BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR

PETITION NO. 1978 OF 2021

<u>In the Matter of:</u>

<u>Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Ministry of Power guidelines dated 30.01.2019 for procurement of electricity for medium term from power stations set up on Finance, Own & Operate basis.</u>

Petitioner	:	Gujarat Urja Vikas Nigam Limited (GUVNL)
Represented By	:	Shri K. P. Jangid and Shri Sanjay Mathur
Objector No. 1	:	Shri K. K. Bajaj
Represented By	:	Shri K. K. Bajaj
Objector No. 2	:	Adani Enterprises Limited
Represented By	:	Shri Saket Maloo
Objector No. 3	:	Adani Power (Mundra) Limited
Represented By	:	Shri Saket Maloo

CORAM:

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

Date: 04/08/2021.

<u>ORDER</u>

1. The Petitioner GUVNL has filed this Petition under section 86 readwith Section 63 of the Electricity Act, 2003 for approval of deviations from the Ministry of Power guidelines dated 30.01.2019 for procurement of electricity for medium term from power stations

set up on Finance, Own & Operate basis and prayed for following reliefs:

(i) To approve the deviations from Guidelines dated 30.01.2019 including modifications as proposed by Petitioner as per details stated in the present Petition.

(ii) To approve the Draft Bidding Document (RFQ, RFP & PPA) annexed with the Petition.

(iii) To condone any inadvertent omission/errors/shortcomings and permit the Petitioner to make minor addition/change/ modification/alter this filing and making further submissions as may be required at a future date.

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

2.1 The Petitioner Gujarat Urja Vikas Nigam Limited (GUVNL) is a company incorporated under the provisions of Companies Act, 1956 and engaged in the activities of bulk purchase and bulk supply of electricity for and on behalf of four State Distribution Licensees, i.e. Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL), Dakshin Gujarat Vij Company Ltd. (DGVCL) and Paschim Gujarat Vij Company Ltd.

2.2 The Petitioner has tied up for power procurement on long-term basis with the generating companies and it also purchases power on medium / short-term basis from time to time in order to ensure availability of adequate power as per the requirement at competitive rates.

2.3 The Petitioner has tied up capacity of 18453 MW from Conventional sources on long / medium term basis consisting of around 2645 MW capacity being Gas based capacity. In order to meet the peak power demand, operation of Gas based stations is necessary. In the international market, prices of RLNG being very high, the gas based plant capacity cannot be utilized fully as generation cost is very high.

2.4 Further, State Government has implemented Kisan Suryodaya Yojana (KSY) with an objective to enable utilization of generation from upcoming solar capacity for meeting power demand of agriculture sector during day period instead of present arrangement of supplying power to Agriculture sector under various groups during day and night period.

2.5 Due to above, there is increase in power demand during day period (5 AM – 9 PM) due to shifting of Agriculture load. Further, with shifting of additional load in phased manner in upcoming period, the day power demand to be catered by State distribution licensees would further increase.

2.6 Generation from Renewable projects is infirm in nature and depends upon availability of wind / solar. State is having 8192 MW wind capacity operational out of which capacity of GUVNL / DISCOMs is 4219 MW. Wind generation is mainly during night hours and availability is very less / unavailable during peak demand hours. Therefore, wind generation cannot be considered for meeting peak power requirement. Similarly, solar generation during day hours is parabolic in nature and increases in gradual manner reaching upto full capacity by noon and reduces rapidly after around 3:00-3:30 PM. Therefore, thermal generation capacity is required to be operated for balancing the grid requirement.

2.7 In order to meet the power requirement of DISCOMs and with an objective of optimization of power purchase cost, the Petitioner intends to procure power through competitive bidding process on medium term basis for the period 01.09.2021 to 31.07.2023.

2.8 The Ministry of Power vide letter dated 29.01.2019 issued revised Model Bidding documents and vide resolution dated 30.01.2019 has notified Revised Guidelines for Procurement of Electricity from Medium Term from Power Stations set up on Finance, Own & Operate (FOO) basis which provides as under:

a) The aforesaid Guidelines provides for Model Bidding Documents comprising RFQ, RFP & PPA.
b) The guidelines would be applicable for purchase of power with a contract period between one and five years.
c) The tariff determined through DEEP e-Bidding process using e-reverse Auction based on these Guidelines comprising the Model Bidding Documents shall be adopted by the Appropriate Commission in pursuance of the provisions of section 63 of the Act.
d) As per para (4) of Ministry of Power Guidelines dated 30.01.2019, any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission.
e) Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.

2.9 The Commission was apprised regarding the initiation of bid invitation process for tie up of 1000 MW power on medium term basis in accordance with Ministry of Power Guidelines dated 30.01.2019 by the Petitioner vide its letter dated 06.04.2021.

2.10 The Petitioner published a Notice Inviting Tender in 2 national newspapers on 06.04.2021. Further, the Petitioner has also uploaded the Draft Bid Documents (RFQ, RFP & PPA) on DEEP Portal of Ministry of Power as well as website of the Petitioner to accord wider publicity. As per the Guidelines, the Petitioner has invited suggestions / queries from the prospective bidders. The Petitioner has received queries / comments as well as suggestions from various bidders. The Petitioner has released the Clarification to the Queries of interested bidders on 31.05.2021.

2.11 It is submitted that the Petitioner has prepared draft bid documents based on Model Bid Documents of Ministry of Power. However, the Petitioner intends to make certain deviations to Model Bidding Documents in order to ensure commercial clarity with regard to contractual provisions and in order to safeguard the interest of the Petitioner. Further, certain modifications in the Bid Documents are proposed in order to align contractual terms in accordance with prevailing Rules and Regulations and to avoid cost implication on the Petitioner.

2.12 The following deviations / modifications from the model bidding documents are sought by the Petitioner for simplification of commercial aspects and to optimize the overall cost of power procurement:

(a). Delivery Point:

With regard to Delivery Point, clarification has been added that for Projects connected with Gujarat State Transmission Utility (STU) network i.e. GETCO – Delivery Point shall be Interconnection of Generator and Gujarat STU in intra-state Grid where supply is received by Utility and for Projects connected to network other than Gujarat State Transmission Utility i.e. GETCO – Delivery Point shall be Interconnection Point of Central Transmission Utility

(CTU) with Gujarat STU network in intra-state Grid where supply is received by Utility.

The above modification is proposed in order to have clarity with regard to evaluation of bids from projects connected at different network and to have landed cost working of all Projects at equal interconnection point for comparison and to have parity for evaluation of bids for projects in Gujarat or outside Gujarat.

(b). Financial Capacity / Net Worth criteria for pre-qualification:

As per the Model Bidding Documents, the Bidder shall have a minimum Net Worth (the "Financial Capacity") equivalent to Rs. 1 Crore per MW of the capacity the Bidder is willing to Bid, at the close of the preceding financial year.

In view of various stressed power plants having merchant capacity willing to participate, in the tender invited by Power Finance Corporation in January 2020 for aggregated power of 2500 MW under Pilot scheme-II, no financial capacity was solicited from bidders to encourage participation.

The Petitioner has proposed to take the deviation to the Model Bidding Documents by removing the financial capacity / Net Worth criteria in line with Pilot Scheme II of Govt. of India. Moreover, for ensuring adequate risk coverage regarding supply commitment under the contract, Bidder / Supplier would be required to submit Bid Security and Performance Security to the Petitioner (Utility).

(c). Right to accept or reject any Bid / Application:

It is submitted that at present the Petitioner is having litigations pending with Generator(s) regarding non-fulfilment of contractual obligations, which are pending at various forum. Accordingly, allowing / making eligible such applicant(s) for participation under this tender may compromise / dilute the stand taken by the Petitioner before regulatory forum and judicial body and may pose consequential implications.

In order to avoid any implications under the pending litigations of the Petitioner, an additional clause has been proposed to be incorporated in the Draft Bid Documents under RFQ as 2.6.2 (c) clarifying that the Petitioner shall have a discretion to accept / reject such bids at qualification stage.

(d). Extension of Contract Period:

Clause 3.2 of PPA providing for damages to be paid by the Utility (i.e. Petitioner) to Supplier in case of non-extension of contract after original period may be deleted as in the Tender to be floated by the Petitioner, the contract period is pre-defined and any extension would be mutual and in accordance in terms laid out in the Bid Documents.

(e). Transmission Charges, Losses & Open Access:

The bid documents may be appropriately revised clarifying that the Supplier (incl. Trading Licensee, in case of a Trader) shall be responsible for making timely application for Short / Medium Term open Access, for & on behalf of the Utility. Further, for ensuring uniformity in transmission charges & losses to be quoted by bidder(s), it may be clarified that for projects connected with other than Gujarat STU network, the Petitioner shall pre-specify the ISTS transmission charges (in Rs/unit) (based on prevailing Medium Term Open Access charges grossed up at 85%) and transmission losses for ISTS network (in %) to be quoted by the Bidder while submitting the bid. Whereas, the transmission charges & losses to be quoted by Projects connected with Gujarat STU shall be assumed as NIL as such projects would not be incurring transmission charges & losses of ISTS network for supply of power to the Petitioner.

The above clarification and modification would enable evaluation of bids from various Projects at uniform level, provide transparency with regard to applicability of ISTS transmission charges as well as pass through of the transmission charges & losses during the contract period in addition to clarity on responsibility of open access.

(f). Payment Security Mechanism:

The Model Bidding Documents provides for establishment of Default Escrow Agreement and Deed of Hypothecation by the Petitioner in addition to Letter of Credit equal to 20% of annual capacity charge payable by Utility for a month.

In order to help with avoiding the implementation of multiple payment security mechanism under the arrangement and avoid associated cost thereof specifically taking into consideration that contract period is 23 months only, the Petitioner intends to seek deviation towards removal of Default Escrow Agreement and Deed of Hypothecation as payment security mechanism to Supplier / Bidder and in lieu of the same has increased the amount of Letter of Credit equivalent to one month energy bill at normative availability to ensure adequate risk coverage to Supplier.

(g). Force Majeure:

Various provision(s) with regard to Force Majeure conditions and sharing of cost implications thereof has been deleted in order to avoid any unfettered cost implication on Petitioner as the same would be more relevant in power tie up on long term basis. The details of clauses which are proposed to be deleted are as under:

i. Clause 17.2 (d) – regarding delay or failure of an overseas contractor to deliver equipment in India – the clause may be deleted as the same would not be relevant in the present tender proposed to be floated by the Petitioner wherein participation would be pre-dominantly from operational projects.

ii. Clause 17.4 (a) – any Change in law event shall be considered as Political Event under Force Majeure if consequences thereof cannot be dealt with under Article 21 pertains to 'Change in Law' and its impact in financial terms exceeds the sum specified in Article 21. To avoid consequential implication on the Petitioner due to claim referring to such events, the Petitioner intends to delete the same.

iii. Clause 17.7.1 (b) – upon occurrence of a Political Event, all Force Majeure costs attributable to Political event shall be reimbursed to Supplier by the Utility – the Petitioner seeks a deviation and clarifies that such costs shall be borne by Supplier only and the Utility (i.e. Petitioner) shall not be required to bear the same.

iv. Clause 17.10 – Relief for Unforeseen Events provides that upon occurrence of an unforeseen event, parties may refer the matter to Conciliation Tribunal for appropriate relief / remedy including costs, expense, revenues of Power Station etc – allowing relief to Supplier on account of unforeseen events may lead to dispute / litigations and consequential impact including cost on the Petitioner (i.e. Utility). Accordingly, since the tender is being invited on medium term basis and risk /obligation with regard to fuel arrangement being on Supplier / Bidder, the Petitioner intends to take a deviation and delete the above provision.

(h). Change in Law:

In case Supplier suffers an increase / reduction in costs or reduction / increase in net after-tax return or other financial burden due to Change in Law, the aggregate financial effect of which exceeds the higher of Rs. 1 Crore and 0.1% of the Capacity Charge in any Accounting Year, Supplier may notify the Utility and propose amendments to PPA so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law. Further, Parties shall endeavour to establish a NPV of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, so as the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

As the cost reimbursement as well as adjustments for NPV working may lead to complexity and dispute in calculation, the Petitioner intends to modify the Change in Law provision in line with the provisions adopted for Short Term tender (for less than 1 year) in order to simplify pass through of cost and delete the provision regarding Protection of NPV (Article 21.3 of Model Bidding Documents) and Restriction on Cash compensation (Article 21.4 of Model Bidding Documents).

(i). Dispute Resolution:

As per Model Bidding Documents, dispute if not settled mutually shall be referred to Conciliation and then Arbitration. While any dispute under applicable laws if required to be adjudicated by Commission, be submitted before Commission.

In order to ensure adjudication of disputes under the contractual arrangement by this Commission, the Petitioner intends to delete the provision with regard to Conciliation and Arbitration and clarify that any dispute if not resolved amicably may be referred to adjudication by the Gujarat Electricity Regulatory Commission for all purpose.

(j). Non-Availability as a consequence of shortage of Fuel:

As per Model Bidding documents, in case of non-availability as a consequence of shortage of fuel caused by an event of Force Majeure, for the purpose of Fixed Charge payment, availability to extent of 30% of Non-Availability shall be considered. As the responsibility as well as risk for assured supply of fuel/arrangement thereof is on the Supplier/Bidder, the provision with regard to deemed availability to the extent of 30% for payment of fixed charge to Supplier may be deleted.

(k). Indexation / escalation of Fixed Charge as per WPI:

As per Model Bidding documents, Base Fixed Charge quoted by the bidder shall be revised annually to reflect 20% of WPI variation occurring between January month immediately preceding the Bid Due Date and January month for the accounting year for which revision is undertaken.

As the contract period is 23 months only, the Petitioner proposes to take a deviation and delete the above provision with regard to escalation in Fixed Charge and add clarification that Fixed Charge shall remain constant for the entire contract period. The same is in line with the Tender Documents floated by Power Finance

Corporation under Pilot Scheme II for 2500 MW power under Medium Term basis.

2.13 The Petitioner intends to add following new provisions to the Bid Documents in order to have commercial clarity with regard to cost implication due to compliance to environment norms, if any and sharing of risk towards transmission cost burden.

a. Impact of additional expenditure due towards compliance to revised Environmental norms (Clause 5.12)

The Petitioner through this provision intends to clarify that any impact on Tariff on account of compliance to revised environmental norms shall be on account of Supplier / Trader at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions. It is submitted that since the tender to be invited by the Petitioner being on Medium Term Basis on Lumpsum Tariff wherein selection would be on L1 basis, the above provision may be incorporated in order to have parity inter-se bidders with regard to cost pass through during the contract tenure after selection.

b. Cost of Transmission Charges (Clause 12.6)

Model Bidding Documents provides that Cost of Transmission Charge shall be a part of Base Variable Charge which would be payable to Supplier by Utility as per actual despatch of electricity. While as per the CERC Sharing of Inter-State Transmission Charges and Losses Regulation 2020, the bill for transmission charges for Medium Term Open Access would be raised on the Buyer i.e. the Petitioner while in case of flow of power under Short Term Open access no additional charges would be payable in case of application of open access on behalf of Utility i.e. the Petitioner.

Accordingly, the Petitioner proposes to incorporate a new provision (Clause 12.6) to clarify that in case the Utility schedules less power than availability actually declared by Supplier, Utility shall reimburse / adjust the cost of transmission charge to the extent of normative availability or actual availability whichever is lower. Further, the Supplier shall be responsible for applying open access on behalf of Utility. In case of power flow under STOA, transmission charges towards MTOA would not be payable to Supplier by Utility (Clause 5.11 of PPA).

The linking of recovery of transmission charges will ensure declaration of adequate availability by the Supplier and avoid cost burden on the Utility (the Petitioner) towards transmission charges in case project is unavailable for the Petitioner.

2.14 The Petitioner has filed the present Petition for approval of bidding documents and the deviations to the Guidelines for initiating the tender process in accordance with the Ministry of Power Guidelines.

2.15 It is prayed to the Commission to accord approval to the Draft Bidding Documents along with the proposed deviations as well as modifications in order to enable the Petitioner to initiate the process of inviting tender.

3. The Petitioner was directed to issue Public Notice in one daily Gujarati newspaper and one English newspaper having wide circulation in the State/National level, stating that they have filed

this Petition before the Commission for approval of deviations from the Ministry of Power Guidelines dated 30.01.2019 for procurement of electricity for medium term from power stations set up on Finance, Own & Operate basis. In compliance to the aforesaid direction, the Petitioner issued Public Notice in Daily Newspapers - Gujarat Samachar, Hindustan Times and Mint dated 22.06.2021. The Petitioner has also uploaded the Petition on its website as directed by the Commission. The Commission has also uploaded the Petition with documents on its website. Thus, the Petitioner has complied with the directions given by the Commission vide Daily Order dated 18.06.2021.

4. In response to the aforesaid Public Notice, the Commission has received objections/suggestions from the following persons/entities.

(i) Shri K.K. Bajaj
(ii) Adani Enterprises Ltd.
(iii) Adani Power (Mundra) Ltd.

5. Shri K.K. Bajaj has objected to procurement of power by the Petitioner on medium-term and raised the following objections:

5.1 The present Petition is not maintainable.

5.2 The Petitioner has initiated the process without taking approval from the Commission.

5.3 The tender was issued with specific conditions to favour a particular party. The Petitioner has later on modified the original documents. Detailed explanation should be given by the Petitioner on this aspect. The Petitioner has not submitted the critical information which are necessary in the present Petition.

5.4 The Petitioner should explain as to why the issue of shortfall in power procurement and the need for competitive bidding was not taken up in the recent proceedings.

5.5 Whether the approval for quantum is sought by the Petitioner in the separate Petition? If the answer is 'Yes', the Petition should be shared in the public domain and invite public objection. If the answer is 'No', then how can it pursue for approval of deviations without approval of quantum.

5.6 The Petitioner has signed PPAs with the generating stations for 23000 MW capacity (18453 MW from conventional sources - which consists of 2645 MW gas-based project and 4219 MW wind project) against which the peak demand is of 18000 MW. The Petitioner has total tied up capacity of 8010 MW renewable project including 3537 MW of solar project. The peak demand of the State for FY 2020-21 was around 16600 MW recorded in the month of January 2021 while in the past it was 17305 MW in January 2018. Thus, the peak demand is nearby 17000 MW. The power available from the power plants is quite sufficient to meet out the peak demand of the Petitioner. The Petitioner has tied up excess capacity of more than 9000 MW in comparison to the demand. It affects the Petitioner and the consumers by way of burden of additional fixed cost on the consumers. The GSECL plants operate at lower PLF. However, the Petitioner desires to procure 1000 MW on medium-term basis though the capacity tied up is in excess. The Petitioner has also filed the Petition for approval of PPA with GSECL for 800 MW Wanakbori Unit-VIII for a period of 30 years. Major power plants of GSECL remain shut down due to higher generation cost which leads to low PLF of such plants. Further, there is low demand due to the reasons that factories are facing economical constraints, labour problems etc. and it creates surplus power position in the

State. Further, for a few hours requirement in a day or in case if there is any shortage of power for time being, Power Exchange is available for such requirement for few hours or days. In such situation, the Petitioner is coming out with the tender to tie up for 1000 MW power on medium term basis is not justified.

5.7 Further, due to cancellation of PPA with 1000 MW capacity of Adani Power (Mundra) Ltd. such surplus capacity is available. Therefore, to favour Adani Power Ltd. a specific provision is kept in the bid documents.

5.8 In the absence of approval of the Commission, whether the Petitioner can invite bids for power procurement? The Petitioner is required to seek approval of quantum before initiation of any bidding process.

5.9 The Petitioner has not followed the provisions of bidding Guidelines issued by the Central Government and also the Guidelines of the Commission.

5.10 GUVNL Study Report for Solar Rooftop states that peak demand of all four distribution licensees for the entire FY 2019-20 was 12164 MW against the tied up capacity of 18453 MW with conventional power plants plus 8000 MW with renewable power projects. The peak demand recorded was 14492 MW for the month of August. Thus, it is clear that the Petitioner is having surplus capacity and further procurement of capacity would lead to higher cost of power supplied to the consumers by the Petitioner and fixed cost of the same be passed on to the consumers. The Petitioner shall procure power from the market as and when required instead of procuring the same on mid-term basis.

5.11 The contention of the Petitioner is that it has tied up 2645 MW gas based capacity to meet out the peak demand. However, gas is not available at cheaper rate due to higher price of RNLG in the International market. As stated in earlier para, the tied up capacity by the Petitioner with conventional plants plus renewable capacity cannot suffice the requirement of power to meet peak demand of the State ignoring 2645 MW of gas based project capacity needs to be clarified by the Petitioner.

5.12 The contention of the Petitioner that the gas prices have been increasing in the recent past. However, what is the basis that such higher pricing of gas will remain in force for the next 2 years. The Petitioner is not willing to make any effort to tie up cheaper gas even in future. As the Petitioner is recovering the fixed cost from the consumers and not incurring any loss though the plants are not operating, there is no justification for procurement of 1000 MW power on medium-term basis. The Petitioner has relied on Kisan Suryoday Yojna and submitted that the said Yojna was implemented by the State Government with intent to utilize generation available from the solar power plants to meet agricultural demand during day time instead of night time. The Petitioner has not submitted any details with regard to capacity available from solar, wind and conventional power plants in different times and the same is met in day time of the consumers. The Petitioner has not submitted any details of additional load due to shift of power requirement under Kisan Suryoday Yojna, which is already implemented since October 2020 and there is resultant shift and increase in comparison to last year. The Petitioner is required to submit the complete details of Kisan Suryoday Yojna scheme stating number of consumers under the scheme, total demand, consumption pattern, details of shift in load etc.

5.13 The Petitioner should clarify as to whether any approval was obtained from the Commission before implementation of Kisan Suryoday Yojna scheme or not. Whether the Petitioner is required to incur any capital and revenue expenditure or not? Whether the Government is going to compensate to the Petitioner for capital and revenue expenditure for implementation of Kisan Suryoday Yojna scheme under Section 65 of the Act?

5.14 There is no justification as to how the quantum of 1000 MW has been arrived at by the Petitioner for which the tenders were floated. Further, no approval of the additional quantum of 1000 MW is sought by the Petitioner from the Commission. It is unlawful action of the Petitioner and is trying to circumvent with the jurisdiction of the Commission.

5.15 Whether the Petitioner has paid necessary fee as per the Regulations notified by the Commission with the Petition or not needs to be clarified with consideration of quantum approval and adoption of tariff as per the Regulations.

5.16 The Petitioner's discretion to accept/reject the bids at qualification stage where the Petitioner is having litigations with the generator with regard to non-fulfilment of contractual obligations and the same are pending before various Forums on a ground that it will potentially affect the Petitioner's stand before those Forums. Giving such discretion to the Petitioner in this regard, could result into situation where Petitioner would indulge into connivance as was done earlier and in turn the consumers would suffer.

5.17 The peak demand and time demand vary from season to season and the objector, Shri K.K. Bajaj, has submitted that considering maximum peak demand during FYs 2017-18, 2018-19 & 2019-20 of 17097 MW, 18221 MW & 18424 MW respectively there is no justification to sign PPA for 23 months under medium-term scheme for procurement of 1000 MW by the Petitioner. It will further affect PLF of GSECL's plants which is below 40% due to failure to stand in Merit Order Power Purchase. This will further reduce PLF of GSECL power plants below 30% and put additional burden on the consumers in the form of fixed cost. Moreover, operation of power plant at low capacity increases fuel cost and it would lead to disqualifying them from merit order. Therefore, the Commission may allow to sign PPA only for eight months under short-term agreement by the Petitioner.

5.18 Plant load factor of gas based power plant at Dhuvaran and Utran for the last 3 years shows that they are operating at less than 20% PLF. The Petitioner is managing power demand by procuring power from other sources without signing of any short-term/medium-term agreement. In such situation the proposal for procurement of power on medium-term basis for 23 months for 1000 MW is not justified. Further, the total fixed cost amount of Rs. 552 crore per year is paid for gas based power is illegal as the Petitioner and GSECL are not interested to operate these power plants and prefer to purchase power from private power producers.

5.19 Based on the above, the objector submitted that the present Petition may not be allowed.

6. M/s Adani Enterprises Ltd. and M/s Adani Power (Mundra) Ltd. have separately filed common objections as under:

6.1 Clause 2.2.1 of RFQ documents consists of Eligibility of Bidders. The Petitioner has proposed clarification under clause (d) to the said Clause 2.2.1 stating that the bidders required to submit details regarding firm fuel arrangement / FSA / LOA / any other document showing fuel arrangement to the satisfaction of Utility towards assured supply of fuel. The objectors have contended that if the Bidder does not have FSA and has supply of coal through e-auction/imports, the bidder has no documentary proof for assured supply of fuel though it has been receiving coal on a regular basis from e-auction/import.

Hence, the utility should allow the Bidder or Developer with supply of fuel through e-auction/imports to submit an undertaking for assured fuel supply. This will permit wider participation and hence, lead to better price discovery which will ultimately be in the benefit of the end consumers.

6.2 The Petitioner has proposed to add a new clause in clause 2.6.2 of RFQ documents wherein the utility has the right to reject the application and/or bid if the implementation of the award and/or PPA is affected by implications of any pending litigations or otherwise disputes with the bidder/supplier or the award and/or PPA in the RFP will have any impact on implication on the pending litigation or otherwise disputes with the bidder/supplier.

The objectors contended that the clause is not required to be included since the litigation may be pending due to stretched legal proceedings and the delay of court hearings etc. on account of several reasons. Moreover, the litigations are arising out of separate cause of actions and has no nexus with new tender. The litigations will be under specific contract with different suppliers with different nature of disputes. The only factor where implementation of award in this tender can be affected is due to non-achievement of commercial operation of completion of construction of the power station from which bidder/supplier has participated in this tender.

Further, since it is medium-term tender and of short duration a legal litigation which may take long time to clear may restrict the bidder to participate in the tender.

In view of the above, any pending disputes/litigations under various Forums, courts etc. may not be relevant to disqualify any bidder/ supplier. In this tender, the said clause is in deviation to the Standard Bidding Documents. The utility should only make said clause applicable to that bided capacity that is pending adjudication under litigation.

6.3 The objector has objected to the modification sought by the Petitioner in clause 2.12.2 (vi) pertaining to bidding documents required to be uploaded as per the RFQ consisting of FSA or equivalent arrangement for the power station to the satisfaction of the Utility. The objectors contended that if all types of sources are allowed for supply of fuel, then for e-auction/imports supply there would be no such documents which would ensure continuous and assured supply. Hence, for Bidder or Developer with supply of fuel through e-auction/imports, Utility must allow to submit an undertaking for assured fuel supply. This will permit wider participation and will lead to better price discovery. It will ultimately be in the benefit of the end consumers.

6.4 The modification in clause 2.18.1(i) of RFQ of the bidding documents pertains to statement on fuel supply arrangement for the power station. The clause may be modified as it contains a statement on fuel supply arrangement for the Power Station or equivalent arrangement to the satisfaction of Utility and for the generators having fuel supply through e-auction/imports, the bidder or the developer must provide an undertaking for assured fuel supply.

6.5 The objector has also objected to clause 5.1.5 of the RFQ documents pertaining to obligations of supplier wherein the Petitioner has proposed to add two new clauses (k) & (l) as under:

> *"k. ensure and comply that the Power Station has access to an assured supply of Fuel in order to supply power under this agreement.*
>
> *l. ensure compliance towards norms for end usage of fuel as per FSA/allocation/Policy/prevailing norms in order to supply power under this Agreement".*

In response to the above the objectors contended that clause l should be modified as *"ensure compliance towards norms for end usage of fuel as per FSA / allocation / Policy / prevailing norms / undertaking in order to supply power under this Agreement".*

6.6 Clause 9.2 pertaining to appropriation of Performance Security wherein for additional cure period given is 120 days in the Standard Bidding Documents which is proposed to be reduced by the Petitioner stating that the same may be 60 days for remedying the Supplier Default or to meet any Condition Precedent.

The objectors have contended that the rationale mentioned is not sufficient for such change and deviation from MoP Model Bidding Document dated 30.3.2019. Hence, the clause must be retained as it was in Model Bidding Document.

6.7 The Petitioner has proposed deviations in clause 17.7.1 (b) pertaining to allocation of costs arising out of Force Majeure clause in the Standard Bidding Documents wherein it is provided that upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the

Utility to the Supplier. Instead, the Petitioner has proposed that upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be borne by the Supplier.

The objectors have submitted that the Model Bidding Documents are formulated duly considering appropriate risk allocation between the Supplier and the Utility. Any change to such risk allocation, as is being done through the proposed deviation will tantamount to material change in the risk allocation matrix and ultimately vitiate the principles of Section 61 and 63 of the Act.

The objectors further contended that the rationale mentioned / provided by the utility is not sufficient to such change and deviation from MoP Model Bidding Document dated 30.3.2019 and can affect the supplier in case of a Political Event. Importantly, Political Events are not in any control of the supplier thus will also lead to Bidders assuming a higher risk premium. This shall lead to higher tariff discovery which would be also detrimental to consumer interest. Hence, the clause must be retained as it was in Model Bidding Document.

6.8 The Petitioner has proposed deviation in clause 11.11 pertaining to Discount for early payment by modification with regard to payment, if made, within 7 days of the date of submission of invoice (as per Standard Bidding Documents if made within 5 days of the date of submission of the invoice) shall be entitled to deduct 2% from energy bills by way of discount for earlier payment (as per Standard Bidding Documents, 1% discount for early payment). The aforesaid deviation is objected by the objectors.

The objectors contended that the rationale mentioned is not sufficient for such change and deviation from MoP Model Bidding Documents dated 30.3.2019 and will affect the supplier. Hence, the clause must be retained as it is in Model Documents. Further, ultimately, the discount to be offered to the Utility will in any case be factored in the bids by Bidders and will lead to discovery of higher tariff in case discount is increased. Hence, the objectors suggested that the clause as appearing in the Model Bidding Document may be retained.

6.9 The Petitioner has proposed to delete clause 17.2 pertaining to Force Majeure – Non Political Event instead of keeping it as per the Standard Bidding Documents. The objectors have contended that removal of this clause may affect the generators having supply of imported coal through captive mines. Thus, the objectors suggested that the clause as appearing in the Model Bidding Document may be retained. Notwithstanding the above, in case the Utility is allowed to delete the said clause as proposed by the Petitioner, the Commission may be pleased to allow any Change in Law occuring in the host country (where mine is situated) as a Change in Law under the present bid.

6.10 The Petitioner has proposed deviation in clause 17.10 pertaining to Relief for unforeseen events by deleting the said clause. The objectors have objected to the same and contended that if there are unforeseen events, then the matter must be referred to adjudicating authority for protection of the interest of the supplier as well as the utility. Therefore, the clause is very much required for protection of rights of the parties.

The objectors further contended that exclusion of protection from Unforeseen Events will also lead to Bidders assuming a higher risk premium. Hence, tariff discovered may be higher, which would be detrimental to consumer interest.

6.11 The Petitioner has proposed the Certificate from the Statutory Auditor stated at Annexure-II to RFQ which reads as under:

> *"Based on its books of accounts and other published information authenticated by it, this is to certify that …………. (name of the Bidder) is an equity shareholder in ……… (title of the power station) and holds Rs…… cr. (Rupees ……. Crore) of equity (which constitutes ….% of the total paid up and subscribed equity capital) of the project company".*

The objectors contended that if the bidder is a trading licensee and is not an equity shareholder in the developer (but is a group company of the developer), then the data does not fit properly in the attached format of the certificate.

The objectors further contended that if a particular power station is a bidder (say X), then according to the certificate, this clause will mean that 'X' is an equity shareholder in 'X' and constitutes 100% of the total paid up and subscribed equity capital. So, this certificate should be allowed to be modified as per convenience.

The objectors further contended that the Institute of Chartered Accountants of India (ICAI) has prescribed set formats and guidelines for certificates to be issued, and the formats provided in the bidding documents are not in line with the formats/guidelines laid down by ICAI. Hence, the utility may be directed to allow certificates in line with ICAI guidelines.

Based on the aforesaid objections, the objectors have submitted that the proposed deviations by the Petitioner may not be allowed.

7. In response to the objections raised by M/s Adani Enterprises Ltd. and M/s Adani Power (Mundra) Ltd., the Petitioner filed its rejoinder-reply as under:

7.1 **Eligibility of Bidders**: The Draft Bid Documents floated by the Petitioner provides for determining the pre-qualification wherein it is provided that the power station has access to an assured supply of fuel for which documents are to be submitted showing fuel arrangement to the satisfaction of the Petitioner. The objectors have submitted that if the Bidder does not have FSA and has supply of coal through E-auction/ imports, the bidder has no documentary proof for assured supply of fuel though it has been receiving coal on regular basis from E-auction/imports. The bidder with supply of fuel under E-auction/imports shall be allowed to submit an undertaking for assured fuel supply.

In response to above objection, the Petitioner submitted that the provision made in the bid documents is in accordance with MoP guidelines and Model Bidding Documents. In case the assured supply of fuel is not available with the Bidder, then pursuant to power tie up, the Developer/Bidder may not be able to fulfil its obligations under the agreement or may seek reprieve from performance obligation citing non-availabi8lity of fuel. Further, the procurement of coal from spot market may pose risk of supply uncertainty. Therefore, the aforesaid provision as provided in the bid documents may be accepted in the interest of the Petitioner and the consumers at large to ensure availability of power during the contract period without any subsequent implication.

7.2 **Right to accept/reject bid:** The objectors have opposed the provision that the Petitioner shall have discretion to accept/reject bids at qualification stage from the Generators under dispute/litigation. The objectors have suggested that pending disputes/litigations may not be relevant to disqualify any bidder/supplier. The said clause shall be applicable to that bided capacity that is still pending adjudication / under litigation.

In response to above objection, the Petitioner submitted that the aforesaid provision has been incorporated by the Petitioner to safeguard the interest of the Petitioner in the pending litigation while ensuring offer for supply of power at competitive rates under the proposed tender.

7.3 In response to the objections raised by the objectors that the clauses deleted/modified by the Petitioner in the Draft Bid Documents with regard to costs arising out of Force Majeure, discount on early payment, Force Majeure - Non-political event, relief for unforeseen events, the Petitioner submitted that the detailed rationale for deletion/modification of the aforesaid clauses have been provided by the Petitioner as a part of the Petition. The modifications proposed by the Petitioner are in the interest of the consumers of the State for ensuring power tie-up at competitive rate.

7.4 Based on the above, the Petitioner submitted that the proposed amendments/deviations may be allowed.

8. The Petitioner has filed its response against the objections raised by Shri K.K. Bajaj as under:

8.1 **The Petitioner has initiated the process without taking any approval of the Commission.**

In response to the aforesaid objection, the Petitioner submitted that vide its letter No. 419 dated 06.04.2021, the Commission has already been apprised that the Petitioner has invited bids for medium-term procurement of power on behalf of its subsidiary distribution licensees and also conveyed that the Petitioner shall file a Petition for approval of bid documents including deviations before the Commission in due course. The proposed tender is in accordance with MoP Guidelines dated 30.01.2019 for procurement of electricity on medium-term basis from the power stations set up on Finance, Own & Operate basis. Clause (4) of the Guidelines provides that any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the appropriate Commission. The present Petition has been filed by the Petitioner seeking approval of deviations carried out by the Petitioner in the Model Bidding Documents in order to have commercial clarity for ensuring discovery of competitive tariff and to safeguard the interest of the consumers of the State. Therefore, the objection of Shri K. K. Bajaj is erroneous and not acceptable.

8.2 **The Power Procurement Guidelines issued by GERC requires the Petitioner to seek approval of the Commission for tender and quantum.**

In response to the aforesaid objection, the Petitioner submitted that it has tied up adequate generation capacity to meet the demand of the licensees and there is no shortfall. The proposed procurement by the Petitioner is with an objective to arrange for replacement of capacity at competitive rates and in order to optimize the power purchase cost through procurement from power market.

So far as approval of quantum is concerned, as per para (7)(c)(1) of GERC Guidelines for procurement of power by the Distribution Licensees Notification No. 2 of 2013, approval of the Commission has to be sought prior to initiation of the bidding process for the quantum of capacity/energy, in case the power proposed to be procured exceeds the projected additional demand forecast for next three years. The Petitioner is intending to tie up power under Medium Term basis for replacement of capacity with an objective to optimize the power purchase cost and no additional quantum is intended to be tied up, specific approval for the quantum under the tender is not necessitated.

Tie-up of final quantum under the Tender is contingent to rates discovered under e-auction, market dynamics at the time of evaluation and would be subject to adoption by the Commission.

8.3 **The Petitioner has tied up excess capacity of more than 9000 MW in comparison to peak demand**.

In response to aforesaid objection, the Petitioner submitted that peak demand of the State has reached upto 19360 MW during the month of April 2021 wherein the peak power requirement of State DISCOMs would be around 17000 MW. As against the same, the Petitioner is having capacity of 18453 MW from conventional capacity and 6481 MW from Renewable projects. The annual power demand in the State is witnessing growth of around 6-7% per annum. The generation from wind is highly infirm in nature and solar generation is available only during day hours. With growth in power demand, all the generation sources including gas based capacity would be required to be operated to successfully meet the power demand of the State. Accordingly, the Petitioner is seeking power tie up under medium-term capacity to optimize the power purchase cost by replacing a part of the gas based capacity which is 2645 MW.

8.4 **Objection has been raised that as per Study Report for Solar Rooftop released by the Petitioner, the average peak demand of State DISCOMs is 12164 MW during FY 2019-20.**

In response to the aforesaid objection, the Petitioner submitted that the peak demand of the State Distribution Licensees has reached upto around 17000 MW. With regard to 12164 MW, the Petitioner submitted that the same is average demand for one time block i.e. 11-12 hours only and does not represent the peak power demand. Therefore, the reference raised by the objector is incorrect. Moreover, as per the National Electricity Policy and National Tariff Policy, the licensee is required to tie up capacity to meet out the peak demand of the licensee and not the average demand.

8.5 As regards the objection raised by the objector that inspite of having Gas based capacity, the Petitioner is not making efforts to tie up cheaper gas is concerned, the Petitioner submitted that it has tied up 2645 MW gas based capacity on long-term basis. However, at present market prices of Gas are in the range of USD 10-11.5 per MMBTU for which the variable cost works out to around Rs. 5.90 – 6.75 per unit if gas is tied up. The Petitioner has not tied up gas at present due to higher cost. Due to higher cost of gas, the Petitioner is seeking power tie up for the replacement of only part of gas based capacity and in case gas becomes available at competitive rates in future, the same would be tied up for availing generation from gas based projects.

8.6 The objector submitted that no detail has been provided with regard to Kisan Suryodaya Yojana. In response, the Petitioner submitted that during determination of tariff for FY 2021-22 before the Commission, the Distribution Licensees have intimated and submitted regarding implementation of Kisan Suryodaya Yojana by State Government for day-time supply to Agriculture and the same was also taken note of by the Commission in its Tariff Order dated 31.03.2021.

8.7 In response to contention raised by the objector that as to why Tender has been invited for medium-term basis (23 months) instead of entering into short-term contract, the Petitioner submitted that medium-term power procurement arrangement extends more flexibility as compared to short-term power arrangement due to following reasons:

(i) Power procurement under short-term, basis provides for monthly minimum supply off-take obligation (i.e. 85%) failing which liquidated damages are payable by the Petitioner. Whereas, under medium-term tender being two part tariff, there is no monthly minimum off-take obligation.

(ii) In case the power is procured through medium-term open access, the same would extend operational flexibility to Petitioner to schedule power during a day as per the system requirement i.e. when power is not required during a day it can be backed down as per the provisions of Grid Code.

8.8 **Right to accept / reject bid**:

The objector stated that discretion may not be allowed to Petitioner to accept/reject bids at qualification stage from the Generators under dispute/litigations.

In response to the aforesaid objection, the Petitioner submitted that the above provision has been incorporated to safeguard the interest of the Petitioner in pending litigations while ensuring offer for supply of power at competitive rates under the proposed tender.

8.9 **Fees paid for the Petition:**

The objector has sought for details of the fees paid by the Petitioner. In response to the same the Petitioner submitted that the Petition has been filed under Section 86 read with Section 63 of the Act for approval of the deviations to the Model Bidding Documents notified by Ministry of Power as a part of cost optimization initiative. The Petitioner has paid the fees as per the provisions of GERC (Fees, Fines and Charges) Regulations, 2005.

8.10 As far as the issue raised by the objector that the Petitioner has initiated the process without taking any prior approval of the Commission is concerned, the Petitioner submitted that as a part of consultative process, the Petitioner had issued draft of documents seeking comments/suggestions from prospective bidders. However, only after approval of the Commission, final Bid Documents would be released for submission of bids by interested bidders. The objector is erroneously referring to consultation process carried out by the Petitioner as the initiation of bidding process.

8.11 **Approval of Quantum not taken:**

The objector has raised the issue that the Petitioner has not taken specific approval for quantum, capacity tied up by the Petitioner, capacity available for utilization vis-à-vis peak power demand in addition to need for replacement capacity is concerned, the same is already clarified by the Petitioner.

8.12 **Excess capacity tied up by the Petitioner:**

The objector has raised the issue that the Petitioner is having more than 5000 MW surplus due to Renewable capacity. The Petitioner submitted that generation from Renewable Capacity is highly infirm and is continuously varying in nature. Wind Generation is directly dependent on wind velocity and is having huge variation even during 24 hours of a day. While, solar generation is parabolic in nature and is available during day period only. Therefore, availability of entire tied up generation capacity is inevitable as firm source of power in order to ensure uninterrupted power supply to consumers, grid stability and balancing.

With regard to the query as to whether 800 MW capacity from new Wanakbori Unit VIII plant of GSECL is included in the 18453 MW conventional power tied up by the Petitioner, the Petitioner has confirmed that the same is already included in the aforesaid capacity.

8.13 **Gas based generation:**

The objector has confirmed that at present in the international market, prices of RLNG are high and that such increase is short-term in nature and gas prices may reduce in future. The Petitioner submitted that it has tied up 2645 MW gas based capacity on long-term basis. Due to growth in power demand, generation from entire tied up capacity is necessitated. The tender is proposed to be invited for replacement of only part of the gas based capacity and in case gas becomes available in near future at cheaper rates, the same may be tied up for availing generation from gas based projects.

8.14 **Short-term v/s. Medium-term:**

The objector contended that medium-term power carries the added risk of change in law implications in comparison of short-term power.

The Petitioner in its Bid Documents has taken a deviation by modifying the Change in Law provision in line with provision under Short-term Tender. The objection raised by the objector is without going through the bid documents and is factually incorrect.

8.15 **Right to accept/reject bid**:

The objector has raised the aforesaid issue for which the Petitioner has given detailed submission in Annexure-G to the Petition.

8.16 Based on the aforesaid, the Petitioner submitted that the Commission may allow the deviations proposed.

9. It is an admitted fact that the Petitioner has vide letter No. 419 dated 06.04.2021 apprised the Commission that they have initiated the process for tie-up of 1000 MW power on medium term basis as per the guidelines dated 30.01.2019 issued by the Ministry of Power, Government of India. The Petitioner had published a Notice inviting tender in two National newspapers on 06.04.2021 and uploaded the draft Bid Documents i.e. RFP, RFQ and PPA on the portal of Ministry of Power and its own website. The Petitioner had invited suggestions/queries from the prospective bidders and after receipt of comments from the bidders, the Petitioner had issued clarification on queries of the bidders on 31.05.2021.

9.1 The present Petition has been filed by the Petitioner seeking deviations from the Model Bidding Documents on the ground that to ensure commercial clarity with regard to contractual provisions and to safeguard the interest of the Petitioner and the consumers at the large. Thus, prior to initiation of procurement of 1000 MW power on medium-term basis i.e. 23 months, the Petitioner has sought approval from the Commission on certain provisions of the bidding documents.

10. The objectors have raised following objections:

(i) There is no justification with regard to procurement of 1000 MW power on medium-term basis and it is burdensome on the consumers.

(ii) The Petitioner has tied up excess capacity than the requirement. Hence, the proposed procurement of 1000 MW power on medium term basis is not justified.

(iii) The price of gas stated at higher side is not justified to procure 1000 MW power on medium-term basis as the price of gas may reduce later on.

(iv) Fee for the Petition is not paid by the Petitioner.

11. Now we deal with the objections raised by the objector.

11.1 The objector has contended that there is no justification for the 1000 MW capacity proposed to be procured by the Petitioner on medium-term open access basis as the Petitioner has tied up excess capacity of more than 9000 MW in comparison to peak demand. The objector has contended that no approval has been sought by the Petitioner prior to inviting the medium-term open access tenders from the bidders.

11.2 In response to the aforesaid contentions of the objector, the Petitioner has submitted that the Petitioner has filed Tariff Petition before the Commission wherein the Commission has approved procurement of power from different sources consisting of conventional based energy as well as renewable energy sources. The Petitioner has submitted that the total power procurement from different sources approved by the Commission in the Order consists of 18453 MW from conventional sources and 6481 MW from renewable capacity. The conventional capacity consists of gas based capacity of 2645 MW from where the Petitioner was allowed to procure power from that sources. The Petitioner intends to procure power in place of gas based capacity of 2645 MW by about 1000 MW as replacement of power since the cost of gas / RLNG is quite high in the market i.e. in the range of about USD 10 – 11.5/MMBTU. The generation cost with above rate works out to Rs. 5.90 to Rs. 6.75 per unit, which is quite high. Hence, the Petitioner desires to procure power from medium-term open access to reduce the cost of purchase.

11.3 We have considered the submissions made by the parties. It is fact that the Commission has approved power procurement by the State Distribution Licensees, viz., UGVCL, DGVCL, MGVCL and PGVCL through GUVNL from various sources. In Petition No. 1911/2020, 1912/2020, 1913/2020 and 1914/2020, the Commission has approved procurement of power from different conventional sources of about 18453 MW consisting of power projects viz. NTPC, Stating Generating Company, PSUs and Private Generating Companies. Moreover, the Commission has also approved procurement of power from renewable sources i.e. wind, solar, biomass, and solar, to the tune of 6481 MW. We further note that the gas based capacity in conventional projects consists of 2645 MW. Thus, the gas based project is one of the sources of energy purchased by the Petitioner on behalf of the State Distribution Licensees. We also note that the rates of gas in the international market are high and it leads to higher cost of energy generation from such plants. As the rate of RLNG in the international market is about USD 10 – 11.5/MMBTU as stated by the Petitioner, the generation cost of energy from such projects works out quite high i.e. Rs. 5.90 to Rs. 6.75 per unit with consideration of exchange rate, calorific value of the gas, SHR and auxiliary consumption of the gas power project. Hence, any procurement of energy from gas based power projects affects the overall power procurement of the licensees and ultimately it is burdensome on the consumers. Moreover, the gas based power projects run by the licensees is to meet out the variability in demand particularly peak time demand as well as variation in generation availability from renewable energy sources to meet out the demand as well as Grid management purpose. Any replacement of energy from other sources than gas based power projects whose energy cost and/or power procurement cost of fixed/variable charges are lower than the energy cost of the gas based power projects, it is beneficial to the licensee and ultimately the consumers. Further, the Commission has also given directives to the distribution licensees to optimise power procurement cost. Hence, with regard to the contention of the objector that power procurement of 1000 MW power from medium-term open access proposed by the Petitioner is not justified and has not obtained approval from the Commission, we note that the Petitioner has submitted that it is replacement quantum in place of gas based power project quantum which was earlier approved by the Commission. Hence, there is no need for separate approval in the aforesaid matter. Hence, the contentions of the objector are not acceptable.

11.4 The Objector contended that the Petitioner has filed the Petition without approval of quantum and it is essential to call for comments/suggestions from the stakeholders on such quantum prior to approval of the Commission. The objector further contended that the Petition filed is bereft of critical information and is based on sketchy details.

In response to the aforesaid, the Petitioner submitted that the Petitioner has filed the Petition for replacement of gas based capacity by procuring power under medium-term open access to optimise power purchase cost. Clause 7(c)(1) of the GERC Guidelines for Procurement of Power by Distribution Licensees Notification No. 2 of 2013 issued by the Commission provides that prior to initiating bidding process for the quantum of capacity/energy only in case the power proposed to be procured exceeds the projected additional demand forecast for the next 3 years. As the Petitioner is intending to tie up power under medium-term basis for replacement capacity with an objective to optimise the power purchase cost and no additional quantum intended to be tied up, specific approval for the quantum under the tender is not necessitated. Further, final quantum under Tender is contingent to rates discovered under e-auction, market dynamics at the time of evaluation and would be subject to adoption by the Commission.

We note that the Petitioner has specifically submitted that procurement of 1000 MW power on medium-term basis (23 months) intended by the Petitioner in place of gas based capacity of 2645 MW is to optimise the power procurement cost. Thus, there is no addition in capacity based on anticipated demand in the State Distribution Licensee area envisaged by the Petitioner for which it desires to tie-up 1000 MW capacity on medium-term basis. Further, the discovered rate under e-auction is subject to evaluation by the Committee and adoption by the Commission. Hence, the contention of the objector is not accepted.

12. Now, we deal with the contentions/objections raised by the objector stating that the process for procurement of power on medium-term basis initiated by the Petitioner is without taking any approval of the Commission. The objector has also contended that the tender was issued by the Petitioner with specific condition to favour particular party in original bid. The Petitioner had specified

the condition for usage of coal. However, the objector has made representation and on complaints from other bidders, the Petitioner has issued clarifications and modified the original documents issued by it. The Petitioner has not filed the Petition in accordance with GERC Power Procurement Guidelines which mandates approval on long-term also.

12.1 The Petitioner submitted that it has, vide Letter No. 419 dated 06.04.2021, apprised the Commission regarding invitation of bids for proposed procurement of power on medium-term basis for and on behalf of its subsidiary Distribution Companies and also submitted that the Petitioner shall file Petition for approval of bid documents including deviations before the Commission in due course. The proposed tender documents are in accordance with Ministry of Power Guidelines dated 30.01.2019. Sr. No. (4) of the said Guidelines provide that any deviation from the Model Bidding Documents shall be made with prior approval from the Appropriate Commission. Accordingly, the Petitioner has filed Petition on 01.06.2021 seeking approval of the Commission to the deviations carried out by the Petitioner in the Model Bidding Documents in order to have commercial clarity for ensuring discovery of competitive tariff and to safeguard the interest of the consumers of the State.

12.2 We note that the Petitioner has apprised the Commission vide letter No. 419 dated 6.4.2021 for procurement of 1000 MW power on medium-term basis and also stated that they shall approach the Commission for approval of the Bidding Documents consisting of deviations in due course. The power procurement proposed by the Petitioner is in accordance with the Ministry of Power Guidelines dated 30.1.2019 for procurement of electricity on medium-term basis from power stations set up on Finance, Own and Operate basis. Sr. No. (4) of the said Guidelines provides as under:

> *"Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations form the Model Bidding Documents".*

12.3 In compliance of the aforesaid clause, the Petitioner has filed the present Petition seeking approval of deviations from the Commission. The Commission has directed the Petitioner to issue Public Notice in Daily Newspapers, upload the Petition on their website and call for comments/ suggestions on it. In compliance to the aforesaid direction, the Petitioner issued Public Notice in Daily Newspapers - Gujarat Samachar, Hindustan Times and Mint dated 22.06.2021 and also uploaded the Petitioner on its website inviting comments/suggestions. The said Petition was also uploaded on the website of the Commission and invited comments/suggestions from the stakeholders. Thus, opportunity is given to the stakeholders to comment on the proposed deviations sought by the Petitioner as well as procurement of power proposed by the Petitioner. From the above, it is clear that the Petitioner has followed the process to obtain approval of the Commission by filing the present Petition. Hence, the contention of the objector that the Petitioner has not followed the process for approval of the Commission is not valid and acceptable.

13. The objector has contended that the Petitioner has tied up 18453 MW capacity with conventional sources consisting of 2645 MW gas based plants. Further, it has also tied up 4219 MW of wind power

and has also tied up with solar power capacity. As per the submissions of the Petitioner in Petition No. 1922 of 2021, it appears that Petitioner has total tied up renewable energy capacity of 8010 MW consisting of 3537 MW Solar power as on 31.03.2020. The peak demand in the State for the month of January 2021 was around 16,600 MW while in the past it reached up to 17305 MW in January 2018. Thus, the peak demand of the State appears to be in the range of 17,000 MW. Considering the capacity tied up by the Petitioner, as stated above, the Petitioner has tied up capacity of more than 9000 MW in comparison to peak demand. Entire fixed cost of this excess capacity is being borne by the consumers of the Distribution Licensee.

13.1 The State owned Generating Company, GSECL, states that Gujarat is power surplus State and GSECL has to back down or keep its plants in shutdown or reserve mode which results into lower PLF. On one side GUVNL/Petitioner has excess capacity tied up yet issued tender for procurement of 1000 MW power on medium-term basis. Moreover, it has also tied up 800 MW capacity of Wanakbori Unit-VIII of GSECL for a period of 30 years.

13.2 The Study Report for Solar Rooftop published by the Petitioner states that the average peak demand of all 4 Distribution Licensees during FY 2019-20 is 12164 MW against its tied up capacity of 18453 MW from conventional plants and about 8000 MW with renewable energy sources. The said Report also states that the highest peak demand was 14492 MW for the month of August at around 16 hours in all 12 months. The Petitioner has to procure power from the market as and when required though they have already tied up surplus capacity and fixed cost of such excess capacity are being borne by the consumers of the State Discoms.

The Petitioner is directed to demonstrate with all facts and figures as to where is the shortfall and how many time blocks.

13.3 In response to the above, the Petitioner has submitted that the peak demand reached up to 19360 MW during the month of April 2021 wherein the peak power requirement of the State Distribution Licensees would be around 17000 MW. Against the same, the Petitioner is having tied up capacity of 18453 MW from conventional capacity and 6481 MW from Renewable capacity. The annual power demand in the State is witnessing growth of around 6-7% per annum. The generation from wind is highly infirm in nature and solar generation is available only during day hours. With the growth in power demand, all generation sources including gas based capacity would be required to be operated to successfully to meet the power demand. Accordingly, the Petitioner is seeking power tie up under medium-term capacity to optimise the power purchase cost by replacing a part of the gas based capacity which is 2645 MW.

13.4 We note that the power demand in the State is varying, dependent on various factors like economic slowdown, Covid-19 pandemic, high growth rate, inflation etc. Hence, it is necessary to take into consideration various factors while envisaging the demand of energy by the Distribution Licensee. From the submissions of the Petitioner and the objectors, it is clear that the power demand has varied in different years. It is also observed that peak demand of State was 19360 MW power during the month of April, 2021 wherein the peak power requirement was around 17000 MW as against the conventional capacity of 18453 MW and renewable capacity of 6481 MW capacity. The conventional capacity of 18453 MW consists of gas based capacity also. The demand of power is witnessing growth on year to year basis around 6-7% per annum in the last 5 years. The Distribution Licensees which are having universal obligation to supply power to the consumers also need to tie up power to meet out their long-term and medium-term power requirement and in order to meet out any variance requires short-term power procurement. Therefore, it is the duty of the Licensee to tie-up adequate capacity of the power procurement to meet out the consumers' demand simultaneously and to optimise the power procurement cost also. It is an admitted fact that the Petitioner is having 2645 MW gas based capacity tied up on long-term basis to meet out its power requirement. We also note that the cost of gas/RLNG has also increased substantially and it affects the generation cost of energy from such plants. Moreover, the renewable energy is infirm in nature. In this situation, it is the contention of the objectors that there is about 9000 MW excess capacity available to the Petitioner and yet they also need to tie up for 1000 MW capacity is not correct. The proposed tied up capacity under the medium-term power procurement by the Petitioner is as replacement of gas based capacity which is a part of 18453 MW capacity considered to meet out the demand of the consumers. Moreover, the fixed cost is payable for the capacity tied up with the generating companies and the power procurement from the proposed medium-term power procurement by the Petitioner is having lower cost of energy charge than the gas based energy generation. It will be helpful to reduce the cost of power procurement of the Licensee. The objector has contended that the licensee may procure power to meet out the peak demand and excess demand, if any, through short-term basis is concerned, we note that the short-term power procurement is planned by the licensee with consideration of the power requirement, availability of energy from different energy sources, i.e. power projects on short-term basis. In the present case, the Petitioner has proposed to procure 1000 MW in place of tied up gas based capacity of 2645 MW which is tied-up on long-term basis. Hence, the contention of the objector that the power procurement be carried out by the Petitioner on short-term basis from the market is not acceptable.

13.5 The contention of the objector that in the Study Report for Solar Rooftop released by the Petitioner, the average peak demand from the State DISCOMs is 12164 MW during FY 2019-20 is concerned, the same is average demand for one tie block i.e. 11-12 hours only and it does not represent peak power demand. Hence, reference to the aforesaid Report by the objector is incorrect. Moreover, as per the National Electricity Policy and National Tariff Policy, the licensee has to tie-up adequate capacity to meet out the peak demand and not the average demand.

13.6 The objector has contended that though the Petitioner is having capacity of 2645 MW gas based power projects it has not tied up for cheaper gas supply. Moreover, how one can ascertain or come to the conclusion that gas price will remain high for the next 2 years instead of same being short-term nature. The Petitioner is not willing to make any effort to tie-up cheaper gas in future. The Petitioner needs to submit the number of blocks wherein the demand is expected to be more than the tied up capacity.

13.7 In response to the aforesaid contentions of the objector, the Petitioner submitted that the market prices of gas are in the range of USD 10 – 11.5/MMBTU, corresponding to the same, the energy charge works out to around Rs. 5.90 – 6.75 per unit and therefore, the Petitioner is seeking approval for procurement of power 1000 MW on medium-term basis as a replacement of gas based capacity and as and when the gas prices become competitive the same would be tied up for availing power from gas based generation projects. We note that the cost of generation from gas based power projects with consideration of price of gas in the international market stated by the Petitioner and availability of gas, the cost of generation from such plants is quite higher. Hence, any procurement of energy in place of gas based capacity having lower cost than the energy charge of the gas based plant, such energy procurement is beneficial to the licensee and the consumers. Therefore, the contention of the objector that though the Petitioner is having gas based plants, the Petitioner is not making any effort to tie up the gas at cheaper rate is not accepted.

13.8 The objector has contended that one of the reasons for procurement of power on medium-term basis is power supply to the agricultural sector under Kisan Suryodaya Yojna implemented by the State Government wherein it is provided that power supply provided to the agricultural sector is during day time. Hence, to meet the demand of energy during day time i.e. 5.00 a.m. to 9.00 p.m., due to shifting of the agricultural load in day period, it is necessary to plan for procurement of power to meet out demand of aforesaid scheme. The objector has contended that there are about 600 MW Solar rooftops added every year since last 3-4 years. Additionally, the Petitioner has also tied up with Solar power projects. Thus, the power available from solar rooftop projects and tied up by the Petitioner would be helpful to meet out the demand of agricultural sector. The Petitioner has not submitted any details about increase in power demand due to KSY scheme, consisting of number of consumers under the scheme, total demand, peak demand, consumption pattern, details of shift in load etc. and whether the Petitioner is required to obtain approval from the Commission before implementation of KSY Scheme or not? Whether the Petitioner is required to incur any capital and revenue expenditure for KSY Scheme? Whether the State Government is going to compensate the Petitioner for capital and revenue expenditure for implementation of KSY Scheme under Section 65 of the Act?

13.9 In response to the above, the Petitioner submitted that during the proceedings for determination of tariff for FY 2021-22, the Petitioner has submitted and intimated to the Commission regarding implementation of the KSY Scheme introduced by the State Government for supply of power to the agricultural sector during day time. The Commission has also taken note of the same in its Tariff Order dated 31.03.2021. We note that the KSY Scheme was introduced by the State Government with an intent to provide day time power to the agricultural sector instead of supply during day and night period and save power purchase cost. We note that by introduction of the KSY scheme the Agriculture load that was supplied during night hours will gradually shift by providing power to the farmers during day time. Such shifting of load needs to be met/catered by the additional power requirement available to some extent through renewable sources in addition to existing sources of power supply. However, power supply available from renewable sources may also not be sufficient to meet out the demand arising on account of shifting of Agriculture load. Moreover, intermittent nature of renewable energy and its availability may also affect the supply to cater demand by the licensees. Further, higher cost of gas based generation will affect supply cost of the licensees in such situation. Hence, the proposed procurement of 1000 MW power on Medium term basis proposed by the Petitioner will be helpful in meeting the incremental demand arising due to implementation of KSY scheme with optimum power procurement cost. As regards the capital expenditure, if any, necessary to strengthen the existing system or creation of new system for KSY scheme is concerned, the same is subject matter of tariff determination and approval of ARR of the licensee. It is not the subject matter of the present Petition.

Hence, the contentions of the objector on this aspect are not accepted.

13.10 The objector has contended that the Petitioner shall procure power on short-term contract basis instead of medium-term basis for 23 months. The Petitioner has not provided any details of the shortfall in power procurement with consideration of time block-wise demand. Moreover it is not sure that the gas price will remain higher during 23 months i.e. medium-term power procured by the Petitioner. Hence, the Commission may allow power procurement on short-term basis only and not on medium-term basis, i.e. 23 months, as proposed by the Petitioner.

13.11 In response to the aforesaid submissions, the Petitioner submitted that procurement of power on medium term basis provides facility in comparison to short-term power procurement, as in short-term power procurement it is provided that monthly minimum supply off-take obligation is 85%, failing which liquidated damages payable by the procurer i.e. the Petitioner in the present case, while in case of medium-term tender, the tariff is two part tariff. There is no monthly minimum off-take obligation. Moreover, the power procured on medium-term open access provides flexibility to schedule power during the day and as per the system requirements, when power is not required during the day it can be backed down as per the provisions of Grid Code.

13.12 We note that the power procurement proposed by the Petitioner for 23 months on medium-term basis provides facility to the Petitioner as stated by it with regard to minimum off-take obligation and avoid liquidated damages in case of less off-take. Further, it would also provide operational flexibility to the Petitioner to schedule power during a day and system requirement on day to day basis and back down as per the provisions of Grid Code. Hence, the contention of the objector that power procurement on short-term basis be allowed and not as proposed by the Petitioner for 23 months is not acceptable.

13.13 The objector has contended that the Petitioner has kept discretion that it may accept/reject the Bids at qualifying stage from the generator under dispute/litigation which is discriminatory and against the provisions of competition and that the Petitioner would indulge into connivance as per its choice and the same may not be allowed. Some of the objectors have contended that it is restrictive provision and against the spirit of the Act which provides for competition in the Electricity sector.

13.14 In response, the Petitioner submitted that the aforesaid provision is kept in order to protect the Petitioner and to safeguard its interest in pending litigations with the generators while ensuring proper supply of power.

13.15 We note that as suggested by the Petitioner, in pending dispute/ litigation with the generators rationale by the Petitioner that allowing such generators to participate may compromise/dilute the stand taken by the Petitioner before the Regulatory Forums or judicial body where the litigation between the Petitioner and the generator is ongoing and it may cause consequential implications, seems valid. The aforesaid clause provides the Petitioner to safeguard its interest in the litigations before the judicial or regulatory authorities against the generators with whom such litigation is going on. Hence, it is incorrect to say that it is restrictive and against the competition envisaged in the Act because such litigations may be limited. Hence, the contentions of the objectors are not acceptable.

13.16 The objector has contended that the Petitioner has not paid requisite fee to the Commission as per the GERC (Fees, Fines & Charges) Regulations, 2005.

13.17 In response to the aforesaid, the Petitioner contended that the present Petition has been filed as Miscellaneous Petition under Section 86 read with Section 63 of the Act for approval of deviations to the Model Bidding Documents notified by the Ministry of Power as a part of cost optimisation initiative and the Petitioner has paid necessary fee for approval of deviations as per the GERC (Fees, Fines & Charges) Regulations. Hence, the contention of the objector is not accepted.

14. The objectors have contended that the eligibility criteria of bidders provides that for determination of prequalification, power station has access to an assured supply of fuel for which documents are to be submitted showing fuel arrangement to the satisfaction of the Petitioner and if the bidder does not have FSA but has supply of coal through e-auction/imports, the bidder has no documentary proof for assured supply of fuel though it has been receiving coal on regular basis through e-auction/imports. The objectors have suggested that the bidder with supply of fuel under e-auction/imports shall be allowed to submit an undertaking for assured fuel supply.

14.1 The Petitioner submitted that if the assured power supply is not available with the bidder, then pursuant to power tie up Developer/Bidder may not be able to fulfil its obligation under the arrangement and may seek reprieve from the performance obligation citing non-availability of fuel. Further, the above provision is adopted in accordance with the Model Bidding Documents of the Ministry of Power and is in the interest of the consumers to ensure availability of power supply during contract period without any subsequent implication.

14.2 We note that the provision provided by the Petitioner is in accordance with the Ministry of Power Guidelines and Model Bidding Documents as the power supply desired to be procured by the Petitioner on medium term basis to meet out the demand of the consumers/licensee. In place of higher price of gas in the market any impact due to non-availability of power supply for the reason that fuel is not available it will further hamper the licensee/Petitioner to arrange power from other sources. Fuel is one of the important parameters while deciding the procurement from the generating station by the distribution licensee. Hence, the assured fuel supply agreement is necessary with the generators to satisfy the Petitioner about availability of fuel and power from the generating station. In case of non-availability of fuel for any reason through e-auction/import by the generator it will hamper the power procurement of the procurer on the ground that as fuel is not available generation is not possible and it is beyond the control of the generator and thereby seek reprieve from the performance obligation. Hence, we are of the view that the aforesaid contention of the objector is not acceptable.

15. The objector has contended that the bid documents provides that the Petitioner shall have discretion to accept/reject the bids at qualification stage from the generators under dispute/litigations is not relevant to disqualify any bidder/supplier.

15.1 We note that as submitted by the Petitioner, the aforesaid provision is provided with a view to protect the interest of the Petitioner in the pending adjudication/under litigation with the generators affects the ongoing dispute between the parties. The aforesaid provision has been kept by the Petitioner with a view to protect the interest of the Petitioner and ensure proper supply of power at competitive rate from the generators without affecting the matters pending for adjudication. Hence, the objection is not accepted.

16. The objectors have contended that modification proposed in the Appropriation of Performance Guarantee - clause 9.2 of RFQ which provides for replenishment or furnishing of a fresh Performance Security, as the case may be, the supplier shall be entitled to an additional cure period of 60 days for remedying the supplier default or to meet any condition precedent instead of 120 days provided in the Model Bidding Documents. As the aforesaid deviation is from the Model Bidding Documents and there is no sufficient reason for such change is concerned, the Petitioner has submitted that the aforesaid provision is modified with consideration of short period of 23 months only seems valid as the procurement proposed by the Petitioner is only for 23 months and correspondingly reduces the replenishment / performance Security is appropriate as the same period is 4 months as per the Bidding Documents and considering the same period medium-term procurement of 23 months, 60 days is reasonable and valid and the contention of the objectors is not accepted.

16.1 The objectors have contended that modification proposed in clause 11.11 of the PPA pertaining to discount for earlier payment which provides that any payment within 5 days by the utility to the generator from the date of invoice submitted shall be entitled to deduct 1%. The said modification as proposed by the Petitioner saying that in case the utility pays the energy bills within 7 days from the date of submission of bills it shall be entitled to deduct 2% of the amount comprising of energy bills by way of discount for earlier payment.

16.2 We note that the aforesaid deviation provides clarification with regard to consideration of due date and eligibility towards discount for early payment. Further, the proposed discount is in line with the present practice of the Petitioner and the contention of the objectors is not acceptable.

17. The Petitioner has proposed to delete clause 17.2(d) of the PPA pertaining to Force Majeure/Political Event on a ground that as it is not relevant in the present bidding invited by the Petitioner to avoid any consequential implication thereof. The objectors have contended that removal of the aforesaid clause may affect the generators having supply of imported coal through captive mines. Hence, the aforesaid clause may be retained as per the Model Bidding Documents. Further, it is contended that if the Commission allows to delete such clause then the Commission may be pleased to allow in change in law occurring in the host country as a Change in Law in the present bid.

17.1 We note that the power supply desired to be procured by the Petitioner in the present case in the State of Gujarat with assurance that the generators have fuel supply agreement. Further, the fuel supply, if any, tied up by the generators from other countries, either through fuel supplier or from its mines, any change in law in that country be qualified as Change in Law be allowed by the Commission as Force Majeure is not permissible because the aforesaid provision is pertaining to Force Majeure and not Change in Law. Force Majeure and Change in Law are defined in the Bidding Documents in different Articles and have different & distinct interpretation. Hence, no provision of Force Majeure can be qualified as Change in Law. On that ground the contention of the Petitioner is not accepted.

17.2 The Petitioner has proposed to modify Force Majeure clause pertaining to allocation and cost arising out of Force Majeure specified in Article 17(1(b) stating that upon occurrence of Political Event all Force Majeure costs attributable to Political Event shall be borne by the supplier instead of the said provision provided in the Model Bidding Documents that upon occurrence of Political Event all Force Majeure costs attributable to such Political Event shall be reimbursed by the utility to the supplier. The aforesaid deviation proposed by the Petitioner is to avoid any fatal cost implication on the Petitioner on account of Political Event. The objector has contended that the aforesaid deviation affects risk allocation matrix and ultimately vitiates the principles of Sections 61 and 63 of the Act. The objector further submitted that Political Events are not in control of the supplier. Thus, it will also lead to Bidders assuming a higher tariff discovery and hence, it would be detrimental to the consumers interest. Therefore, the said clause may be retained.

17.3 We note that the foresaid deviation proposed by the Petitioner to avoid unfettered implication on the Petitioner and the consumers. The contention of the objector that it will lead to higher risk premium and also discovery of higher tariff and the same is detrimental to the consumers interest are concerned, it is without any supporting documents, and based on the approval, the Petitioner shall be required to carry out competitive bidding wherein different generators/suppliers may participate in the bidding process and they may bid with consideration of their assumptions and presumption. It is incorrect to say that every party/bidders consider higher risk premium or any risk premium as a part of bidding price. Hence, the contention of the objector is not accepted.

17.4 The objectors have contended that the relief for unforeseen reasons provided in Article 17.10 of the PPA proposed to be deleted by the Petitioner on the ground that the unforeseen event may lead to dispute/litigation and consequential impact thereof including the cost. The objectors suggested that the unforeseen events affect either the bidder or supplier. Hence, the said clause is required to be kept to protect the right of the parties. Removal of such clause leads to bidders assuming higher risk premium. Hence, the tariff discovered may be higher and detrimental to the consumers interest.

17.5 We note that the aforesaid provision proposed to be deleted by the Petitioner is to avoid the disputes/litigation that may occur between the parties on account of unforeseen reason and it affects the supply of power as well as cost. We agree with the contention of the Petitioner that unforeseen reasons are wide and on that ground any dispute between the parties will lead to litigation and hamper the power supply to the licensee and ultimately to the consumers which is against the core purpose of procurement of power on medium-term basis desired by the Petitioner for 23 months. The contention of the objectors that the said provision protects the interest of the supplier as well as utility and also removal of such provision leads to bidders assuming higher risk premium and discovery of higher tariff is concerned, the same are not accepted on a ground that it will put both supplier and utility at the same level and impact of the same both on the utility and supplier are the same. Further the contention of the objects that it will lead to higher premium risk in tariff considered by the bidders and reflected in the tariff is not accepted on a ground that it is premature to contemplate consideration of different bidders i.e.

generators/suppliers participating in the bidding wherein such higher risk premium may not be considered by some of the bidders with consideration of their ability to supply power. Therefore, the contention of the objectors is not accepted.

17.6 The Petitioner has proposed deviation in the Certificate from the Statutory Auditors provided in Annexure-II of RFQ as under:

> *"Based on its books of accounts and other published information authenticated by it, this is to certify that .... (name of the Bidder) is an equity shareholder in ....(title of the power station) and holds Rs. .... Cr. (Rupees .... crore) of equity (which constitutes ....% of the total paid up and subscribed equity capital) of the project company."*

The aforesaid deviation proposed by the Petitioner stating that in case of the SPV and the bidder are the same, there is no change.

17.7 The objectors have contended that if the bidder is a trading licensee and is not an equity shareholder in the developer, then the data does not fit properly in the attached format of the certificate. So, this certificate should be allowed to be modified as per convenience. Further, the Institute of Chartered Accountants of India (ICAI) has prescribed set formats and guidelines for certificates to be issued and the formats provided in the bidding documents are not in line with the formats/guidelines laid down by ICAI. Hence, the utility may be directed to allow the certificate in line with the ICAI guidelines.

17.8 We note that the aforesaid provision provided by the Petitioner is with consideration that when SPV and the bidding company are the same the said certificate is not having any change. The certificate is to be provided by the bidders. The contention of the objectors that in case of the bidder being trading licensee and not having equity shareholding in the developer, then the data does not fit in the format. Further, the certificate proposed by the Petitioner is with regard to bidders' equity holding in the power project. It is the bidder to supply power to the utility/Petitioner. Hence, the said certificate provides clarify on the supplier/bidder about equity holding in the power station from where the bidder would supply electricity to the licensee/Petitioner. Hence, the contention of the objectors to the certificate as per ICAI guidelines has not relevance and the same is rejected.

17.9 The Petitioner has also proposed following deviations on which there are no objections from the objectors.

(i) Delivery Point : The Petitioner has proposed deviation in Delivery Point specified in the bidding documents stating that the project connected with Gujarat State Transmission Utility (STU) network, the Delivery Point shall be interconnection of Generator and Gujarat STU in intra-state Grid where supply is received by the Petitioner/utility. While in case of the project connected to network other Gujarat State Transmission Utility the interconnection is of Central Transmission Utility (CTU) with Gujarat STU network in intra-state Grid where supply is received by the utility. We note that the aforesaid provision brings clarity with regard to evaluation of bids from the projects connected at different network like CTU or STU and its impact would be on landed cost to the utility/Petitioner with consideration of working out the cost of such project and carry out the comparison and to have parity for evaluation of bids for projects in Gujarat State as well as outside Gujarat. Hence, the aforesaid deviation is approved.

(ii) Financial Capacity / Net Worth criteria for pre-qualification: The Petitioner has proposed in the Model Bidding Documents that the bidder shall have a minimum Net Worth equivalent to Rs. 1 crore per MW of the capacity at the closing of the preceding financial year. The Petitioner further submitted that in view of various stressed power plants having merchant capacity willing to participate, in the tender invited by Power Finance Corporation in Jan-2020 for aggregated power of 2500 MW under Pilot Scheme-II no financial capacity was solicited form bidders to encourage participation. Therefore, the Petitioner has proposed to deviate from the aforesaid provision of Model Bidding Documents by removing financial capacity net worth criteria in line with Pilot Scheme-II of Government of India Space Net Worth. The Petitioner further submitted that for ensuring adequate risk coverage regarding supply commitment, the bidder/supplier would be required to submit Bid Security and Performance Security to Utility. We note that the proposed deviation by the Petitioner is with an intent to increase competition from the bidders and avoid restriction coming in the way of net worth criteria as per the Model Bidding Documents. Further, to ensure the power supply commitment from the bidder/supplier, the Petitioner has proposed submission of Bid Security so that the interest of the Petitioner shall be protected in case of non-supply or performance by the bidder/supplier. Hence, the aforesaid deviation is approved.

(iii) Extension of Contract Period: The Petitioner has proposed that clause 3.2 of PPA providing for damages to be paid by the

Petitioner to the supplier in case of non-extension of contract after the original period, may be deleted. The aforesaid provision of clause 3.2 of PPA provided by the Petitioner is with consideration that the contract period is predefined and any extension in it would be mutually and in accordance with the terms laid down in the bid documents. Therefore, the provision for damages to be paid by the Petitioner/utility to supplier in case of non-extension of contract after original period is not having any relevance. Hence, the same is approved.

(iv) Transmission Charges, Losses & Open Access: The Petitioner has revised the aforesaid provision in the bidding documents to provide clarity to the supplier who is responsible for making application short-term/medium-term open access for and on behalf of the utility/Petitioner. Further, to ensure uniformity in transmission charges and losses to be quoted by the bidder connected with either Gujarat STU network or CTU network. The aforesaid deviation provides clarity to enable the Petitioner for evaluation of the bids received from various projects at uniform level and also provides transparency with regard to applicability of ISTS transmission charges and losses as well as pass through of the transmission charges and losses during the contract period and also provides clarify on the responsibility of open access. Hence, the aforesaid deviation is approved.

(v) Payment Security Mechanism: The Model Bidding Documents provides for establishment of Default Escrow Agreement and Deed of Hypothecation by the Petitioner in addition to Letter of Credit equal to 20% of annual capacity charge payable by the Petitioner for a month. The Petitioner has proposed to avoid implementation of multiple Payment Security Mechanism under the arrangement and avoid associated cost thereof with consideration of power supply received only for 23 months by removing Default Escrow Agreement and Deed of Hypothecation as Payment Security Mechanism to the supplier/bidder and in lieu of the same increase the amount of Letter of Credit equivalent to one month energy bill at normative availability to ensure adequate risk coverage to supplier. The aforesaid deviation proposed by the Petitioner seems valid as the same is with consideration of avoiding implementation of multiple Payment Security Mechanism and also to protect the interest of the supplier. Therefore, the said deviation is approved.

(vi) Force Majeure – Clause 17.2(d): The aforesaid provision is with regard to delay or failure of an overseas contractor to deliver the equipment in India with consideration that the tender is floated for procurement of power for 23 months wherein participation would be predominantly from operational projects. Hence, the aforesaid provision is not having any relevance. Therefore the said deviation is approved.

(vii) Clause 17.4(a): The aforesaid provision provides that any Change in Law event shall be considered as political event under Force Majeure if consequence thereof cannot be dealt with under Article 21 (Change in Law) and its impact in financial terms exceeds the terms specified in Article 21. The aforesaid clause proposed to be deleted by the Petitioner with an intent to avoid consequential implementation on the Petitioner due to claim referring to such event. We note that the procurement of power is for only 23 months by the Petitioner. Further, the aforesaid provision provides that the event of any change in law which is not covered under Article 21 is qualified as Force Majeure as political event. Force Majeure and Change in Law are different and distinct from each other. The law is defined in Article 21 and any change with respect of law specified in Article 21 is qualified only Change in Law and the same cannot be qualified as Force Majeure Event. Therefore, we are of the view that the proposed deviation seems valid and the same is approved.

(viii) Clause 17.7.1(b): The said provision provides that upon occurrence of a Political Event, all Force Majeure costs attributable to political event shall be reimbursed to supplier by the utility. The Petitioner sought deviation in the aforesaid provision stating that the same should be borne by supplier only and the utility/Petitioner shall not be required to bear the same. We note that the Political Event is different and distinct for different bidders considering different situations. The impact of Political Event occurrence as Force Majeure as per the Model Bidding Documents may vary from project to project wherein the suppliers are different. Therefore, the proposed deviation wherein the envisaged Political Event as Force Majeure, if occurred, the cost is attributable on it and shall be borne by the supplier. In such cases, the suppliers who have such risks in supply are able to consider in the bid price while the bidders may not have risk or having variance in risks consider its impact in bid price. Thus, the bid price quoted by different bidders with consideration of Political Event and Force Majeure and its impact on the bid price, the Petitioner is protected from such risk as it is part of the bidding documents and the bids are evaluated on common platform with consideration of risk of supply considered by them. Hence, we are of the view that the aforesaid deviation is valid and the same is approved.

(ix) Change in Law: The Petitioner has proposed Change in Law provision with regard to allow pass through of cost due to occurrence of Change in Law. As per the Model Bidding Documents in case the supplier suffers any increase or reduction in cost of reduction or increase in net after-tax return or other financial burden due to Change in Law, the aggregate financial effect of which exceeds the higher of Rs 1 crore and 0.1% of the Capacity Charge in any Accounting Year, Supplier may notify the Utility and propose amendments to PPA so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law. Further, parties shall endeavour to establish a NPV of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, so as the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

The aforesaid provision leads to complexity and also it may lead to dispute in calculation. Hence, the Petitioner has proposed to modify the said provision in line with the provision adopted for short-term tender in order to simplify pass through of cost and delet3 the provision regarding protection of NPV and restriction on cash compensation, the aforesaid deviation proposed by the Petitioner seems valid and avoid complexity of calculation as well as the dispute in calculation between the parties and provide clarity on valuation of impact of Change in Law, if any, occurred to compensate to the supplier for such occurrence. Hence, the aforesaid deviation is approved.

(x) Dispute Resolution: As per the Model Bidding Documents, in case of dispute it requires to be referred to Conciliation and then Arbitration. While any dispute under applicable laws if required to be adjudicated by the Commission it should be submitted before the Commission. The Petitioner has submitted that any dispute between the parties be adjudicated by the Commission and therefore, delete the provision of Conciliation and Arbitration. We note that as procurement of power proposed by the Petitioner is from the supplier who may be licensee or generating company. The

Petitioner is a licensee. Hence, any dispute between the Petitioner and supplier for supply of electricity having any dispute falls under the jurisdiction of this Commission, i.e. GERC, under Section 86(1)(f) of the Electricity Act, 2003. Hence, we approve the deviation proposed by the Petitioner.

(xi) Non-Availability as a consequence of shortage of Fuel: As per the Model Bidding Documents, in case of non-availability as a consequence of shortage of fuel qualifies as Force Majeure Event for the purpose of Fixed Charge payment availability to the extent of 30% of non-availability shall be considered. The aforesaid provision is proposed to be deleted by the Petitioner on a ground that it is the responsibility of the supplier to arrange for fuel. Any such provision of non-availability of fuel qualifies deemed availability to the extent of 30% for which the procurer shall provide payment to the supplier. We note that it is the duty of the supplier to supply power with consideration of availability of fuel. Any such provision will burdensome on the procurer/Petitioner which is a licensee, who is not responsible for fuel. Any risk of non-availability of fuel will be on the part of the supplier. Hence, the proposed deviation by the Petitioner is approved.

(xii) Indexation/escalation of Fixed Charge as per WPI: As per the Model Bidding Documents Base Fixed Charge quoted by the bidder shall be revised annually to reflect 20% of WPI variation occurring between Jan month immediately preceding the Bid Due Date and Jan month for the accounting year for which revision is undertaken. The Petitioner has proposed to delete the aforesaid provision with consideration of 23 months only for procurement of power and keep the provision for fixed charge and shall remain constant during the entire period of contract. The same provision is in line with the tender documents floated by the PFC under Pilot

Scheme-II for 2500 MW power under medium-term basis. We note that the aforesaid provision proposed by the Petitioner provides clarify to the bidder/supplier and also helpful to avoid complexity of calculation of fixed charge and dispute which may arise on that ground can be avoided. Hence, we approve the same.

(xiii) The Petitioner has proposed to add following two new provisions as a part of the Bidding Documents which may have commercial impact and to bring clarity with regard to cost implication due to compliance to environment norms, if any, and sharing of risk towards transmission cost burden.

(a) **Impact of additional expenditure due towards compliance to revised Environmental norms (Clause 5.12)** - The aforesaid provision proposed to be incorporated in the bid documents to provide clarity that any impact on tariff on account of compliance to revised environmental norms shall be on account of supplier/trader at all times during the contract period and the same shall not qualify for adjustment in tariff under Change in Law provision. We note that the aforesaid provision brings clarity with regard to price bids submitted by the bidders wherein the selection be carried out on L1 basis. The said provision provides that all bidders shall consider the impact of additional expenditure, if any, needs to be carried out by them in compliance to revised environmental norms and procurer/Petitioner shall be able to evaluate the bids with consideration of all suppliers on equal footing and avoid the chance of unfettered cost implication due to Change in Law, if occurred in future. Hence, we approve the incorporation of this provision in the bid documents.

(b) **Cost of Transmission charges (Clause 12.6) –** The Model Bidding Documents provides that transmission charges shall be a part of Base Variable Charges and it would be payable to the supplier by the utility as per actual despatch of electricity. As per CERC sharing of Inter-State Transmission Charges and Losses Regulations 2020, the bill for transmission charges for medium-term open access would be raised on the buyer (Petitioner) while in case of flow of power under short-term open access no additional charges would be payable in case of application of open access on behalf of the utility i.e. the Petitioner.

The Petitioner has proposed to incorporate a new provision (clause 12.6) to clarify that in case the utility schedules less power than availability actually declared by the supplier, utility shall reimburse/adjust the cost of transmission charge to the extent of normative availability or actual availability whichever is lower. It is further clarified that the supplier shall be responsible for applying open access on behalf of the utility. In case of power flow under short-term open access transmission charges towards medium-term open access would be payable to the supplier by utility as per clause 5.11 of the PPA.

We note that the linking of recovery of transmission charges specified in the provision will ensure declaration of adequate availability by the supplier and avoid cost burden on the utility/ Petitioner towards transmission charges in case project is unavailable for the utility. Hence, we approve the incorporation of proposed amendment in the bidding documents as suggested by the Petitioner.

18. Considering the above, we decide to approve the deviations proposed by the Petitioner in the Model Bidding Documents specified by the Ministry of Power Guidelines dated 30.1.2019. We also approve addition of clauses as proposed by the Petitioner and as decided in earlier paras of this Order.

19. We note that the present Petition has been filed by the Petitioner for approval of deviations from the Model Bidding Documents and procure 1000 MW power on medium term basis in place of the approved quantum of 2645 MW capacity of gas based power plants out of 18453 MW capacity of conventional plants tied up on long-term basis due to higher cost of gas/RLNG in the market. The proposed procurement by the Petitioner is with intent to reduce the power procurement cost of the utility and optimise the overall power procurement cost so that the consumers may not be burdened with higher cost. As the Petitioner during the proceedings assured that power procurement for 1000 MW proposed by them under medium-term open access will be carried out such that at all times price of such power procurement shall be lower than the power generation cost from the gas based power project with consideration of pricing of the gas in the market at the relevant time and it will be helpful to reduce the overall cost of power procurement of the distribution licensees and ultimately the benefits of same be available to the consumers at large shall be adhered. Further, the Petitioner shall also ensure that such power procurement shall be helpful to meet out the peak demand of the licensee and also able to replace higher cost of procurement approved by the Commission from its power procurement basket.

ORDER

20. In view of the aforesaid discussion and decision, we order as under:

(i) The present Petition is allowed.

(ii) We approve the deviations as sought for in this Petition from the Guidelines dated 30.01.2019 issued by the Ministry of Power including modifications/deviations, additions, deletions proposed by the Petitioner and accordingly approve the draft of Bid Documents i.e. RFQ, RFP and PPA.

21. We order accordingly.

22. With this order the petition stands disposed of.

Sd/-	**Sd/-**
[S. R. PANDEY]	**[M. M. GANDHI]**
Member	**Member**

Place: Gandhinagar
Date : 04/08/2021