 3.75 per unit for the Petitioner.
- 6.6. According to the submissions made by the Petitioner, the tariff discovered on DEEP portal is in the range of Rs. 3.27 – Rs. 5.64 per unit and comparing with average tariff of Rs. 3.59 per unit at regional periphery of Power Exchanges for the period between January to April and accounting the additional transmission charges and losses of around Rs. 1.20 - 1.50 per unit, the landed cost at GIFT Periphery comes to around Rs. 4.79 per unit. It is further submitted that as per recent price of RTC bids discovered on DEEP Portal for power procurement by various utilities, tariff discovered is less than PPA rate of Rs. 3.38 per unit in case of two utilities only i.e., GUVNL (in range of Rs. 2.81 – 3.10 per unit for 700 MW) and Tata Power Company Limited (Rs. 3.27 per unit for 100 MW). Even, in the bids invited by Torrent Power Limited, the tariff discovered is Rs. 3.69 per unit quoted by L1 bidder M/s Adani Power at GETCO periphery for power supply for period from 01.04.2021 to 31.03.2021.
- 6.7. Therefore, after evaluating various parameters and economic consideration to secure the best possible terms, the Petitioner decided continuing with existing power procurement arrangement by extending the PPA for further period of one

year with M/s PTC India for supply of 2 MW from M/s Adani Power – Mundra at the existing tariff of Rs. 3.38 per unit at GETCO Periphery.

- 6.8. We note that, although in the Petition, it is stated that the extension proposed by the Petitioner be for one year or two years but during the hearing of the matter, the submissions were made by the representative of the Petitioner for one year only. Moreover, in response to why the Petitioner is proposing extension of existing PPA for only one year and not considering to extend the same for longer duration of 2-3 years with consideration of load demand of 2 MW, the representative of the Petitioner submitted that they had approached and discussed regarding the possibility of extension of more than one year with M/s PTC India Limited but it was informed that the generators are not ready to tie up capacity beyond 1 year and are not agreeing for two years. However, it was submitted that the Petitioner will once again explore the possibility for the same.
- 6.9. With regard to Clause 11 of the existing PPA pertaining to ‘Dispute Resolution Mechanism’ providing for ‘Arbitration’ in contravention of Section 86(1)(f), representative of the Petitioner agreed that the said Clause needs to be aligned with the provision of Section 86(1)(f) and accordingly, the Petitioner will ensure that the same is suitably changed/amended in the PPA / Supplemental PPA to be executed between the Petitioner and M/s PTC India Limited.
- 6.10. We note that pursuant to the hearing and in response to above, the Petitioner has filed additional submissions vide affidavit dated 02.06.2021 submitting that the Petitioner approached M/s PTC India for extending the existing PPA with feasibility of extension for 2 years and modification of Clause 11 of the PPA, but it was conveyed by M/s PTC India that the generator M/s Adani Power-Mundra has denied to supply the power further at existing rate due to increase in coal prices and other uncertainties in the market. We also note that the Petitioner therefore, informed M/s PTC India to search for another generator who shall supply 2 MW RTC for a period of 1 year or 2 years at a competitive rate since the PPA extension was denied at existing tariff by M/s Adani Power. In response, M/s PTC India explored various options conveyed to the Petitioner vide communication dated 28.05.2021 that M/s Phillips Carbon Black Limited, Mundra Unit has being a Captive Generator agreed to offer 2 MW RTC power for a period of 1 year at the

rate of Rs. 3.30 per unit and at the rate of Rs. 3.40 per unit for a period of 2 years starting from 01.07.2021 i.e. at tariff lower than M/s Adani Power.

- 6.11. According to the Petitioner, it is economical to execute a PPA for a period of 1 year at the rate of Rs. 3.30 per unit rather than executing the same for a period of 2 years since the cost saving to the Petitioner is Rs. 17.52 lakhs for PPA period of 1 year at the rate of Rs. 3.30 per unit as against Rs. 16.64 lakhs for PPA period of 2 years at the rate of Rs. 3.40 per unit. Therefore, the Petitioner exercising commercial prudence of the offer received from M/s PTC India has prayed for allowing the Petitioner to execute Power Purchase Agreement with M/s PTC India for a period of 1 year on medium term basis at the rate of Rs. 3.30 per unit for supply of 2 MW RTC from the ultimate seller M/s Phillips Carbon Black–Mundra and has also filed the Draft Power Sale Agreement to be executed between the parties.
- 6.12. We note that, earlier the Petitioner after taking prior approval of the Commission for procurement of power through MoU route as per the Clause 6 of the Notification No. 2 of 2013 dated 14.08.2013 had executed PPA with M/s PTC India for supply of 1.5 MW RTC power on medium term basis and thereafter, the same was also extended for period from 01.06.2020 to 31.05.2021 vide PPA dated 04.05.2020. Although, the present Petition was filed seeking approval for procurement of 2 MW power for a period of one year / two year by amending and extending the existing PPA dated 04.05.2020 executed earlier through MoU route with M/s PTC India, but subsequently vide additional affidavit dated 02.06.2021, the Petitioner has prayed for allowing the Petitioner to execute Power Purchase Agreement with M/s PTC India for a period of 1 year on medium term basis at the rate of Rs. 3.30 per unit for supply of 2 MW RTC from the ultimate seller M/s Phillips Carbon Black–Mundra.
- 6.13. We note that the tariff of Rs. 3.30 per unit for supply of 2 MW RTC by executing Power Purchase Agreement with M/s PTC India for a period of 1 year on medium term basis from the ultimate seller M/s Phillips Carbon Black–Mundra is lower compared to the tariff of Rs. 3.38 per unit for which the Petitioner has prayed in the Petition. Moreover, the said tariff of Rs. 3.30 per unit with delivery at GETCO periphery is lower compared with average tariff of Rs. 3.59 per unit at

regional periphery of Power Exchanges for the period between January to April. Further, as per the submissions of the Petitioner, after accounting for the additional transmission charges and losses of around Rs. 1.20 - 1.50 per unit over and above the average tariff of Rs. 3.59 per unit at regional periphery, the landed cost at GIFT Periphery comes to around Rs. 4.79 per unit.

- 6.14. We also note that, even the tariff discovered on DEEP portal is in the range of Rs. 3.27 – Rs. 5.64 per unit while the tariff of Rs. 3.30 per unit for which approval is sought by the Petitioner is less except the tariff discovered in case of two utilities i.e. GUVNL (in range of Rs. 2.81 – 3.10 per unit for 700 MW) and Tata Power Company Limited (Rs. 3.27 per unit for 100 MW). Even, in the bids invited by Torrent Power Limited, the tariff discovered is Rs. 3.69 per unit quoted by L1 bidder.
- 6.15. Thus, from the above it emerges that the tariff of Rs. 3.30 per unit for procurement of power by the Petitioner by executing Power Purchase Agreement with M/s PTC India for a period of 1 year on medium term basis for supply of 2 MW RTC from the ultimate seller M/s Phillips Carbon Black–Mundra prayed by the Petitioner is less when compared with recent price of RTC bids discovered on DEEP Portal for power procurement by various utilities, except in case of two utilities as well as the average tariff of Rs. 3.59 per unit at regional periphery of Power Exchanges for the period between January to April. Therefore, the prayer of the Petitioner for allowing the Petitioner to execute Power Purchase Agreement with M/s PTC India for a period of 1 year on medium term basis at the rate of Rs. 3.30 per unit for supply of 2 MW RTC from the ultimate seller M/s Phillips Carbon Black–Mundra made through additional affidavit dated 02.06.2021 after evaluating the situation and based on commercial prudence appears to be reasonable. Hence, we decide to approve the same and allow the Petitioner to execute Power Purchase Agreement with M/s PTC India for a period of 1 year on medium term basis at the rate of Rs. 3.30 per unit for supply of 2 MW RTC from the ultimate seller M/s Phillips Carbon Black–Mundra.
- 6.16. We note that Clause 19 titled ‘ Arbitration and Governing Law’ of the Draft Power Sale Agreement filed by the Petitioner through additional affidavit dated 02.06.2021 reads as under:

“

19. ARBITRATION AND GOVERNING LAW

Any dispute, difference or disagreement between the parties arising under or in relation to this agreement, including (but not limited to) any dispute, difference or disagreement as to the meaning of the terms of this contract or failure to agree on any matter required to be agreed upon under this agreement shall, if possible, be resolved by negotiation and mutual agreement by the parties within 30 days.

In the event that such dispute or difference between the Parties are not settled through mutual discussions, then dispute shall be adjudicated by GERC upon the written request of either party hereto in accordance with the Electricity Act-2003, Rules, Regulations of GERC amended from time to time.

Should no agreement be reached, then the dispute shall be settled by arbitration upon the written request of either party hereto in accordance with the rules of conciliation and arbitration of the Indian Arbitration and Conciliation Act 1996, as amended from time to time.

During the period of submission to mediation and thereafter until the dispute is settled the parties shall, continue to perform all their obligations under this agreement without prejudice to final adjustment in accordance with such award.

This Agreement and the rights, privileges, duties and obligations of the parties herein under shall be construed to be in accordance with the governing law in the State of Gujarat, India.

.....”

- 6.17. Para 3 and 4 of the above Clause provide regarding Arbitration and Conciliation proceedings whereas Para 2 provides that in case any dispute or difference between the Parties are not settled through mutual discussions, then dispute shall be adjudicated by GERC upon the written request of either party in accordance with the Electricity Act-2003.

6.18. In this regard, it is necessary to refer Section 86 of the Electricity Act which confers the power and jurisdiction of the Commission, is reproduced as under:

“

86. Functions of State Commission, --

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

(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;

.....

(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;

.....”

As per the aforesaid provisions, the Commission has to regulate the power procurement of the Distribution Licensees, including the procurement process, the price at which electricity shall be purchased from the generating company or the Licensees or through other sources through agreement for purchase of power for distribution and supply within the State. As per Section 86(1)(f) of the Electricity Act 2003, State Electricity Regulatory Commission is empowered to adjudicate upon disputes between licensees and generating companies, and inter-se between the licensees and generating companies.

6.19. We note that the Commission vide Order dated 06.03.2013 in License Application No. 1 of 2012 has granted distribution license to the Petitioner. Accordingly, in the present case, the Petitioner is distribution licensee and M/s PTC India is an Inter-

State trading licensee. On perusal of above Clause 19 of the draft Draft Power Sale Agreement, it transpires that any dispute, difference or disagreement between the parties arising under the PPA, including but not limited to any dispute, difference or disagreement as to the meaning of the terms of PPA or failure to agree on any matter required to be agreed upon under the agreement shall, if possible, be resolved by negotiation and mutual agreement by the parties within 30 days. However, if such dispute or difference between the Parties are not settled through mutual discussions, then as per Para 2 of aforesaid Clause, the dispute to be adjudicated by GERC whereas as per Para 3 the same to be settled by Arbitration.

- 6.20. We therefore decide that the above para 3 & 4 of Clause 19 of the Draft Power Sale Agreement cannot be approved. We direct the Petitioner that the aforesaid para 3 & 4 of Clause 19 of the Draft Power Sale Agreement need to be removed and the said Clause should be aligned with the provision of Section 86(1)(f) of the Electricity Act, 2003. The Petitioner will ensure that the same is suitably changed/amended in the Power Sale Agreement / PPA to be executed between the Petitioner and M/s PTC India Limited by removing para 3 & 4 of the Clause 19 of the Draft Power Sale Agreement.
- 6.21. We note that the Ministry of Power, Government of India vide Notification dated 22.02.2021 has notified the Electricity (Late Payment Surcharge) Rules, 2021. The relevant provision of the said Rules is reproduced as under:

“.....

2. Application. - These rules shall be applicable for payments to be made in pursuance of---

(a) Power Purchase Agreements, Power Supply Agreements and Transmission Service Agreements, in which tariff is determined under section 62 of the Act; and

(b) such Power Purchase Agreements, Power Supply Agreements and Transmission Service Agreements that become effective after these rules come into force, in which tariff is determined under section 63 of the Act.

.....”

We note that there are no submissions by the Petitioner with regard to aforesaid Rules. However, from the above, it transpires that the said Electricity (Late

Payment Surcharge) Rules, 2021 are applicable to the Power Purchase Agreement which become effective after the date of its Notification i.e., 22.02.2021. Accordingly, the Petitioner shall execute the Power Purchase Agreement with M/s PTC India Limited by incorporating the above provision in the PPA, in compliance with the stipulations of the Electricity (Late Payment Surcharge) Rules, 2021.

7. We direct the Petitioner that the copy of the duly executed PPA in conformity with our above decisions shall be submitted to the Commission within period of 30 days, on Affidavit stating that the PPA is signed and executed by the Petitioner as approved by the Commission in this Order.
8. We order accordingly.
9. With this Order, the present Petition stands disposed of.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.

Date: 16/06/2021.