

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1982 of 2021.

In the Matter of:

Petition for approval of Short-Term Arrangement of power pursuant to selection of successful bidders through DEEP Portal of Ministry of Power, Government of India and the Commission's Guidelines dated 14.08.2013 for the period from 15.03.2021 to 30.06.2021.

Petitioner	:	Gujarat Urja Vikas Nigam Limited (GUVNL)
Represented By	:	Shri K. P. Jangid, Shri Sanjay Mathur and Shri M.P. Naik

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 13/07/2021.

ORDER

1. The present Petition has been filed by the Petitioner seeking following reliefs:
 - (i) To approve the Short-Term Power Procurement Arrangement by the Petitioner and adopt the tariff discovered through transparent e-bidding process on DEEP Portal, Government of India;
 - (ii) To grant exemption to the Petitioner for seeking specific approval for Procurement of Power and adoption of tariff towards such Short-term

arrangement to provide uninterrupted, economical power to their electricity consumers.

- (iii) To allow the Petitioner to initiate the bids & tie-up power through DEEP Portal as per Ministry of Power Guidelines in order to meet the future shortfall of require power as per Annual Revenue Requirement (ARR) under intimation to the Commission.

2. The brief facts mentioned in the Petition are as under:

- 2.1 The Petitioner GUVNL is a company incorporated under the Companies Act, 1956 and deemed trading licensee and is the successor to the functions of the bulk purchase and bulk supply of electricity under taken by erstwhile Gujarat Electricity Board. The Petitioner purchases electricity for and on behalf of the State-owned distribution Licensees.
- 2.2 Ministry of Power (MoP), Government of India on 30.03.2016, has notified the “Guidelines for Short Term Procurement of Power by Distribution Licensees through Tariff based Bidding Process”.
- 2.3 The Petitioner on behalf of its subsidiary Distribution Companies has entered into long term arrangement with various Generators to meet the power demand of the consumers of aforesaid distribution licensees. The present power tie up by the Petitioner from conventional sources is 17,665 MW which includes Gas based capacity of 2645 MW and around 5900 MW from Renewable sources. As per the demand availability scenario for FY 2021-22, the anticipated peak demand of power of the State is expected to be in the range of 17500-19000 MW and peak demand of GUVNL is expected to be in the range of 15300-16500 MW.
- 2.4 Further Government of Gujarat has implemented Kisan Sarvodaya Yojana wherein power is being provided to farmers during day time which has resulted into an increase in peak load. Accordingly, the Petitioner is procuring power from other marginal generating stations and balance supply gap is presently being met through purchase of power from Power Exchange on daily/ Real time basis. However, during

the summer season, power exchange(s) may witness increase in prices due to increase in demand vis.-a-vis. generation along with uncertainty in clearance of volume. With the onset of summer, the thermal power stations may get frequent break-downs owing to rise in ambient temperature which may further aggravate the demand-availability deficit. Even, some imported coal based stations are facing coal shortage and their plants are placed under forced outage. In order to meet this demand, running of gas based generating stations are required to which GUVNL has long term PPAs. However, no gas has been tied up for next year due to current high RLNG prices in International Markets with which Generation cost is very costly.

- 2.5 It is submitted that in order to circumvent the price volatility in Short Term market on daily basis and for securing power on firm basis, the Petitioner had invited Bids and floated RFP for procurement of (i) 500 MW Round the Clock (RTC) power for the period 15.03.2021 to 30.06.2021 and published the Notice Inviting Tender in two National Newspapers viz., Indian Express and The Hindu India on 27.11.2020 and also uploaded the RFP & Notice Inviting Tender on the Petitioner's website in line with the Ministry of Power Guidelines.
- 2.6 The Petitioner vide letter dated 02.12.2020 has also informed the Commission regarding the Tender Floated by the Petitioner for tying up the power on Short term basis to meet the generation loss due to above cited reasons through DEEP Portal of Ministry of Power, Government of India in accordance with the Guidelines dated 30.03.2016.
- 2.7 The opening of bids and reverse auction was carried out on 06.01.2021. The details of prices discovered in the Reverse Auction and Quantum offered by various bidders and list of successful bidders selected under the Bucket Filling Procedure on DEEP Portal is stated as under:

i. For the period 15.03.2021 to 31.03.2021:

Sr	Trader/Generator	Quantity (MW)	Rate (Rs/Kwh)	Event Type
1.	PTC India Limited (Essar Power MP - 74494)	130	2.52	RA
2.	TPTCL (Jindal India Thermal Power - 74242)	250	2.52	RA
3.	PTC India Limited (JP Nigrie - 74490)	100	2.69	RA
4.	TPTCL (Jindal Power Limited- 74176)	20	2.73	RA
	Total	500		

ii. For the Period 01.04.2021 to 30.04.2021:

Sr	Trader/Generator	Quantity (MW)	Rate (Rs/Kwh)	Event Type
1.	TPTCL (Jindal India Thermal Power - 74242)	250	2.65	RA
2.	PTC India Limited (Essar Power MP - 74494)	230	2.65	RA
3.	PTC India Limited (JP Nigrie - 74490)	20	2.69	RA
	Total	500		

iii. For the Period 01.05.2021 to 31.05.2021:

Sr	Trader/Generator	Quantity (MW)	Rate (Rs/Kwh)	Event Type
1.	TPTCL (Jindal India Thermal Power - 74242)	250	2.65	RA
2.	PTC India Limited (Essar Power MP - 74494)	230	2.65	RA
3.	Manikaran Power Limited (DB Power Limited - 102094)	20	2.73	RA
	Total	500		

iv. For the Period 01.06.2021 to 30.06.2021:

Sr	Trader/Generator	Quantity (MW)	Rate (Rs/Kwh)	Event Type
1.	TPTCL (Jindal India Thermal Power - 74242)	250	2.65	RA
2.	PTC India Limited (Essar Power MP - 74494)	230	2.65	RA
3.	Manikaran Power Limited (DB Power Limited - 102094)	20	2.73	RA
	Total	500		

- 2.8 Based on reverse bidding and bucket filing on Deep Portal, Government of India, the Petitioner has issued Letter of Award (LoA) vide letter dated 16.01.2021 to M/s Tata Power Trading Company Limited (TPTCL), M/s PTC India Limited and M/s Manikaran Power Limited for supply of power during the period from 15.03.2021 to 30.06.2021, as under: -

M/s Power Trading Corporation Limited (PTC)				
Period	Time Block	Name of Generators	Quantum (MW)	Rate at GETCO (Rs/kWh)
15.03.2021 to 31.03.2021	RTC (0 - 24 Hours)	Essar Power Madhya Pradesh Limited	130	2.52
		JP Nigrie Super Thermal	100	2.69
01.04.2021 to 30.04.2021	RTC (0 - 24 Hours)	Essar Power Madhya Pradesh Limited	230	2.65
		JP Nigrie Super Thermal	20	2.65
01.05.2021 to 31.05.2021	RTC (0 - 24 Hours)	Essar Power Madhya Pradesh Limited	230	2.65
01.06.2021 to 30.06.2021	RTC (0 - 24 Hours)	Essar Power Madhya Pradesh Limited	230	2.65

M/s Tata Power Trading Corporation Limited (TPTCL)				
Period	Time Block	Name of Generators	Quantum (MW)	Rate at GETCO (Rs/kWh)
15.03.2021 to 31.03.2021	RTC (0 - 24 Hours)	Jindal India Thermal Power Limited	250	2.52
		Jindal Power Limited	20	2.73
01.04.2021 to 30.04.2021	RTC (0 - 24 Hours)	Jindal India Thermal Power Limited	250	2.65
01.05.2021 to 31.05.2021	RTC (0 - 24 Hours)	Jindal India Thermal Power Limited	250	2.65
01.06.2021 to 30.06.2021	RTC (0 - 24 Hours)	Jindal India Thermal Power Limited	250	2.65

M/s Manikaran India Limited				
Period	Time Block	Name of Generators	Quantum (MW)	Rate at GETCO (Rs/kWh)
01.05.2021 to 31.05.2021	RTC (0-24 Hours)	DB Power Limited	20	2.73

01.06.2021 to 30.06.2021	RTC (0-24 Hours)	DB Power Limited	20	2.73
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- 2.9 It is submitted that the prices discovered in above reverse auction are competitive as per Merit Order dispatch protocol and the Petitioner intends to meet the shortfall in requirement of power from the above tie-up.
- 2.10 In accordance with the Clause 4 of the Guidelines for Short Term Procurement of Power by Distribution Licensee through Tariff Based bidding process issued by Ministry of Power, the Petitioner has filed the present Petition for approval of Short-Term Power Purchase Arrangement for the period from 15.03.2021 to 30.06.2021.
3. The matter was kept for hearing on 24.06.2021 through Video Conferencing, physical presence being not insisted on account of prevailing COVID 19 pandemic and containing its spread.
4. During the hearing, Shri K. P. Jangid, on behalf of the Petitioner GUVNL, reiterated the facts stated in para 2 above. He submitted that the delivery point for supply of power by the successful bidders is at GETCO periphery.
- 4.1 On a query from the Commission as to whether there are any deviations from Bidding Guidelines, Shri K. P. Jangid submitted that there are no deviations from Bidding Guidelines except payment clause, as there is some subsequent development wherein the Central Commission has notified new Regulations in respect to POC wherein it is provided in the Central Commission Regulations that if the drawl is within the long term and medium term approved quantum, the Procurer has not to pay any short term charges. He also submitted that it is very difficult for utilities to anticipate in advance as to whether actual drawl of power will be within the approved quantum or it may cross the same. Accordingly, in order to provide clarity that if actual power drawl is within the approved long term and medium term open access quantum limit of the Petitioner, then the procurer has not to pay any short term open access charges and in case if the actual power drawl exceeds the LTOA and MTOA limit in that case the short term open access charges for exceeded quantum is payable by the Petitioner because

generally the aforesaid limit is not exceeded and only in few 15 minutes time block the limit is crossed.

- 4.2 He also clarified that with regard to Payment terms, the Petitioner offered payment term period as 7 days which is commercial decision of the Petitioner. As such the Petitioner ensures that timely payment is made and therefore the same has been provided in the present case. As such there is no deviation from the Guidelines of Ministry of Power, Government of India.
- 4.3 In response to applicability of the Electricity (Late Payment Surcharge) Rules, 2021, issued by the Ministry of Power, Government of India, it is submitted that the aforesaid Rules has come into effect from 22.02.2021 i.e. after the Petitioner floated RfP documents and issued Notice Inviting Tender on 27.11.2020.
- 4.4 It is submitted that the demand for power otherwise increased post October-2020 and anticipating that it will further increase from March onwards, the Petitioner deemed appropriate to invite the bids under short term open access. Although, restrictions were imposed on account of COVID-19 pandemic during March-2021, there was no affect in demand. Moreover, in order to avoid high cost generation and optimize power procurement, the Petitioner deemed appropriate to procure power through short term which is being received by the Petitioner from the bidders.
5. 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 15.03.2021 to 30.06.2021. We also note that the Petitioner, being a trading licensee, has the Universal Service Obligation to ensure electricity supply to the consumers within its subsidiary distribution licensees' area as provided under Section 43 of the Electricity Act, 2003.
- 5.1 The Petitioner in order to provide optimize power procurement cost and provide economical power has prayed to approve the arrangement for procurement of 500 MW RTC power during 15.03.2021 to 30.06.2021 and adopt the tariff discovered through transparent e-bidding process on DEEP Portal in accordance with the provisions of the Guidelines for Short Term Procurement of Power by the Distribution Licensee issued

by the Ministry of Power and Guidelines issued by the Commission vide Notification No. 02 of 2013 dated 14.08.2013.

- 5.2 Section 86(1) (b) empowers the Commission to regulate the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured. 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:

“

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.

- 5.3 The Petitioner invited bids through transparent e-bidding process on DEEP Portal in accordance with the ‘Guidelines for Short Term Procurement of Power by the Distribution Licensees through Tariff Based bidding process’ dated 30.03.2016 issued by the Ministry of Power and also intimated to the Commission regarding the said tender vide its letter dated 02.12.2020

- 5.4 This Commission has also issued the Guidelines for Procurement of Power through Competitive Bidding dated 14.08.2013. Clause 13, 14, 15 and 16 of the aforesaid Guidelines issued by the Commission are reproduced below:

“

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.

- 5.5 We note that the Petitioner had published the tender notice on 27.11.2020 in 'Indian Express' and 'The Hindu' newspaper for procurement of 500 MW RTC power from 15.03.2021 to 30.06.2021. Thus, the Petitioner in compliance with Clause 15 of the Guidelines for Procurement of Power issued by the Commission has published the tender notice in 2 (two) newspapers and filed with Petition.
- 5.6 From the aforesaid Public Notice, it transpires that the bidders have to submit their offers on MSTC's website (DEEP e-Bidding Portal). The Petitioner also uploaded the RFP and draft PPA on its website and also on MSTC website. The last date of bid

submission as per tender documents was 18.12.2020 and as stated in certificate of Committee is 04.01.2021.

- 5.7 The Petitioner has also filed 'Bid Sheet' of tendering process providing various information of 'Bidder Ref. No.', 'Booking Quantity', 'Booking Amount', 'Booking Time', and 'Source of power / details of generating station from where power is intended to be supplied' for following:

Sl. No.	Item Name	Quantity (UOM)	Description
1	GUVNL/Short/20-21/ET/61 (GETCO periphery)	500.0 (MW)	From 01.04.2021:00:00 to 30.04.2021:24:00
2	GUVNL/Short/20-21/ET/61 (GETCO periphery)	500.0 (MW)	From 01.05.2021:00:00 to 31.05.2021:24:00
3	GUVNL/Short/20-21/ET/61 (GETCO periphery)	500.0 (MW)	From 01.06.2021:00:00 to 30.06.2021:24:00
4	GUVNL/Short/20-21/ET/61 (GETCO periphery)	500.0 (MW)	From 15.03.2021:00:00 to 31.03.2021:24:00

The Petitioner has further provided in the aforesaid 'Bid Sheet' details regarding 'Bucket Filling' for above periods.

In the aforesaid 'Bid Sheet' the details of 'Reverse Auction Participated Bidders Details' is also submitted.

- 5.8 We further note that the Petitioner has constituted a Committee as per Clause 6 of the Guidelines for Procurement of Power by the Distribution Licensee issued by Ministry of Power and has filed the 'Committee Certificate on Conformity of Bid Process' with the Petition. The aforesaid Committee comprises of following persons:

- (a). Shri K.P. Jangid, GM (COMM.);
- (b). Shri A.N. Khambhata, ACE (Tariff), GUVNL;
- (c). Shri Sanjay Mathur, CFM, GUVNL.

The certificate issued and signed by the Standing Committee is reproduced below: -

“

Committee Certificate on Conformity of Bid Process for Procurement of Short-term Power through DEEP Portal, Government of India in accordance with Ministry of Power Guidelines dated 30.03.2016 & RFP floated by GUVNL

Reference:

- (i) GUVNL Tender Specification No. GUVNL/Power Purchase/2021-22/DEC-20;*
- (ii) Event No. GUVNL/Short/20-21/ET/61*

This is to certify that:

- a. GUVNL has floated Notice Inviting Tender in 2 National Newspapers i.e., Indian Express & The Hindu on 27th November 2020*
- b. The last date for submission of the bid was 4th January 2021*
- c. Initial Price Offer & Reverse Auction was carried out on 6th January 2021*
- d. Bid Process followed by GUVNL under the tender is in accordance with the Ministry of Power Guidelines dated 30.03.2016 and RFP floated by GUVNL.*

Sd/-
(Sanjay Mathur)
CFM, GUVNL

Sd/-
(A.N. Khambhata)
ACE (Tariff), GUVNL

Sd/-
(K.P. Jangid)
GM (COMM.), GUVNL

.....”

5.9 The aforesaid certificate issued by the Committee states that the tender notice was published in two newspapers, viz. (i) Indian Express and (ii) The Hindu India, last date of bid submission was 04.01.2021 and Initial Price Offer & Reverse Auction was carried out on 06.01.2021. It also states that Bid Process followed by GUVNL under the tender is in accordance with the Ministry of Power Guidelines dated 30.03.2016 and RFP floated by GUVNL.

5.10 The Petitioner has also filed Letter of Awards (LOAs) issued vide its letters dated 16.01.2021 to M/s Tata Power Trading Company Limited (TPTCL), M/s PTC India Limited and M/s Manikaran Power Limited for supply of power during the period from

15.03.2021 to 30.06.2021. Further, the Petitioner has also filed Power Purchase Agreements dated 27.01.2021 signed with M/s Manikaran Power Limited, dated 04.02.2021 with M/s Tata Power Trading Company Limited and dated 04.02.2021 with M/s PTC India Limited respectively.

5.11 The certificate confirms that the bid process evaluation has been done in accordance with the provisions of the RFP document and the bidding process carried out in conformity with the Guidelines for Short-Term Power Procurement issued by the Ministry of Power vide notification No. 23/25/2011- R&R dated 30.03.2016.

5.12 Based on the above, we decide that the process for procurement of power is carried out by the Petitioner in conformity with the 'Guidelines for Short-Term Procurement of Power by Distribution Licensee through Tariff based bidding', issued by the Ministry of Power vide Notification dated 30.03.2016 and the Guidelines for Procurement of Power by Distribution Licensee issued by the Commission vide Notification No. 2 of 2013 dated 14th August, 2013.

5.13 We, therefore, decide to adopt the tariff for procurement of 500 MW RTC power by the Petitioner from M/s Tata Power Trading Company Limited (TPTCL), M/s PTC India Limited and M/s Manikaran Power Limited for supply of power during the period from 15.03.2021 to 30.06.2021 as under:

Sr. No.	Period	Time	Name of Bidder(s)	Name of Sources	Quantum (MW)	Rate at GETCO Periphery (Rs/kWh)
01.	15.03.2021 to 31.03.2021	Round the Clock (RTC) 00:00 to 24:00 hrs.	M/s Power Trading Corporation Limited	Essar Power Madhya Pradesh Limited	130	2.52
				JP Nigrie Super Thermal	100	2.69
			M/s Tata Power Trading Corporation Limited	Jindal India Thermal Power Limited	250	2.52
				Jindal Power Limited	20	2.73
02.	01.04.2021 to 30.04.2021	Round the Clock (RTC) 00:00	M/s Power Trading Corporation Limited	Essar Power Madhya Pradesh Limited	230	2.65
				JP Nigrie Super Thermal	20	2.69

		to 24:00 hrs.	M/s Tata Power Trading Corporation Limited	Jindal India Thermal Power Limited	250	2.65
03.	01.05.2021 to 31.05.2021	Round the Clock (RTC) 00:00 to 24:00 hrs.	M/s Power Trading Corporation Limited	Essar Power Madhya Pradesh Limited	230	2.65
			M/s Tata Power Trading Corporation Limited	Jindal India Thermal Power Limited	250	2.65
			M/s Manikaran India Limited	DB Power Limited	20	2.73
04.	01.06.2021 to 30.06.2021	Round the Clock (RTC) 00:00 to 24:00 hrs.	M/s Power Trading Corporation Limited	Essar Power Madhya Pradesh Limited	230	2.65
			M/s Tata Power Trading Corporation Limited	Jindal India Thermal Power Limited	250	2.65
			M/s Manikaran India Limited	DB Power Limited	20	2.73

The Commission thus, decides to approve the procurement of power by the Petitioner for the period 15.03.2021 to 30.06.2021 as per the recommendation of the Committee constituted for bid evaluation by the Petitioner.

5.14 We also note that the Ministry of Power, Government of India has notified the Electricity (Late Payment Surcharge) Rules, 2021. The Rules have come into force on the date of their publication in the Official Gazette i.e., 22.02..2021. The said Rules read as under:

“.....2 Application. -

.....

(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.

3. Definitions. – (1) In these rules, unless the context otherwise requires, -

(a) “Act” means the Electricity Act, 2003 (36 of 2003);

(b) "base rate of Late Payment Surcharge" means the marginal cost of funds-based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;

(c) "due date" means the date by which the bill for the charges for power supplied by the generating company or electricity trader or for the transmission service provided by a transmission licensee are to be paid, in accordance with the Power Purchase Agreement, Power Supply Agreement or Transmission Service Agreement, as the case may be, and if not specified in the agreement, forty-five days from the date of presentation of the bill by such generating company, electricity trader or transmission licensee;

(d) "Late Payment Surcharge" means the charges payable by a distribution company to a generating company or electricity trader for power procured from it, or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date;

(2) Words and expressions used and not defined herein but defined in the Act shall have the meaning respectively assigned to them in the Act.

4. Late Payment Surcharge. - (1) Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default.

(2) The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:

Provided that the rate at which Late Payment Surcharge shall be payable shall not be higher than the rate specified in the agreement for purchase or transmission of power, if any:

Provided further that, if a distribution licensee has any payment including Late Payment Surcharge outstanding against a bill after the expiry of seven months from the due date of the bill, it shall be debarred from procuring power from a power exchange or grant of short-term open access till such bill is paid.

....."

The said rules are statutory Rules notified under the Electricity Act, 2003 by Ministry of Power, Government of India. Therefore, the same need to be given effect in the power procurement by the distribution licensee. The Petitioner has submitted that the

said Rules came into effect after the Petitioner floated RfP documents and issued Notice Inviting Tender on 27.11.2020. It is also submitted that the Petitioner executed the PPA with the successful bidders prior to 22.02.2021 and as such the Petitioner is making regular payment towards power procurement and therefore, there is no issue of late payment .

From the above, it transpires that the said Electricity (Late Payment Surcharge) Rules, 2021 are applicable to the Power Purchase Agreements that become effective after the date of its Notification i.e. 22.02.2021. As the period of power procurement i.e. 15.03.2021 to 30.06.2021 is over, there is no meaning in incorporating in the PPA by the Petitioner.

6. In view of above, we decide to adopt the tariff as per recommendation of 'Committee for Bid Evaluation' and to approve the Short-Term Power Purchase carried out by the Petitioner for the period 15.03.2021 to 30.06.2021 from M/s Tata Power Trading Company Limited (TPTCL), M/s PTC India Limited and M/s Manikaran Power Limited. The Petitioner is directed that for the purpose of transparency, it shall make the bids public by indicating the tariff quoted by all the Bidders. While doing so, only the name of the Successful Bidder(s) shall be made public and tariffs quoted by other Bidders shall be made anonymous in terms of Clause 11.3 of the Guidelines for Short-Term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process notified by Ministry of Power vide Notification No.23/25/2011-R&R dated 30.03.2016.
7. The Order is passed as above.
8. With this Order the Petition Stands disposed of.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.

Date: 13/07/2021.