

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2006 of 2021.

In the Matter of:

Petition under Section 86 read with Section 63 of the Electricity Act 2003 seeking adoption of tariff discovered under Competitive Bidding Process for Procurement of 1000 MW Power on Medium Term Basis in accordance with Ministry of Power Guidelines dated 30.01.2019.

Petitioner : Gujarat Urja Vikas Nigam Limited
Represented by : Ld. Advocate Shri Anand Ganesan, Shri K. P. Jangid, Shri Sanjay Mathur, Shri Pratik Joshi and Shri K. N. Chudasama

And

IA No. 18 of 2021 in Petition No. 2006 of 2021.

In the Matter of:

Application for impleadment and directions in Petition No. 2006 of 2021.

Applicant : Adani Enterprises Limited
Represented by : Ld. Sr. Advocate Shri Saurabh Soparkar and Advocates Shri Sandeep Singhi, Shri Gaurav Mathur alongwith Shri Mehul Rupera, Shri Abhishek Tyagi, Shri Malav Deliwala, Shri Saket Maloo and Shri Dipak Gajjar

V /s.

Respondent : Gujarat Urja Vikas Nigam Limited
Represented by : Ld. Advocate Shri Anand Ganesan, Shri K. P. Jangid, Shri Sanjay Mathur, Shri Pratik Joshi and Shri K. N. Chudasama

And

Petition No. 2008 of 2021.

In the Matter of:

Petition under Section 86 (1) of the Electricity Act, 2003 in the matter of Regulation of Procurement of power under Agreement for Power Purchase and for effective implementation of the Competitive Bidding Process for procurement of 1000 MW power on Medium Term Basis.

And

IA No. 19 of 2021 in Petition No. 2008 of 2021.

In the Matter of:

Application seeking interim reliefs.

Applicant : Adani Enterprises Limited

Represented by : Ld. Sr. Advocate Shri Saurabh Soparkar and Advocates Shri Sandeep Singhi, Shri Gaurav Mathur alongwith Shri Mehul Rupera, Shri Abhishek Tyagi, Shri Malav Deliwala, Shri Saket Maloo and Shri Dipak Gajjar

V /s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Advocate Shri Anand Ganesan, Shri K. P. Jangid, Shri Sanjay Mathur, Shri Pratik Joshi and Shri K. N. Chudasama

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 08/10/2021.

ORDER

1. Gujarat Urja Vikas Nigam Ltd. (GUVNL), has filed Petition No. 2006 of 2021 under Section 86 read with Section 63 of the Electricity Act, 2003 before the Commission for adoption of tariff discovered under the tender invited by it through tariff based Competitive Bidding Process followed by E-Reverse Auction and L1 matching mechanism. GUVNL has prayed the Commission to adopt the tariff and allow it to commence off-take power from the successful bidders to meet out its requirement.
2. During the pendency of the aforesaid Petition, M/s Adani Enterprises Ltd. one of the successful bidders, has filed IA No. 18 of 2021 in this Petition and requested to implead it as a party. It is also prayed that necessary directions be issued to GUVNL and approve request of the applicant - Adani Enterprises Ltd. to change the Developer / Generator from Essar Power MP Ltd. to Raigarh Energy Generation Ltd.
3. Thereafter, M/s Adani Enterprises Ltd. has also filed Petition No. 2008 of 2021 with prayer that the Commission may be pleased to direct the Respondent therein i.e. GUVNL, to forthwith agree to substitute Essar Power MP Ltd by Raigarh Energy Generation Ltd. as developer and direct the Respondent GUVNL to take all such steps in the subject matter by exercising the regulatory power by the Commission. It is also prayed to tag Petition No. 2008 of 2021 with Petitioner No. 2006 of 2021.
4. Alongwith aforesaid Petition No. 2008 of 2021, M/s Adani Enterprises Ltd. also filed an IA No. 19 of 2021 *inter alia* seeking *ex parte* ad interim relief that pending hearing and final disposal of the Petition filed by M/s Adani Enterprises Ltd. under Section 86(1) of the Electricity Act, 2003, the Commission may defer the hearing of Petition No. 2006 of 2021 and direct the Respondent GUVNL not to take any coercive steps including invocation of seven Bank Guarantees dated 11.8.2021 given as Bid Security until Petition No. 2008 of 2021 is heard and decided or alternatively, tag the same with Petition No. 2006 of 2021, so that both matters are heard together.

5. Thus, the Petition No. 2006 of 2021 is filed by GUVNL u/s. 86 read with section 63 of the Electricity Act, 2003 seeking adoption of tariff discovered under competitive bidding process, whereas petition No. 2008 of 2021 along with I.A. No. 19 of 2021 and 18 of 2021 in Petition No. 2006 of 2021 are filed under section 86 (1) of the Electricity Act, 2003 for directing the respondent GUVNL to agree for substitution of Essar Power MP by Raigarh Energy Generation Ltd. as the developer, and for interim relief against invoking bank guarantees etc. and to hear both the petitions together. Therefore, as both the petitions arise from the same cause of action, both the petitions along with the interim applications are dealt with together and disposed of by this common order.
6. The prayers in Petition No. 2006 of 2021 sought by the Petitioner GUVNL, are as under:
- (i) *To adopt the tariff discovered under the tender invited by the petitioner as mentioned above, pursuant to the Tariff Based Competitive Bidding Process followed by Reverse Auction & L1 matching mechanism through GUVNL's Tender/Medium Term/Lumpsum Tariff/2021-22/ET-5 and addendum/clarification thereto.*
 - (ii) *To allow the Petitioner to commence off-take of power under the aforesaid arrangement with immediate effect pending approval under this petition taking into consideration the prevailing power demand scenario due to deficient monsoon, upcoming festive season, exorbitant increase in market prices of gas and critical coal stock position across thermal plants at national level.*
7. The prayers in IA No. 18 of 2021 filed by M/s Adani Enterprises Ltd. in Petition No. 2006 of 2021 are as under:
- (i) *To implead the Applicant as party respondent to Petition No. 2006 of 2021 and permit the Applicant to make submissions at the time of hearing;*
 - (ii) *To direct the Petitioner to provide copy of the Petition to the Applicant;*
 - (iii) *To issue necessary directions and approve the Applicant's request to change the Developer from Essar Power MP Ltd to Raigarh Energy Generation Ltd. and direct the Petitioner to execute a supplementary agreement recording such change.*
8. The prayers in the Petition No. 2008 of 2021 filed by M/s Adani Enterprises Ltd. are as under:

- (i) To direct the Respondent to forthwith agree to the substitution of Essar Power MP Ltd. by Raigarh Energy Generation Ltd. as the Developer and to further direct the Respondent to take all such steps as may be necessary to give effect to such directions;*
- (ii) To issue appropriate directions to tag present Petition with Petition No. 2006 of 2021 for being heard together;*
- (iii) To exercise its regulatory powers and pass such other order or direction, as the Commission may deem fit and appropriate under the circumstances of the case.*

PETITION NO. 2006 OF 2021:

9. The facts stated in Petition No. 2006 of 2021 are in brief, as under:
- 9.1. The Petitioner GUVNL is a company incorporated under the provisions of the Companies Act, 1956 and engaged in the activities of Bulk power purchase and supply of electricity for & on behalf its four distribution companies viz. Uttar Gujarat Vij Company Limited (UGVCL), Madhya Gujarat Vij Company Limited (MGVCL), Dakshin Gujarat Vij Company Limited (DGVCL) and Paschim Gujarat Vij Company Limited (PGVCL).
- 9.2. The Petitioner has been tying up power on long term, medium term as well as short term basis from time to time in order to ensure availability of adequate power as per the requirement at competitive rates.
- 9.3. In order to meet the power requirement of its subsidiary DISCOMs and with an objective of optimization of power purchase cost, the Petitioner had conducted bid process for procurement of 1000 MW power through competitive bidding process on medium term basis for the period 01.09.2021 to 31.07.2023 in accordance with Ministry of Power Guidelines dated 30.01.2019. As per the Ministry of Power Guidelines, any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Commission provided that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.

- 9.4. In accordance with the aforesaid Guidelines, the Petitioner had filed Petition No. 1978 of 2021 before the Commission for approval of bid documents (RFQ, RFP & APP) including deviations and modifications from Model Bidding Documents. Subsequently, in accordance with the directives of the Commission, the Petitioner had issued public notice seeking objections / views of stakeholders and public hearing(s) were conducted. The Commission vide Order dated 04.08.2021 has approved the draft of Bid Documents i.e. RFQ, RFP and PPA filed by the Petitioner including the deviation and modifications to the Ministry of Power Model Bidding Documents.
- 9.5. It is submitted that as per the Tender issued by Petitioner, bidder is required to submit the details regarding firm fuel arrangement / FSA / LoA / any other equivalent arrangement to the satisfaction of Utility for assured supply of fuel. Further, the definition of Fuel Supply Agreement as per Tender is as under:
- “Fuel Supply Agreement” means the agreement entered into between the Supplier and a supplier of Fuel [and includes any arrangement for purchase of Fuel at spot prices]*
- 9.6. The Petitioner had received requests from various bidders that Coal India has been conducting regular e-auctions wherein huge quantum of coal for power sector is made available. Further, it had been requested that PFC Consulting in its Pilot Scheme II for 2500 MW has also accepted the submission of declaration/undertaking of generator for confirming fuel responsibility through the contract period.
- 9.7. Since, the tender document provides for risk/responsibility for arranging fuel on the bidder, in order to encourage better participation, in line with the mechanism under PFC Pilot Scheme II, the Petitioner vide Corrigendum-III clarified that bidders participating based on coal arrangement from spot market/e-auction shall be required to submit a “Commitment for Firm Fuel Arrangement” in the prescribed format on stamp paper acknowledging the risk as well as responsibility for arranging fuel throughout the contract period.
- 9.8. It is submitted that pursuant to aforesaid approval on 04.8.2021, the Petitioner had

released the final bid documents on DEEP Portal of Ministry of Power and also on Petitioner's website for wider circulation. The last date for Bid Submission (Bid Due Date) on DEEP Portal was 20.08.2021 (17:00 Hrs). The Petitioner had received Bids from 11 Bidders. Out of 11 bids, 10 bids were qualified and 1 bid received after the last date of registration intimated by the Petitioner i.e. 01.05.2021 was disqualified.

- 9.9. It is submitted that the Initial Price Offer (IPO) of the technically qualified bids was opened on DEEP Portal by the Petitioner on 23.08.2021. The details of party-wise Initial Price Offer with Quantum submitted on DEEP Portal e-bidding is filed with the Petition.
- 9.10. It is further submitted that the Reverse Auction was conducted on DEEP Portal from 18:15 Hrs to 20:15 Hrs on 23.08.2021. The process of Reverse Auction got finally concluded at 21:48 Hrs on account of auto extension in the DEEP Portal system with receipt of revised price lower than prevailing lower price.
- 9.11. It is submitted that the process of L1 matching was conducted on the DEEP Portal wherein the participating bidders are allowed to submit their revised bids by matching the L1 rate as per reverse auction. The details of party-wise position along with Quantum after conclusion of Reverse Auction process on DEEP Portal e-bidding and after L1 matching process is filed with the Petition.
- 9.12. The details of bidders along with quantum which have matched the L1 tariff and selected under the bucket filling procedure on DEEP Portal e-bidding is as under:

Sr. No.	Bidder	Cost of Generation	Cost of Transmission Charges	Cost of Transmission losses	Total	Allotted Quantity
		Rs. /Kwh	Rs. /Kwh	Rs. /Kwh	Rs. /Kwh	MW
1	Adani Enterprises Limited/91094	1.535	0.48	0.13	3.68	500
2	Tata Power Trading Company Limited/74244	1.535	0.48	0.13	3.68	200
3	Sembcorp Energy India Limited /74297	1.545	0.48	0.11	3.68	100
4	GMR Warora Energy Limited /138044	1.535	0.48	0.13	3.68	150

5	Manikaran Power Limited/78172	1.54	0.48	0.12	3.68	50
Total - 1000 MW at Rs. 3.68/unit at GETCO periphery						1000 MW

Note: As per the Bid parameters, the bidders are required to quote only cost of generation. While, fixed charge shall be deemed to be equal to cost of generation quoted by bidders.

- 9.13. It is submitted that as per the terms and conditions of the Bid Documents, the Petitioner is required to issue Letter of Award to the successful bidders within 10 days of the Reverse Auction & L1 matching and thereafter execute Agreement for Power Purchase (APP).
- 9.14. It is further submitted that taking into consideration the time period for issuance of LoA and signing of PPA, the Petitioner vide letter dated 28.08.2021 has issued the Letter of Award to five (5) qualified bidders who have matched L1 rate on DEEP Portal. The copy of LoA issued by the Petitioner is also filed with the Petition.
- 9.15. It is submitted that all 5 bidders to whom the Petitioner has issued Letter of Award (LoA) has acknowledged and unconditionally accepted the LoA with request for signing the Agreement for Purchase of Power (PPA).
- 9.16. It is further submitted that State is witnessing unprecedented scenario of deficient monsoon and consequential increase in power demand. Further, very less Renewable generation is available during peak demand period necessitating utilization of entire long term tied up generating capacity by the Petitioner. However, the present market rates of gas have increased to around USD 15-18/ MMBTU and therefore, the generation from gas based projects would not be commercially viable.
- 9.17. It is submitted that in view of increase in power demand due to deficient monsoon across the country, various States has been witnessing the issue of non-availability of thermal generation in the Country due to outages, coal shortages etc. Consequentially, the power purchase quantum on Power Exchanges has increased considerably which has led to increase in short term market prices.
- 9.18. In order to minimize the risk associated with quantum clearance from Power

Exchanges on day to day basis due to transmission corridor congestion and in order to avoid price volatility, the Petitioner has proceeded to execute the PPA with the qualified bidders for commencing the off-take of power under the arrangement at the earliest. The copy of PPA signed with 5 qualified and selected bidders by the Petitioner is also filed with the present Petition.

- 9.19. It is further submitted that the Clause (3) of Ministry of Power Guidelines dated 30.01.2019 provides as under:

“

(3) The tariff determined through the 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.

.....”

Further, as a part of Conditions Precedent to be satisfied by Petitioner (Utility) in accordance with Clause 4.1.2 of Agreement, the Petitioner is required to have approval of the Commission for payment of Tariff to Supplier in accordance with provisions of Agreement within 30 days after issuing of notice by Supplier subsequent to signing of PPA.

- 9.20. It is submitted that the rate discovered under the above e-bidding process pursuant to L1 matching is Rs. 3.68 per unit at GETCO periphery which includes Rs. 0.48 per unit towards transmission charges for procurement through medium term open access and Rs. 0.11-0.13 per unit towards transmission losses for Inter-State Transmission system. Therefore, the rate at Generator Bus-Bar works out to around Rs. 3.07 per unit.
- 9.21. With regard to discovered rate, it is submitted that rate is competitive compared to alternate available sources of generation like Generation from gas based projects and imported coal based projects at present market prices. Further, the rate discovered under the medium term tender of Petitioner is also comparatively lower than rates for

PFC Pilot Scheme II for 2500 MW under medium term basis which is around Rs. 3.93 per unit (for FY 2021-22) which works out to around Rs. 3.31 per unit at Generator bus-bar.

- 9.22. It is submitted that in accordance with Section 63 of the Electricity Act, the present Petition is filed by the Petitioner for adoption of tariff discovered pursuant to the Competitive Bidding Process conducted for procurement of 1000 MW power on medium term basis in accordance with Ministry of Power Guidelines dated 30.01.2019.
- 9.23. The power supply under the aforesaid arrangement was envisaged to commence from 01.09.2021. However, with final bid documents released in August-2021, considering timelines to be given for submission of bids as per the Guidelines, the process of e-bidding including Reverse auction have been concluded by end of the August-2021.
- 9.24. Accordingly, the Commission may adopt the tariff discovered as per competitive bidding process for purchase of power. It is further submitted that upon receiving appropriate approval from the Commission, the Petitioner is also required to initiate process for payment security mechanism, application of open access etc. for off-take of power.
10. During the hearing Ld. Senior Adv. Mr. Saurabh Soparkar on behalf M/s Adani Enterprises Ltd. (AEL), produced an IA No. 18 of 2021 in Petition No. 2006 of 2021 for impleadment as party Respondent in the present matter seeking appropriate directions for effective implementation of the Competitive Bidding Process by the Petitioner for procurement of 1000 MW power on Medium term basis submitting that in the bid submitted by the Applicant AEL in aforesaid bidding process, the name of generator from where power will be supplied was mentioned as Essar Power MP Limited since it was contemplated that Corporate Insolvency Resolution Process (CIRP) will conclude prior to commencement of supply. However, since the said process is delayed / pending, now it is not possible for the Applicant to supply power to the Petitioner under PPA from aforesaid generator but in lieu thereof AEL is now

prepared to supply the contracted quantum with same tariff and terms & conditions from another generator viz. Raigarh Project of their group company.

- 10.1. In response to above Shri K. P. Jangid, on behalf of the Petitioner GUVNL submitted that the present Petition has been filed for adoption of tariff discovered under competitive bidding process for procurement of 1000 MW power on Medium term basis in accordance with Ministry of Power guidelines dated 30.01.2019 and the above issue raised by the Applicant is not related to the prayer in present Petition which is regarding adoption of tariff only. It was further submitted that during the bidding process, the bid of M/s AEL was evaluated with consideration of Essar Power MP Limited as generator and in so far as any change in source of supply is concerned, the same is permissible as per provisions of Article 10.3 of the PPA. Hence, the above proposal of M/s AEL is not permissible. At present the Petition of GUVNL under Section 63 of the Electricity Act, 2003 is required to be considered and approved.
- 10.2. Ld. Senior counsel Mr. Saurabh Soparkar of the Applicant AEL submitted that in case the Commission decides Petition No. 2006 of 2021, obligation to supply power under PPA executed by AEL with the Petitioner will commence, which is not possible on account of pendency of CIRP process. It is further pointed out that Applicant AEL is not wriggling out of its obligations to supply the contracted quantum without any change in tariff or terms & conditions of the PPA but is only seeking permission for change in source of supply from Raigarh Power Project which is already a running project, technical details of which may be verified by the Petitioner.
11. The facts stated in IA No. 18 of 2021 in Petition No. 2006 of 2021 filed by Applicant M/s Adani Enterprises Ltd. seeking appropriate directions for the effective implementation of the Competitive Bidding Process for Procurement of 1000 MW Power on Medium Term Basis are, in brief, as under:
 - 11.1. It is submitted that the Applicant is a Trading Licensee and holds a Category-I Trading License from the Central Electricity Regulatory Commission. The Applicant had participated in the bidding process initiated by the Petitioner, for procurement of 1000

MW power under Medium Term, as a Trading Licensee.

- 11.2. Pursuant to this Commissions' Order dated 04.08.2021 in Petition No. 1978 of 2021, the Petitioner GUVNL in Petition No. 2006 of 2021 carried out the bidding process for procurement of 1000 MW power under Medium Term in accordance with Ministry of Power Guidelines dated 30.01.2019. The Applicant submitted a bid for 500 MW capacity.
- 11.3. Under the terms of the Request for Qualification (RFQ) and Request for Proposal (RFP) the Applicant, being a Trading Licensee, was required to state the name and details of the Developer i.e. the source of power from which the Applicant was to procure and supply the power. At the relevant time, the Applicant had indicated the name of the Developer i.e., the generating source from which power is proposed to be supplied as being Essar Power MP Limited. It was also pointed out that the Essar Power MP Limited was undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016.
- 11.4. The e-Reverse Auction under the Bidding Process was held on 23.08.2021 under which a Tariff of INR 3.68 per kWh was discovered. The Applicant, being L1 bidder, was adjudged as one of the successful Bidders for a quantum of 500 MW i.e. 50 % of the quantum desired to be procured by the Petitioner and the Petitioner issued the Letter of Award (LoA) dated 28.08.2021 in favour of the Applicant which is filed.
- 11.5. It is submitted that Essar Power MP Limited owns and operates a 1200 MW (2 x 600 MW) coal based thermal power station in the State of Madhya Pradesh. Adani Power Limited, one of the group companies of the Applicant, is the Successful Resolution Applicant of Essar Power MP Limited, pursuant to a Resolution Plan submitted by Adani Power Limited being approved by 100% voting by the Committee of Creditors of Essar Power MP Limited. Thereafter, the Resolution Professional of Essar Power MP Limited has filed the requisite application for approval of the Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT), Principal Bench, New Delhi.

- 11.6. It is submitted that while submitting its Bid, the Applicant was under the bonafide belief that the CIRP process of Essar Power MP Limited would be concluded by the time power supply is required to be commenced. This would have resulted in the Applicant's group company being in control of the operations of Essar Power MP Limited. However, on account of the pendency of the application for approval of the Resolution Plan, which got postponed due to numerous interventions, the same has not concluded and Adani Power Limited is yet to assume operational control over Essar Power MP Limited and the same continues to be under control of its Resolution Professional. It is pertinent to note that since the Essar Power MP Limited continues to remain under CIRP, there is an issue of availability of working capital, which would hamper availability of the power station and put reliability of power supply to GUVNL at risk.
- 11.7. In these circumstances, immediately on the issuance of the LoA, the Applicant made a request to GUVNL that it be allowed to change the source of supply to Raigarh Energy Generation Limited, one of the group company of the Applicant. However, such request has not found favour with GUVNL.
- 11.8. It is submitted herein that the Applicant's request for change in source of supply of power from Essar Power MP Limited to Raigarh Energy Generation Limited is beneficial to GUVNL for the following reasons:
- (a). The Applicant has requested to allow change in source without, in any way, affecting the tariff discovered in the Bidding Process. Thus, there is no impact whatsoever on the tariff and thus, there is also no adverse implication on GUVNL. Moreover, all other Terms and Conditions of the Agreement for Procurement of Power (APP) shall remain in force except change of source of power supply.
 - (b). There is no change in the Bidding entity i.e. the Applicant and all obligations under the APP will be met by the Applicant only. Further, even with change in

supply source, the qualifying criteria as prescribed in the Bidding documents will be met.

- (c). Raigarh Energy Generation Limited is fully under the control of the Adani Group and hence there shall be certainty in operation of the power plant which will ensure reliable power supply to GUVNL.
- (d). The Applicant, who is the successful bidder, agrees to supply 500 MW i.e. 50% of quantum to be procured by GUVNL for the period of the APP as per its terms to meet out the power requirement of GUVNL which is beneficial to GUVNL / State and consumers at large without any financial implications on GUVNL and smooth source of availability of Power.

11.9. The Applicant AEL further submitted that the present Petition is for the adoption of tariff, discovered during competitive bidding for 1000 MW of power. For such adoption of tariff to be a meaningful exercise and not become an empty formality, it is necessary that all signatories to the APP are in a position to supply power. It is submitted that to this end, it would be just, proper and expedient that necessary directions be issued permitting change in the Developer, declared by the Applicant AEL in its bid from Essar Power MP Limited to Raigarh Energy Generation Limited. Such change will ensure that there is no delay in procurement of 50% of the quantum i.e. 500 MW power, since any failure on part of Essar Power MP Limited would result into either a fresh bid or change of Supplier. In such event also, the source of power i.e. the Developer would undergo a change. However, without affecting the tariff or availability of power or in any manner curtailing the rights of GUVNL, as per the terms of the APP, change in the Developer will ensure availability of 500 MW power, which is in the interest of GUVNL and its consumers. Such change will cause no prejudice to GUVNL or any other person. In the circumstances, appropriate directions are required to be issued permitting change of the Developer.

11.10. Further, the Applicant also submitted that since the present Petition is for adoption of tariff and in case the tariff is adopted, the Applicant's obligation to supply power will

commence, resulting in an anomalous situation, where the possibility of procuring 500 MW power by GUVNL would be in a lurch. The said scenario is avoidable, by permitting the Applicant to be impleaded as a party respondent to the present Petition and issuance of necessary directions for change of the Developer. Even otherwise, in light of the facts stated above, the Applicant is a necessary and/or proper party and ought to be joined as respondent in the present Petition and/or be heard.

- 11.11. In view of the aforesaid facts and circumstance, the power supply from Raigarh Energy Generation Limited instead of Essar Power MP Ltd. will not only be beneficial to all but will not cause any loss or prejudice to any person and hence the same deserves to be granted.
- 11.12. The Applicant submitted that this Commission has adequate powers to regulate the procurement process of the distribution licensees. Such exercise of powers by this Commission would lead to proper and effective implementation of the Competitive Bidding Process for Procurement of 1000 MW Power on Medium Term Basis. It is submitted that no prejudice would cause to GUVNL. If the reliefs, as prayed for by the Applicant, are not granted by this Commission, irreparable harm and injury would be caused to the Applicant.
12. It is pertinent to note here that in the interregnum during the pendency of Petition No. 2006 of 2021 and IA No. 18 of 2021, the Commission received an email/letter dated 19.09.2021 from the Petitioner requesting to allow procurement of power at the discovered tariff under the bidding process to avoid higher cost of power procurement and to optimize the cost and reduce the burden on the consumers of the State, which reads as under:

"ON LETTER HEAD OF GUVNL

Ref. No.: GUVNL : GM (Comm.):

Date : 19.09.2021

*To
Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE*

Road 5C, Zone 5, GIFT City
Gandhinagar, Gujarat - 382355

Sub: Petition under Section 86 read with Section 63 of the Electricity Act 2003 seeking adoption Of Tariff Discovered under Competitive Bidding Process for procurement of 1000 MW Power on Medium Term Basis in accordance with Ministry Of Power Guidelines Dated 30.01.2019

Sir,

This is in reference to Petition no. 2006/2021 filed by Gujarat Urja Vikas Nigam Ltd. for adoption of Tariff discovered under competitive bidding process.

In the above context, it is requested that Hon'ble Commission may be apprised that presently around 3000 MW generating capacity tied up on long term basis is not available while gas based generating stations are not commercially viable as having generation cost above Rs. 12/unit. Therefore, the generation loss is met through purchase from Power Exchanges wherein the issue of limited supply quantum is experienced leading to uncertainty in quantum clearance and volatility in market clearing price. The same is now necessitating to operate the costlier gas based projects (having generation cost more than Rs. 12/unit) which will affect the power purchase cost.

Since the power is tied up under the above arrangement with landed cost of Rs. 3.68/unit at Gujarat periphery, the delay in commencement of power under the above arrangement is adversely impacting the consumers at large.

It is therefore requested to kindly apprise the Hon'ble Commission regarding the urgency of the matter and for further suitable directives in the matter. In view of the urgency in the matter, the additional submission is attached herewith. The same would be filed on affidavit on 20.09.2021.

Kindly acknowledge the receipt of the same.

Thanking You,

Yours faithfully,

Sd/-
(K.P. Jangid)
General Manager (Comm.)"

- 12.1. Considering the urgency shown by the Petitioner GUVNL in Petition No. 2006 of 2021 and its aforesaid email/letter dated 19.09.2021 requesting to allow the procurement of power at cheaper rate from the successful bidder under the competitive bidding process through reverse auction and out of 1000 MW power procurement desired by the Petitioner and noting that M/s. Adani Enterprises Ltd. which is a selected bidder

for contracted quantum of 500 MW has filed an I.A. pending before the Commission for decision while for the remaining quantum of 500 MW, there being no dispute before the Commission particularly when, the aforesaid competitive bidding carried out by the Petitioner GUVNL having tariff of Rs. 3.68 per unit was put before the Bid Evaluation Committee and which has confirmed the bidding process carried out as per the Ministry of Power guidelines wherein the tariff is discovered by the Petitioner under Deep portal through e-reverse bidding and based on it Letter of Award issued by the Petitioner and has also signed the PPAs, in the facts and circumstances, during the pendency of the aforesaid Petition No. 2006 of 2021 and IA No. 18 of 2021, the Commission passed Order on 19.09.2021 and allowed the request of the Petitioner, GUVNL, to adopt the tariff discovered of Rs. 3.68 per unit to purchase power from four successful bidders of the aforesaid Bidding Process having different quantum. The relevant portion of the said Order is reproduced below:

Order

- “10. *The Commission received an E-mail dated 19.09.2021 from the Petitioner requesting to allow the procurement of power at the discovered tariff under the bidding process to avoid the higher cost of power procurement and to optimize the cost and reduce the burden on the consumers of the State.*
11. *We note that the Petitioner has shown urgency by aforesaid email/letter dated 19.09.2021 requesting to allow the procurement of power at cheaper rate from the successful bidder under the reverse auction competitive bidding process. We also note that out of 1000 MW power procurement desired by the Petitioner, M/s. Adani Enterprises Ltd. which is selected bidder for contracted quantum of 500 MW has filed an I.A., which is pending before the Commission for decision while for the remaining quantum of 500 MW, there is no dispute before the Commission.*
12. *We note that the aforesaid competitive bidding carried out by the Petitioner was put before the Bid Evaluation Committee who has confirmed the bidding process carried out as per the MoP guidelines.*
13. *We are therefore of view that the tariff discovered under the bidding process carried out by the Petitioner under Deep portal through e-reverse bidding and is confirmed by the bid evaluation committee having*

tariff of Rs. 3.68 per unit and based on it the LoA issued by the Petitioner and also signed the PPAs. We adopt the aforesaid tariff.

14. *As the Petitioner had vide email/letter dated 19.09.2021 requested to allow the procurement of power at the discovered tariff to optimize the power procurement cost and reduce the burden on the consumers. Therefore, in the facts and circumstances, we deem it fit and proper to pass this Order today in the larger interest of the State and its consumers, while keeping the rest of the matter pending i.e. for 500 MW of M/s AEL. Accordingly, in the meantime, while partially passing this Order for the present we allow the Petitioner to procure 500 MW power at discovered tariff of Rs. 3.68 per unit from the bidders/suppliers other than M/s. Adani Enterprises Ltd. i.e. from Sr. No. 2 to 5 of table stated in para 4 above.*
 15. *The detailed order regarding adoption of tariff will be issued by the Commission separately."*
13. Thereafter, the Petitioner GUVNL also filed additional submissions in Petition No. 2006 of 2021 vide affidavit dated 20.09.2021 as under:
- 13.1. It is submitted therein that during the course of previous hearing on 17.09.2021, the advocate on behalf of M/s Adani Enterprise Ltd. (AEL), a Trading Licensee who has participated in the tender invited by the Petitioner for medium term basis and has been selected for supply of power from the generating source Essar Power MP Ltd. has informed that M/s AEL has filed an Interlocutory Application with a request to (i) Permit AEL as a respondent to the Petition (ii) For providing the copy of Petition filed by Petitioner and (iii) Request for approval for change in Developer from Essar Power MP Ltd. to Raigarh Energy Generation Limited under the PPA signed with the Petitioner on 09.09.2021.
 - 13.2. That one of the prayers of the Petitioner in the main Petition is to allow off-take of power under the aforesaid arrangement with immediate effect pending approval under this Petition taking into consideration the prevailing power demand scenario in the State.
 - 13.3. It is submitted that the request of M/s AEL for change in Developer is an operational aspect of the PPA executed between the Parties, which can be addressed in accordance

with Article 10.3 of the PPA. The issue raised by M/s AEL is not related to the prayer of the Petitioner with regard to adoption of tariff and hence the Commission was requested to adopt the tariff and allow the Petitioner to commence off-take of power under the arrangement at the earliest. The adoption of tariff subsequent to competitive bidding process may be approved by the Commission in view of present demand-supply scenario in the State wherein entire tied up generating capacity needs to be operated.

- 13.4. It is further submitted that presently around 3000 MW generating capacity tied up on long term basis is not available while gas based generating stations are not commercially viable as having generation cost above Rs. 12 per unit. Therefore, the generation loss is met through purchase from Power Exchanges. However, presently the short term power market is witnessing the issue of limited supply quantum leading to uncertainty in quantum clearance and volatility in market clearing price. The same is necessitating the Petitioner to operate the costlier generating stations including gas based projects having generation cost more than Rs. 12 per unit which will affect the power purchase cost. Since the power is tied up under the above arrangement at landed cost of Rs. 3.68 per unit at Gujarat periphery, the delay in commencement of power under the above arrangement is adversely impacting the consumers at large.
- 13.5. In view of the present power supply position, the Commission is requested to allow the Petitioner to off-take supply of power with immediate effect from 20.09.2021 so as to enable the Petitioner to optimize the power purchase cost and reduce the burden on the consumers of the State.
14. During further hearing, Ld. Senior Advocate Mr. Saurabh Soparkar on behalf of Applicant M/s Adani Enterprises Ltd. submitted that apart from IA No. 18 of 2021 in Petition No. 2006 of 2021, the Applicant AEL has also filed a Petition under Section 86 (1) of the Electricity Act, 2003 along with IA, wherein it is also prayed to tag newly filed Petition and IA with the present Petition No. 2006 of 2021.
- 14.1. This request has been opposed by Mr. K. P. Jangid on behalf of Petitioner GUVNL

submitting that their Petition is under Section 63 of the Electricity Act, 2003 only for adoption of tariff.

- 14.2. The Commission has heard at length arguments advanced by Adv. Mr. Anand Ganesan and Mr. K. P. Jangid on behalf of Petitioner GUVNL and Ld. Senior Advocate Mr. Saurabh Soparkar on behalf of Applicant M/s Adani Enterprises Ltd.
- 14.3. Ld. Senior counsel on behalf of AEL argued to demonstrate that this Commission has regulatory powers under Section 86(1)(b) in a matter pertaining to Section 63 of the Electricity Act, 2003 for adoption of tariff. It is further submitted that in order to avoid further litigations in the matter when matter regarding adoption of tariff under Section 63 is pending for decision, this Commission has ample power and jurisdiction to consider the newly filed Petition No. 2008 of 2021 under Section 86 (1) of the Electricity Act, 2003 and IA No. 19 of 2021 therein, which are already served upon GUVNL.
- 14.4. It is also submitted that apart from the issue of pendency of Corporate Insolvency Resolution Process (CIRP) proceedings of Essar Power MP Ltd. before NCLT, which is source of power supply in PPA/APP, it has now emerged that Pollution Control Board of Madhya Pradesh has withdrawn permission for operation of Essar Power MP Limited. Therefore, it is not possible to supply contracted quantum by AEL to GUVNL from above source i.e. Essar Power MP Limited. Hence, AEL has approached this Commission by filing a Petition under Section 86(1) of the Electricity Act, 2003 along with an IA *interalia* seeking permission for substituting source / generator as Raigarh Power Project in place of Essar Power MP Limited as their request with GUVNL is not considered. Further, except seeking this change in source/generator, AEL is not seeking any material change in the PPA with regard to tariff, contracted capacity and other terms of the PPA executed with the Petitioner GUVNL and change in source will not affect any rights, obligations, liabilities of the parties under the PPA. It is also submitted that AEL is not wriggling out of its obligations to supply the contracted quantum but is only seeking permission for change in source of supply when it is clearly known that it is not possible to supply the contracted capacity from Essar Power

MP Ltd. The Commission has jurisdiction to direct the Petitioner to substitute Raigarh Power Project in place of Essar Power Mahan Ltd. in PPA and thereby no prejudice will cause to GUVNL. It is also argued that the Petitioner itself wants cheaper power for its consumers in the State and the Applicant finding it that it is not possible to supply power from the original source/ generator Essar Power MP Ltd. and by allowing change in source of supply it would ensure power supply quantum at same tariff with same terms & conditions and it is beneficial not only to the GUVNL but to the consumers at large whereby any future litigation can be avoided at this stage itself. Therefore, the Commission is required to take a comprehensive view of the matter by tagging both the matters together by giving a common hearing. In case the Commission decides Petition No. 2006 of 2021, the newly filed Petition No. 2008 of 2021 and IA No. 19 of 2021 under Section 86 (1) will become infructuous and obligation to supply the contracted capacity will start and may result in further litigations, which otherwise can be avoided. It is also argued that tagging the matters together and hearing thereof will not cause any prejudice to the Petitioner or consumers groups. On the contrary, the concern of consumer groups to get power at cheaper rate will materialize, if change in source of supply is permitted. Ld. Senior Advocate Mr. Soparkar has also drawn attention of the Commission on various consequences that may arise in this matter if source of supply is not allowed to be substituted.

- 14.5. Ld. Senior Counsel also referred judgments of Hon'ble Supreme Court in Energy Watchdog matter and Tarini matter in support of submission that this Commission has power to regulate tariff under Section 86 (1)(b) even in Section 63 matter.
- 14.6. It is also argued by Ld. Senior Advocate that the Petitioner itself had sought approval of deviations from Standard Bidding Documents under bidding guidelines from this Commission in Petition No. 1978 of 2021. It is further submitted that there is no objection by AEL in so far as an Order dated 19.09.2021 is passed by the Commission, allowing procurement of balance 500 MW power from other selected bidders by the Petitioner, GUVNL as the Applicant is not concerned with it.
- 14.7. Shri K. P. Jangid appearing on behalf of GUVNL submitted that Petition No. 2006 of 2021

is filed for limited purpose of adoption of tariff under Section 63 of the Electricity Act, 2003 and therefore, not only IA No. 18 of 2021 preferred by Applicant AEL is opposed but even the newly filed Petition under Section 86(1) of the Electricity Act, 2003 along with IA cannot be entertained by this Commission under Section 63 proceeding. It is further submitted that this Commission has approved vide its Order dated 04.08.2021, deviations in the bidding documents viz. RfQ, RfP and PPA sought by GUVNL in Petition No. 1978 of 2021 and pursuant to the said approval, GUVNL has carried out Competitive Bidding Process through e-reverse auction in transparent manner in accordance with guidelines dated 30.01.2019 of Ministry of Power. Therefore, under Section 63 proceedings, the Commission is required to adopt the tariff unless any violation is proved. The newly filed matter under Section 86 (1) has no relevance at this stage since, it was the decision of AEL, which is a trading licensee to submit in its bid, source as Essar Power MP Ltd. despite being aware regarding CIRP process. The bidders had choice while submitting their bid to decide about the source. Further, there is nothing on record from generator Essar Power MP Ltd. regarding issues raised by AEL.

- 14.8. It is also argued that Article 10.3 of the PPA addresses the issue of Applicant AEL. Also, in so far as judgments relied by the Ld. Counsel for AEL are not relevant in present matter. Per contra, the judgment of Hon'ble Supreme Court in Energy Watchdog matter is in favour of GUVNL with regard to competitive bidding guidelines and adoption of tariff discovered thereunder. In so far as Tarini judgment is concerned, the same pertains to determination of tariff under Section 62 of the Electricity Act, 2003.
- 14.9. It is further submitted that the Petitioner is in urgent need of power supply on account of situation prevailing at present and hence needs to avail this power supply with consideration of optimising the power purchase cost. There is shortage of power presently prevailing in the State. Therefore, the Commission may decide their Petition urgently.

15. Since both the petitions have common facts and cause of action, with a view to avoid repetition, only the necessary facts of Petition No. 2008 of 2021 filed by AEL, in brief, are summarised as under:

PETITION NO. 2008 OF 2021:

- 15.1. The Petitioner AEL has filed the Petition No. 2008 of 2021 on account of the unwarranted and unjustified refusal by the Respondent GUVNL to agree to change in the Developer stated in the Petitioner's AEL bid in respect of Procurement of 1000 MW Power on Medium Term Basis and under the Agreement for Procurement of Power.
- 15.2. It is submitted that the Petitioner AEL is a Trading Licensee and holds a Category-I Trading License from the Central Electricity Regulatory Commission. The Petitioner had participated in the bidding process initiated by the Respondent, for procurement of 1000 MW power under Medium Term, as a Trading Licensee.
- 15.3. The facts regarding status of the parties, bidding process, parameters, background etc. as stated in the petition, are undisputed, hence not repeated here. It is submitted by the Petitioner that Essar MP is having a 1200 MW (2 x 600 MW) coal based thermal power station in the State of Madhya Pradesh. In the CIRP of Essar MP, a group company of the Petitioner, namely, Adani Power Limited submitted a Resolution Plan under which, *inter alia*, Essar MP was to be acquired by APL. The Committee of Creditors of Essar MP, in a meeting held on 15.6.2021 unanimously approved the Resolution Plan of APL.
- 15.4. It is submitted that on 25.6.2021, the Resolution Professional of Essar MP filed an application being Interlocutory Application No. 2829 of 2021 in CP (IB) No. 893 (PB) of 2020 under the provisions of Section 31 of the Code before Hon'ble National Company Law Tribunal, Principal Bench at New Delhi for sanctioning of the approved Resolution Plan of APL in respect of Essar MP. With such approval, APL, a group company, would be in management and control of Essar MP and would be in a position to infuse funds for working capital and manage its affairs.
- 15.5. That on account of factors beyond the control of APL, the Approval Application has

remained pending before the Ld. Adjudicating Authority. The Approval Application is now listed for further hearing on 27.09.2021. While the Petitioner believes that the Resolution Plan of APL will be approved, the delay in the process of approval has put the Petitioner in a precarious position.

- 15.6. The Respondent GUVNL has issued a Letter of Award dated 28.08.2021 in its favour. In the LoA, the Respondent mentioned that the Developer from whom the power will be sourced is Essar Power MP Ltd. The Respondent required the Petitioner to unconditionally agree to the LoA.
- 15.7. That due to the delay in conclusion of the proceedings before the Ld. Adjudicating Authority, APL has been unable to get control of Essar MP and infuse necessary funds. In this scenario, Essar MP continues to remain under CIRP. This situation may give rise to issues of availability of working capital, which would hamper availability of the power station and put the reliability of power supply to the Respondent at risk.
- 15.8. In these circumstances, and in the interest of the Bid process under which the Respondent would get 500 MW power from the Petitioner, a request was made vide letter dated 3.9.2021 to the Respondent for change of Developer from Essar MP to Raigarh Energy Generation Limited (REGL), another group company of the Petitioner and enter in an Agreement for Procurement of Power directly with REGL, while the Petitioner would remain as a guarantor. In such scenario, the Respondent would have greater reliability of receiving power directly from a generating company, as against a Trading Licensee, with the Petitioner continuing to guarantee the supply of power. However, such request has not found favour with the Respondent, who by an email dated 3.9.2021 took the stand that it has evaluated the Petitioner's bid on the basis of Essar MP being the Developer. The Respondent thus insisted that the Petitioner indicates its unconditional acceptance of the LoA, though such un-conditionality is not a requirement under the Bidding Document.
- 15.9. The Petitioner once again reiterated its request for changing the Developer and/or executing an Agreement for Power Purchase directly with REGL by a letter dated

4.9.2021, pointing out the benefits of its proposal to substitute REGL in place of Essar MP as the Developer and/or direct Agreement for Power Purchase with REGL. Once again, the Respondent rejected such request vide its email dated 4.9.2021 and insisted that the acceptance of the LoA should not only be unconditional generally but also specifically for the source of power indicated in the bid. The relevant extract of the said email dated 4.9.2021 reads as under:

"This is in reference to your letter dated 04.09.2021.

In this regard, please refer to AEL letter dated 03.09.2021 and GUVNL's response vide email dated 03.09.2021.

It is once again requested that acceptance to the Letter of Award (LoA) issued shall be unconditional and for the source for which bid has been submitted by the bidder. Therefore, it is requested to convey your timely acceptance to the LoA adhering to the terms & conditions of tender vis-à-vis your bid submission."

- 15.10. The Petitioner stated since its Bid Security was at stake in case an acceptance to the LoA was not submitted within 7 working days of its issuance by virtue of Clause 5.5 of the RFP, the Petitioner vide letter dated 6.9.2021 was constrained to communicate its unconditional acceptance of the LoA.
- 15.11. That the Respondent thereafter sent a draft of the Agreement for Procurement of Power to the Petitioner. The Petitioner signed the Agreement for Procurement of Power on 9.9.2021 (APP) and submitted the same to the Respondent. The Petitioner is not aware whether the Respondent has signed and executed the APP since the Respondent has not shared an executed version of the APP. In the circumstances, the Petitioner is producing draft of the APP, the accepted version of which was signed by the Petitioner on 9.9.2021. The relevant extract of the APP read as under:

"WHEREAS:

- (A) The Utility had resolved to procure electricity for and on behalf of its four subsidiary electricity distribution companies from Essar Power MP Limited (Developer), through Supplier, a power generating station that would dedicate a contracted capacity of 500 MW (at Delivery Point) for production of electricity and supply thereof to the Utility on finance, own and operate (the "FOO") basis,*

in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003.

1.2.1. In this Agreement, unless the context otherwise requires,

- t. references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors.*

2.1. Scope of the Project

The scope of the Agreement (the “Scope of the Agreement”) shall mean and include, during the contract period:

- a. ensure the operation and maintenance of the Power Station, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement;*
- b. supply of electricity to the Utility in accordance with the provisions of this Agreement.*

3.1. The Procurement Contract

3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards to the Supplier the procurement contract set forth herein [for producing electricity at the Power Station” if Supplier is NOT a Trading Licensee] for supply thereof to the Utility (the “Procurement Contract”) for the period 9th Sept 2021 / date from which supply is available to Utility in accordance with this Agreement, whichever is later to 31st July 2023, and the Supplier hereby accepts the Procurement Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

3.1.2. Subject to and in accordance with the provisions of this Agreement, the Procurement Contract hereby awarded shall oblige or entitle (as the case may be) the Supplier to:

- a) finance, own, operate and maintain the Power Station in accordance with this Agreement” if Supplier in NOT a Trading*

Licensee, or ensure that the Developer finances, owns, operates and maintains the Power Station in accordance with this Agreement” if Supplier is a Trading Licensee];

b) [procure if Supplier is NOT a Trading Licensee, or ensure that the Developer procures if Supplier is a Trading Licensee] Availability of the Contracted Capacity for production of electricity and supply thereof to the Utility under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement.

(i) [neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement” if Supplier is NOT a Trading Licensee, or neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Procurement Contract hereby granted or allow the Developer to assign, transfer or sub-let or create any lien or Encumbrance on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement if Supplier is a Trading Licensee.]

5.1. Obligations of the Supplier

5.1.1. *Subject to and on the terms and conditions of this Agreement, the Supplier shall, [at its own cost and expense” if Supplier is NOT a Trading Licensee, or insert “through the Developer” if Supplier is a Trading Licensee], procure finance for and undertake the development, operation and maintenance of the Power Station and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder. Further in case Supplier is a Trading Licensee; The Supplier shall further ensure that the Developer maintains all consents, clearances and permits as required under Applicable Law for the operation and maintenance of Power Station and production of power, in full force and effects during the Term of this Agreement]*

5.1.4. *The Supplier shall [ensure that the Developer shall if Supplier is a Trading Licensee] operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty five per cent) thereof during each year of the Contract Period (the “Normative Availability”). Contract Period under this arrangement shall be sub-divided into three parts i.e. (i) 9th Sep-*

2021/date from which supply is available to Utility in accordance with this Agreement, whichever is later to Mar-2022 (ii) Apr-2022 to Mar-2023 & (iii) Apr-2023 to July-2023. Accordingly, Normative Availability as well as Incentive / Penalty as per the provision of this Agreement shall be worked out for above contract period respectively.

5.1.5. The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- c. perform and fulfil its obligations in respect of debt service for the Project if Supplier is NOT a Trading Licensee, ensure performance and fulfilment of Developer's obligation in respect of debt service for the Project" if Supplier is a Trading Licensee.

5.3. Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any Change in Ownership, except with the prior written approval of the Utility.

7.1. Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

- (c) along with its Associates, [it if Supplier is NOT a Trading Licensee, or insert the Developer if Supplier is a Trading Licensee] has the financial standing and capacity to operate the Project in accordance with the terms of this Agreement;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that its promoters together with their Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement;

8.1. Disclaimer

8.1.2. The Supplier acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause

8.1.1 above and hereby acknowledges and agrees that the Utility shall not be liable for the same in any manner whatsoever to the Supplier, and its Associates or any person claiming through or under any of them.

8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.

8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Utility to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Utility contained in Clause 8.1.1 and shall not in any manner shift to the Utility any risks assumed by the Supplier pursuant to this Agreement.

8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Supplier and the Utility shall not be liable in any manner for such risks or the consequences thereof."

15.12. As would be evident from the terms of the APP, diverse obligations are placed on the Petitioner with respect to the Developer i.e. Essar MP, which *inter alia*, includes an obligation not to permit any change in ownership, ensure the performance and fulfilment of Essar MP's obligation to service the debt, obligation that Essar MP would procure finance and undertake the development, operation and maintenance of its power station, such that at least 85% of the contracted capacity is available during the period of supply, an obligation to warrant that Essar MP is not facing any proceedings, the outcome of which would result, *inter alia*, in any material impairment of its ability to supply power. Such obligations, especially with respect to a company undergoing CIRP under the provisions of the Code can never be warranted since the Petitioner cannot be held responsible for outcome of any litigation even though its group company is vitally interested in the same.

15.13. Based on above, the request of the Petitioner for change of Developer from Essar MP to REGL is not only bonafide but also in the interest of the Respondent and its consumers. Accepting such request would ensure that the Respondent does not have to either undertake a fresh bidding process or scout for willing suppliers. In case, the Respondent resorts to the latter course of action, subject to the Petitioner being unable

to perform its obligations, the same would perforce result in a change of a Developer. Accordingly, the stand of the Respondent is neither proper nor in the overall interest of its consumers.

- 15.14. It is thus evident that, both, this Commission and the Respondent are anxious to procure power at a cheaper rate discovered at the auction with a view to ensure that the Respondent is able to *“optimize its power procurement cost.”*
- 15.15. Also, recent development that has occurred on 22.9.2021 is that the Resolution Professional of Essar MP has informed APL that the application for renewal of the Consent to Operate issued by the Pollution Control Board of the State of Madhya Pradesh to Essar MP, came to be rejected. In these circumstances, Essar MP can no longer run its power plant and consequently therefore, it would be impossible for the Petitioner to perform its obligations under the APP, without changing the Developer and again an issue beyond the control of the Petitioner.
- 15.16. The Petitioner has approached this Commission on the following amongst other grounds:
- A) The stand of the Respondent insisting that Essar MP alone should remain the Developer is illegal, unjustified, arbitrary, contrary to the spirit of the objective behind the Bid Document and would only result in engineering a breach of the terms of the APP on part of the Petitioner.
 - B) Under the Bid Document, the requirement to specify the Developer is merely to ensure that a bid by a trading licensee is not an exercise in futility. The Petitioner being a trading licensee, by the very nature of its business, would have to procure electricity from a generating company. The purpose and the objective for naming the Developer and providing details as required under Annexure - V of the RFQ is, therefore, an act of caution, which ensures that only serious trading licensees make a bid. Such requirement, however, is not to pin down a trading licensee to a particular Developer so long as a trading licensee is in a position to demonstrate

that a different developer would be in a position to perform its obligations, as mandated under the Bid Document and the APP. Such facts can always be verified by the Respondent without any delay. In the circumstances, the Respondent's refusal to accept the proposal to change the Developer is clearly unwarranted and unjustified.

- C) While the Bid Document required a bidder who is a trading licensee to name and give details of the Developer, the same does not mandate that once a Developer is named, it would be sacrosanct and cannot be changed. Any bidder being a Trading Licensee would at all times have the flexibility to alter/change the Developer, with a view to ensure reliable supply of electricity and due performance under the terms of the Bid Document. Merely because the bid has resulted into a LoA, the same has no nexus with the source of supply, so as to bind the Petitioner or the bidder to the person named in the bid. The essence of the obligation of a successful bidder, under the Bid Document, is to ensure continuous supply of power for the contract period but not to ensure supply of power from a named source.
- D) The Respondent's insistence that the Petitioner 'unconditionally' accepts the LoA and also the Developer named therein is contrary to the terms of the Bid Document, hence illegal and is also unjustified and unwarranted, inasmuch as it is an artificial requirement created by the Respondent for reasons best known to it. It is submitted that verification of a Developer is done based on the documents submitted by a bidder, in this case the Petitioner. It does not involve any long drawn techno-physical effort on the part of the Respondent. With the digitization of the data pertaining to power sector and its ready availability on internet makes it possible to do real-time monitoring as to whether a particular generating station is generating electricity or not. In this scenario, there is no rationale or justification for the Respondent to insist upon Essar MP to continue as a Developer merely because Essar MP was named by the Petitioner in the Bid

Document and whose details have been verified by the Respondent. The stand of the Respondent is, therefore, non-business like, wholly unjustified and illegal.

- E) The Respondent has failed to appreciate that the change of Developer, in the facts of the present case, would clearly be beneficial to it, save time and cost and will also be in the interest of the consumers in the State. The Petitioner submits that REGL is a group company of the Petitioner. It has the capacity to supply 500 MW power. It has the financial and technical backing of the Adani Group of Companies. It is operated in a professional manner. With minimal effort, REGL can be substituted in place of Essar MP, which in any case continues to be undergoing CIRP, as the Developer, without causing any prejudice to the Respondent or to any other person. The stand of the Respondent not to accept such substitution is unreasonable and arbitrary.
- F) The Respondent ought to have appreciated proposal made by APL, who is the successful Resolution Applicant of Essar MP, has not been able to acquire and gain control of Essar MP as the proceedings are pending before the Ld. Adjudicating Authority. The details submitted by the Petitioner with the bid were genuine and bonafide and on the basis of such details, the Petitioner did not incur a disqualification but has in fact become the lowest bidder. It is neither the intention of the Petitioner nor is it borne out from its actions that it is seeking to either avoid its obligations under the APP or cause any harm or prejudice to the Respondent. The Petitioner is seeking to ensure robust, seamless and uninterrupted supply of power, in discharge of its obligations under the APP.
- G) The Respondent has failed to appreciate that under the terms of the APP, various obligations are cast on the Petitioner as well as the Developer. Such obligations and warranties are impossible to perform in light of the fact that Essar MP is undergoing CIRP. In case the CIRP results in the approval of the Resolution Plan of APL, the same would result in change of ownership, which is otherwise prohibited under the APP, unless consented to by the Respondent. In case the CIRP results in an order of liquidation, the power plant, itself, will not be available

and there are chances that it is sold to a third party, who may be unwilling to supply power under the APP. Alternatively, the assets of Essar MP may be sold and in such scenario, it will be impossible for the Petitioner to ensure availability of power. Further, for a company, which is undergoing CIRP, it will be impossible for the Petitioner to ensure that such company is able to finance, operate and maintain the power station or services its debt. It is submitted that the said terms of the APP are clearly unenforceable but upon the unwarranted insistence of the Respondent of retaining Essar MP as the Developer, would perforce lead to breach of contract by the Petitioner, resulting in financial and other losses to the Petitioner. The Petitioner submits that the Respondent was fully aware of the fact that Essar MP is facing insolvency proceedings and therefore, the terms of the APP, which places an unwarranted and impossible obligations on the Petitioner, which cannot be performed on account of Essar MP being insolvent, are clearly a mutual mistake. In the circumstances, the Petitioner's suggestion of change of Developer is not only bonafide but would also ensure due performance of the APP and ought to have been accepted.

- H) Even otherwise, by virtue of rejection/ revocation of Essar MP's application for renewal of Consent to Operate (CTO) by the Madhya Pradesh Pollution Control Board has resulted in a situation where it will become impossible for Essar MP to operate its power plant. In the circumstances, the Petitioner cannot be considered bound by the obligations cast on it under the terms of the APP and the only proper course of action for procuring 500 MW of power by the Respondent would be to accept REGL as the Developer.

16. The Respondent GUVNL vide its affidavit dated 27.09.2021 filed reply to above Petition No. 2008 of 2021 of M/s Adani Enterprises Ltd. as under:

- 16.1. The present Petition has been filed purportedly under Section 86 of the Electricity Act, 2003, in effect seeking deviation from the bidding process and changes to the bidding documents and PPA under which the Petitioner has participated and has been awarded

the contract for supply of 500 MW capacity.

- 16.2. The Petitioner had participated in the bidding process for supply of electricity from the specified source, namely M/s Essar Power MP Limited. The specification of the source was a mandatory condition in the bidding process and without which the Petitioner would not have even qualified as a bidder.
- 16.3. The Bidding Documents require unconditional acceptance of the bidding terms and conditions to participate in the process. In this regard, Clause 1 of Appendix 1 to the Request for Proposal, providing for the letter comprising the bid to be submitted by the bidders, reads as under:
- “With reference to your Bidding Document dated, comprising of the RFQ & RFP, I/we, having examined the Bidding Document and understood their contents, hereby submitted my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.”*
- 16.4. This was duly provided for by the Petitioner by letter dated 19.08.2021. As stated hereinabove, without the said conditions being fulfilled, the Petitioner would not have even been a qualified bidder in the bidding process.
- 16.5. Upon being selected as the successful bidder, the Petitioner has also by communication dated 06.09.2021 unconditionally accepted the Letter of Award. Thereafter, the Petitioner has also executed the PPA with GUVNL on 09.09.2021
- 16.6. At this stage, the only issue that arises is whether the tariff that has been discovered in the bidding process is to be adopted by the Commission or not. The terms and conditions of the bidding documents and any deviations thereof does not arise for consideration at this stage. The deviations if at all have to be approved by the Commission prior to the bidding process being undertaken. In fact, Article 2.8 of the RFP provides for modification of the documents by Respondent i.e. Utility prior to the Bid Due Date. Further, the Article 2.14 of the RFP provides for Modifications / substitution of Bids by Bidder prior to the Bid Due Date. It cannot be possibly done after the bidding process is over.

- 16.7. The very sanctity of the bidding process would be jeopardised if any terms of the bidding documents are amended after the bidding process has been concluded.
- 16.8. The Petitioner is seeking to expand the scope of Section 63 of the Electricity Act, which is misconceived.
- 16.9. In fact, the Petitioner vide letter dated 03.09.2021 sought to change the counterparty to the PPA from the Petitioner to M/s Raigarh Energy Generation Limited (REGL). The Petitioner sought to substitute itself only as a guarantor. The aforesaid request of the Petitioner to bring third party as a counter party to the PPA to be signed by the Respondent was rejected as not being in accordance with terms & conditions of the Tender documents.
- 16.10. In any event, no deviation from the bidding process and the bidding documents can be done at this stage.
- 16.11. Under the existing PPA, the Petitioner AEL has the right to supply electricity from alternative sources in case the conditions specified in Article 10.3 of the PPA are fulfilled.
- 16.12. In the above circumstances, it is not comprehensible as to the purpose of the present Petition, wherein the Petitioner is seeking deviation from the bidding documents and the terms of the PPA, changing the source of supply. It is respectfully submitted that this is impermissible and the present Petition is liable to be dismissed.
- 17 In response to above rely of GUVNL, M/s Adani Enterprises Ltd. filed Rejoinder reply as under:
- 17.1 The present Petition invokes the regulatory powers and functions of this Commission for a direction to the Respondent to agree to the modification / substitution of the Developer, while adopting the tariff discovered in the e-Reverse auction held on 23.8.2021 in respect of the Competitive Bidding Process for Procurement of 1000 MW

Power on Medium Term Basis as prayed for by the Respondent in Petition No. 2006 of 2021. The Respondent has, however, for no justifiable reasons and contrary to the public interest, refused to the Petitioner's request for such substitution.

- 17.2 The Petitioner stated that the Respondent is a Government of Gujarat enterprise responsible, *inter alia*, for the bulk sale and purchase of electricity on behalf of the Distribution Licensees operating in the State of Gujarat, of whom the Respondent is also the holding company. The principal duty of the Respondent is to act in public interest and in the interest of the consumers in the State of Gujarat and the stand of the Petitioner discernible from the Reply is clearly contrary to such duty.
- 17.3 The Petitioner stated that the Respondent issued a Request for Qualification and Request for Proposal inviting eligible bidders for e-Tender and e-Reverse auction for the Medium Term procurement of electricity on DEEP portal on 5.8.2021. The Bidding Document was issued with a view to meet the growing requirement of electricity in the State of Gujarat on cost effective basis. The Petitioner was the L1 bidder for supply of 500 MW electricity in the e-Reverse auction, wherein the Petitioner participated on being qualified under the criteria enumerated in the Request for Proposal (RFP).
- 17.4 That it has always been ready and willing to abide by its obligation to supply electricity to the tune of 500 MW to the Respondent at the discovered tariff. However, for the reasons elaborated in the memo of the Petition, which are clearly beyond the control of the Petitioner, such supply cannot be undertaken through the Developer named in the Petitioner's Bid and the Agreement for Power Purchase, namely Essar Power MP Limited. In the circumstances, the Petitioner has proposed to substitute Essar MP with Raigarh Energy Generation Limited, another group company of the Petitioner.
- 17.5 That so long as the Petitioner is willing to supply 500 MW power, the source of power is inconsequential since it does not result in any financial burden or any other prejudice to the Respondent. In fact, it aids the Respondent to procure reliable "*electricity at cheaper cost*" and "*the procurement of power at the discovered tariff to optimize the power procurement cost and reduce the burden on the consumers.*" These are the factors

based on which the Respondent vide email dated 19.9.2021 approached this Commission for urgent orders to adopt the tariff for balance 500 MW power pursuant to the e-Reverse auction under the Bidding Documents. Accepting such urgency and the rationale of public interest, this Commission vide Order dated 19.9.2021 in the Tariff Adoption Petition, made, inter alia, the following observations:

"11. We note that the Petitioner has shown urgency by aforesaid email/letter dated 19.09.2021 requesting to allow the procurement of power at cheaper rate from the successful bidder under the reverse auction competitive bidding process. We also note that out of 1000 MW power procurement desired by the Petitioner, M/s. Adani Enterprises Ltd. which is selected bidder for contracted quantum of 500 MW has filed an I.A., which is pending before the Commission for decision while for the remaining quantum of 500 MW, there is no dispute before the Commission."

"14. As the Petitioner had vide email/letter dated 19.09.2021 requested to allow the procurement of power at the discovered tariff to optimize the power procurement cost and reduce the burden on the consumers. ..."

17.6 In support of above, the Petitioner AEL has relied on following judgments:

1. 2017 (14) SCC 80 Energy Watchdog Vs. CERC
2. 2016 (8) SCC 743 GUVNL Vs. Tarini Infrastructure Ltd.
3. 2011 (11) SCC 34 Transmission Corp. Andhrapradesh Ltd. Vs. Sai Renewable Power Pvt. Ltd.
4. AIR 1964 SC 1781 V. S. Rice and Oil Mills and Others Vs. State of Andhra Pradesh.
5. Hon'ble APTEL decision dated 2.12.2013 in Appeal No. 132 of 2012 and Allied matters in case of Junagadh Power Projects Pvt. Ltd. Vs. GUVNL and Others.
6. Hon'ble APTEL decision dated 22.08.2014 in Appeal No. 279 of 2013 in case of GUVNL Vs. GERC and Others.
7. 2011 ELR (APTEL) 234 – GVK (Goindwal Sahib) Ltd. Vs. PSERC and others.
8. Decision of Commission in Petition No. 1645 of 2017 dated 18.04.2017.

17.7 The Petitioner further called upon the Respondent to state on affidavit that all Power Purchase Agreement's (PPA) that have been entered into after the conclusion of any bidding process are exactly in line with the deviations, if any, approved by this Commission and that no changes have been made in the signed PPA that are contrary

to the standard bidding documents or deviations thereof approved by this Commission.

- 17.8 With respect to the contents of paragraph of the Reply filed by the Respondent GUVNL, it is submitted that the Petitioner has, in the present Petition, restricted its claim to change of Developer from Essar MP to REGL and therefore the contents of letter dated 3.9.2021 referred to in the Paragraph under reply are not germane.
- 17.9 With respect to paras regarding clause 10.3 of APP in said Reply, it is submitted that the purpose of the present Petition is clearly comprehensible on a plain reading and the Petitioner is not seeking deviation from the Bidding Documents. It is denied that clause 10.3 of the APP are attracted to the facts of the present case, more so in light of Clause 3.1.1 of the APP. In any case, Respondent's stand that the Petitioner ought to take recourse to Clause 10.3 will first require to commit breach of contract. Such a course is unfair. In fact, the Petitioner submits that the Clause 10.3 of the APP referred by the Respondent can only be invoked after the commencement of power supply and only in the limited conditions if the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure and Clause 10.3 reads as under:

"10.3. Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge. For avoidance of doubt, it is to clarify that, the Utility may deny in its sole discretion to accept supply from such alternative source which is ineligible in accordance with Clause

2.6.2 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.”

- 17.10 It is submitted that the situation which is beyond the control of the Petitioner is known before hand by the Petitioner, the Respondent as well as this Commission before the adoption of the Tariff and approval of the APP. Hence, it would be much more necessary that this Commission exercises regulatory powers under Section 86(1) of the Act and pass appropriate directions and orders to this effect in the overall interest of all the stake holders including the consumers of the State of Gujarat.
- 18 The Ld. Senior Counsel Mr. Saurabh Soparkar for AEL and Ld. Counsel Mr. Anand Ganesan made elaborate arguments in above matters and thereafter, written submissions have been filed by both the parties, perused which in brief are as under.

Written submissions of AEL

- 18.1 The Petitioner stated that it has always been ready and willing to abide by its obligation to supply electricity to the tune of 500 MW to the Respondent at the discovered tariff, *albiet* through REGL. Such substitution is a ministerial act not requiring GUVNL to undertake any action (other than a minor amendment to the APP) and does not in any manner prejudice GUVNL. During the pendency of the AEL's Petition and the Tariff Adoption Petition, it has come to the Petitioner's knowledge on 22.9.2021 that the Madhya Pradesh Pollution Control Board has refused / rejected the renewal of Consent to Operate of Essar MP. Both these eventualities have created serious uncertainty of Essar MP's ability to operate its power plant and provide uninterrupted and reliable power supply to the Respondent, which was one of the essential requirements for the Respondent to call for the said bid. The operation of the power plant by Essar MP is presently continuing only on account of the moratorium under Section 14 of the Code and this cannot be considered as an operation in normal course of business.
- 18.2 The Petitioner submitted that so long it is willing to supply 500 MW power, the source of power is inconsequential since it does not result in any financial burden or any other prejudice to the Respondent. As a matter of fact, GUVNL's agreement to substitute Essar

MP with REGL will sub-serve public interest and will be in the interest of the consumers in the state of Gujarat, as it will enable GUVNL to procure reliable electricity at cheaper cost and procure power at the discovered tariff to optimize the power procurement cost and reduce the burden on the consumers of the State of Gujarat.

18.3 The Petitioner submitted that this Commission has the jurisdiction to grant the relief prayed for in the AEL Petition. It is submitted that exercise of functions under Section 63 of the Electricity Act, 2003 by this Commission necessarily involves the exercise of regulatory functions under Section 86(1) of the Act. Therefore, while adopting the tariff, this Commission can also regulate the conditions of the APP, in addition to tariff, for the procurement of power by the GUVNL.

18.4 In this regard, the Petitioner has relied on the following judgments:

A) 2017 (14) SCC 80 - *Energy Watchdog v/s Central Electricity Regulatory Commission & ors.*

"19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non-obstante clause, but it is a non-obstante Clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined Under Section 63. Thirdly, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a stand alone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office Under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this Section on 19th January, 2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate

Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

20. *It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff Under Section 63, it functions de hors its general regulatory power Under Section 79(1)(b). For one thing, such Regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first Rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. Considering the fact that the non-obstante Clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways-either Under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or Under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission Under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government Under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit Under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers Under Section 79(1)(b) can then be used.*

- B) 2016 (8) SCC 743 - Gujarat Urja Vikas Nigam Limited v/s Tarini Infrastructure Limited & ors -

"12. While Section 61 of the Act lays down the principles for determination of tariff, Section 62 of the Act deals with the different kinds of tariffs/charges to be fixed. Section 64 enumerates the manner in which

determination of tariff is required to be made by the Commission. On the other hand Section 86 which deals with the functions of the Commission reiterates determination of tariff to be one of the primary functions of the Commission which determination includes, as noticed above, a regulatory power with regard to purchase and procurement of electricity from generating companies by entering into PPA(s). The power of tariff determination/fixation undoubtedly is statutory and that has been the view of this Court expressed in paragraphs 36 and 64 of Transmission Corporation of Andhra Pradesh v. Sai Renewable Power Pvt. Ltd. (supra). This, of course, is subject to determination of price of power in open access (Section 42) or in the case of open bidding (Section 63). In the present case, admittedly, the tariff incorporated in the PPA between the generating company and the distribution licensee is the tariff fixed by the State Regulatory Commission in exercise of its statutory powers. In such a situation it is not possible to hold that the tariff agreed by and between the parties, though finds mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent. Rather, it is a determination made in the exercise of statutory powers which got incorporated in a mutual agreement between the two parties involved."

C) 2011 (11) SCC 34 – Transmission Corporation of Andhra Pradesh Limited and anr v/s Sai Renewable Power Private Limited:

"68. In addition to the statutory provisions and the judgments afore referred, we must notice that all the PPAs entered into by the generating companies with the appropriate body, as well as the orders issued by the State in GO Ms. Nos. 93 and 112, in turn, had provided for review of tariff and the conditions. The Tribunal appears to have fallen in error of law in coming to the conclusion that the Regulatory Commission had no powers either in law or otherwise of reviewing the tariff and so called incentives. Every document on record refers to the power of the authority/Commission to take a review on all aspects including that of the tariff.

"69 One of the relevant consideration for determining the question in controversy is to examine whether the matter falls within the statutory or contractual domain. From various provisions and the documents on record it is clear that Regulatory Commission is vested with the power to revise tariff and conditions in relation to procurement of power from generating companies. It is also clear from the record that in terms of the contract between the parties, the APTRANSCO had reserved the right to revise tariff etc. with the approval of the Regulatory Commission."

"108. The basic policy of both the Central as well as the State Government was to encourage private sector participation in generation, transmission and distribution of electricity on the one hand and to further the objective of distancing the regulatory responsibilities of the Regulatory Commission

from the Government and of harmonizing and rationalizing the provisions of the existing laws relating to electricity in India, on the other hand. The object and reasons of Electricity Act, 2003 as well as the Reform Act, 1998 are definite indicators of such legislative intent. The basic objects of these enactments were that the said Regulatory Commission may permit open access in distribution of energy as well as to decentralize management of power distribution through different bodies.

109. The Reform Act, 1998 stated in its objects and reasons that the set-up of power sector in force, at that time, was virtually integrated and functional priorities were getting distorted due to resource-crunch. This has resulted in inadequate investment in transmission and distribution which has adversely affected the quality and reliability of supply. The two corporations proposed thereunder were to be constituted to perform various functions and to ensure efficiency and social object of ensuring a fair deal to the customer. These objects and reasons clearly postulated the need for introduction of private sector into the field of generation and distribution of energy in the State. Efficiency in performance and economic utilization of resources to ensure satisfactory supply to the public at large is the paramount concern of the State as well as the Regulatory Commission. The policy decisions of these constituents are to be in conformity with the object of the Act. Thus, it is necessary that the Regulatory Commission, in view of this object, take practical decisions which would help in ensuring existence of these units rather than their extinguishment as alleged."

D) AIR 1964 SC 1781 – V.S. Rice and Oil Mills and ors v/s State of AP etc.:

- "20. Then, it was faintly argued by Mr. Setalvad that the power to regulate conferred on the respondent by s. 3(1) cannot include the power to increase the tariff rate; it would include the power to reduce the rates. This argument is entirely misconceived. The word "regulate" is wide enough to confer power on the respondent to regulate either by increasing the rate, or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair prices. The concept of fair prices to which s. 3(1) expressly refers does not mean that the price once fixed must either remain stationary, or must be reduced in order to attract the power to regulate. The power to regulate can be exercised for ensuring the payment of a fair price, and the fixation of a fair price would inevitably depend upon a consideration of all relevant and economic factors which contribute to the determination of such a fair price. If the fair price indicated on a dispassionate consideration of all relevant factors turns out to be higher than the price fixed and prevailing, then the power to regulate the price must necessarily include the power to increase the price so as to make it fair. That is why we do not think Mr. Setalvad is right in contending that even though the respondent may have

the power to regulate the prices at which electrical energy should be supplied by it to the appellants, it had to power to enhance the said price. We must, therefore, hold that the challenge to the validity of the impugned notified orders on the ground that they are outside the purview of s. 3(1) cannot be sustained."

E) Judgment dated 2.12.2003 in Appeal No. 132 of 2012 and allied matters – M/s Junagarh Power Projects Pvt. Ltd v/s GUVNL & Ors.:

"15. Under Section 86(1)(a), the State Commission has to discharge inter alia, the function of determination of generation tariff, regulate the electricity purchase and procurement process including the price at which the distribution licensee procures power from the generating companies. Under Section 86(1)(e) of the Electricity Act, 2003, the State Commission has to promote generation of electricity from renewable sources of energy. ..."

...

29. In view of provisions of the Electricity Act, 2003, National Electricity Plan, Tariff Policy and the citations given above, we have come to the conclusion that the State Commission has powers to revise the tariff in a concluded PPA keeping in view the change in the circumstances of the case which are uncontrollable and revision in tariff is required to meet the objective of the Electricity Act. The State Commission has the duty to incentivise the generation of electricity from renewable sources of energy and if the renewable energy projects are facing closure of the plants on account of abnormal rise in price of the biomass fuel than what was envisaged by the State Commission while passing the generic tariff order applicable for a long period then the State Commission could revisit the fuel price to avert closure of such plants. However, in such an intervention, the State Commission has to balance the interest of the consumers as well as the generating company. In fact the State Commission has itself in the case of Abellon Clean Energy by order dated 7.2.2011 modified the tariff determined earlier in the generic tariff order dated 17.5.2010. In the order dated 17.5.2010, there was no separate tariff for biomass projects with air-cooled condensers and a common tariff was decided irrespective of the type of cooling used. However, the State Commission re-determined the tariff decided in order dated 17.5.2010 and allowed increase in tariff for biomass plants with air cooled condenser.

...

34. The State Commission has the powers to reconsider the price of biomass fuel and consequently revise the tariff of the biomass based power plants in the State in view of the circumstances of the case as the biomass plants in the State are partially closed and operating at suboptimal Plant Load Factor due to substantial increase in the price of biomass fuel and in order Summary of our findings: Appeal no. 132 of 2012 & IA nos. 247 &

248 of 2012 Appeal no. 133 of 2012 & IA nos. 249 & 250 of 2012 Page 64 of 64 to avert their closure. In our opinion in the circumstances of the case, this is a fit case for the State Commission to reconsider and re-determine the biomass fuel price."

F) Judgment dated 22.8.2014 in Appeal No. 279 of 2013 – GUVNL v/s GERC & ors.:

22. *At the outset, it is to be pointed out that the strict Rules of the Civil Procedure Code do not apply to the proceedings before the State Commission and the State Commission is free to decide on its own procedure which satisfies two aspects i.e. (i) Principles of Natural Justice and (2) Transparency.*

23. *The Electricity Act is an exclusive Code which is not bound by the procedures contemplated under the Civil Procedure Code. The State Commission is well within its rights to adopt the procedure, which would satisfy the above two elements. Therefore, the State Commission decided to issue notice to other parties when it entertained doubt about the maintainability of the Petition at the admission stage itself.*

24. *This procedure cannot be said to be illegal merely because some of the procedure contemplated under CPC have not been followed.*

25. *As already indicated, the State Commission would follow its own procedures irrespective of the procedures referred to in the CPC either under Order-7 Rule-11 or Order 14 Rule-2 of the CPC. As long as the procedure adopted by the State Commission satisfies the said two requirements namely principle of natural justice and transparency, such procedures could not be called in question in this Appeal.*

.....

"28. *Therefore, the procedure adopted by the State Commission in this case by issuing notice to the other side for deciding the question of maintainability of Petition would show that the State Commission followed both principles of natural justice and the transparency to pass the appropriate order on the issue of the maintainability of the Petition before admission."*

.....

"58. *The above, decisions would make it evident that in exercise of the regulatory powers the appropriate Commission can revisit the tariff and re-open Power Purchase Agreements especially where public interest is involved and the interest of consumers so requires."*

G) 2011 ELR (APTEL) 234 – GVK (Goindwal Sahib) Ltd. v/s PSERC & ors.

"15. *The word "regulate" has wide import. It carries with it the powers to reject, modify, alter or vary the terms of the Agreement. The scope and ambit of the word "regulate" has found conclusive interpretation by the Hon'ble Supreme Court. In the case of Cellular Operators Association v. Union of India AIR 2003 SC 899, the Hon'ble Supreme Court has held as follows:*

The regulatory bodies exercises wide jurisdiction. They lay down the law. They may prosecute. They may punish. Intrinsically, they act like an internal audit. They may fix the price, they may fix the area of operation and so on and so forth. While doing so, they may, as in the present case, interfere with the existing rights of the licensees...

16. *From the above observations, it is clear that the scope of approval under Section 86(1)(b) of the Act includes the power to reject, modify, alter or vary the terms of the agreements for purchase of power and to further direct the distribution licensee to re-write the terms found reasonable by the State Commission”.*

18.5 It is submitted that GUVNL’s contention that the Tariff Adoption Proceedings are in a very narrow compass is therefore incorrect and not in conformity to the above referred judgments. Further, GUVNL’s contention that the judgment in Tarini is watered down by 2017 (16) SCC 498 in the matter of *GUVNL v/s Solar Semiconductor Power Company (India) and anr.* is wrong since in Solar Semiconductor, Hon’ble Supreme Court has itself found that the facts in Solar Semiconductor and Tarini are separate. If that be so, Solar Semiconductor can never explain or water down the ratio of Tarini. In any case, a co-ordinate bench of Hon’ble Supreme Court cannot take a view at variance with a prior judgment unless the same is referred to a larger bench. GUVNL’s contention that changing the developer would be unfair and non-transparent since it amounts to changing the bid conditions is also incorrect since there is in fact no change in the bid qualifying criteria. The name of the developer at qualifying stage was merely for pre-qualification and not with a mandate that a bidder is bound to retain such developer. The same militates against the pre bid clarification, where a bidder could qualify with multiple Developers. Thus, a ‘particular’ developer was never the intent or purport of the Bidding Documents.

18.6 The Petitioner submitted that in light of the undisputed jurisdiction and power to exercise regulatory functions, it is submitted that the facts of the present case such power deserves to be exercise for the following reasons:

- (a) There is no prejudice or financial burden or loss to GUVNL if the Developer is changed.

- (b) Such change will aid GUVNL in procuring 500 MW reliable power at cheaper rates, especially when the Tariff Adoption Petition was filed on the following basis:

- “12) It is further submitted that State is witnessing unprecedented scenario of deficient monsoon and consequential increase in power demand. Further, very less Renewal Generation is available during peak demand period necessitating utilization of entire long term tied up generating capacity by the Petitioner. However, the present market rates of gas have increased to around USD 15-18/MMBTU and therefore the generation from gas based projects would not be commercially viable.*
- 13) It is to humbly submit that in view of increase in power demand due to deficient monsoon across the country, various States has been witnessing the issue of non-availability of thermal generation in the country due to outages, coal shortages etc. Consequentially, the power purchase quantum on power Exchanges has increased considerably which has led to increase in short term market prices.*
- 14) In order to minimize the risk associated with quantum clearance from Power Exchanges on day to day basis due to transmission corridor congestion and in order to avoid price volatility, the Petitioner has proceeded to execute the PPA with the qualified bidders for commencing the off-take of power under the arrangement at the earliest. The copy of PPA signed with 5 qualified and selected bidders by the Petitioner is placed herewith at Annexure – E (colly.)”*

In light of the admitted urgency to procure power, GUVNL's objections are clearly unwarranted and deserve to be rejected.

- (c) Mr. Soparkar has also argued that procurement of reliable power at cheaper rates in the interest of the consumers is highlighted from the Order dated 19.9.2021 passed by this Commission on a public holiday pursuant to GUVNL's request made on 19.9.2021.
- (d) The approach of GUVNL is to force a breach of the terms of the APP by the Petitioner and then enter protracted litigation, which can be entirely avoided by taking a pragmatic and practical approach and agree to the substitution of the Developer.
- (e) This Commission has in Petition No. 1645 of 2017 vide Order dated 18.4.2017 permitted deviation from the Bidding Documents after the conclusion of the Bidding Process while relying upon Section 86(1)(b) of the Act. The Petitioner submits that, there were material deviations from the Standard bidding guidelines issued by Ministry of Power as well as this Commission. The same was adopted and finally being considered by this Commission itself. This Commission while approving deviations post the conclusion of the bidding process, was mindful of the interest of consumers of the State of Gujarat. In the facts of the present case also, permitting the Petitioner to change the Developer would be in the interest of the consumers since the Respondent will be able to avail 500 MW power (i.e., 50% of its required quantum) at a highly competitive rate which will contribute towards optimizing the Respondent's power purchase cost. It is further submitted that in terms of the Order dated 18.4.2017, it is evident that this Commission has adequate powers under Section 86(1)(b) of the Act to modify, alter or vary the terms of the APP, as envisaged in Paragraph no. 16 of GVK.

18.7 The Petitioner submitted that GUVNL's contention that the Petitioner must approach it under Article 10.3 of the APP is misconceived for the following reasons:

- (a) Article 10.3, on a plain reading is not attracted unless tariff is adopted and power supply commences. On the other hand, the AEL Petition is a *quia timet action* to avoid the complication of Article 10.3 of the APP.
- (b) Article 10.3 refers to reduction in the quantum due to certain exigencies and “reduction” is possible when there is actual supply.
- (c) In case there are disputes as to whether the present situation falls within the exigencies mentioned in Article 10.3 of the APP, only further litigation will ensue. GUVNL will not get the cost effective and reliable power and the consumers of the state of Gujarat will suffer.
- (d) In any case, Article 10.3 itself refers to supply by an alternative source. If an alternative source is permissible under Article 10.3, then there is no rationale in not agreeing to an alternative source at the very inception of supply of power. The approach of GUVNL is thus clearly unwarranted and unduly rigid.

18.8 It is submitted that Petition No. 2008 of 2021 deserves to be allowed and any order passed in Petition No. 2006 of 2021 ought to be with the direction to GUVNL to substitute the name of the Developer from Essar Power MP Limited to Raigarh Energy Generation Limited.

19 **Written submissions of GUVNL:**

19.1 It is submitted that the issue that arises in the present case is whether there could be deviations in the bidding documents and the PPA in the case of the Petitioner alone, after the bidding process is over, the PPA has been executed and also the tariff has already been adopted for the other bidders, except the Petitioner and following is relevant:

- a. The Petitioner is seeking a deviation from the bidding documents and the conditions of the bid.
- b. The specification of the source was a mandatory condition in the bidding process and without which the Petitioner would not have even qualified as a

bidder. In case the Petitioner did not identify the source of supply in the bid, the Petitioner would not have even qualified in the bid.

- c. The Bidding Documents require unconditional acceptance of the bidding terms and conditions to participate in the process.
- d. The Petitioner on selection as successful bidder vide its communication dated 06.09.2021 unconditionally accepted the Letter of Award. Thereafter, the Petitioner has also executed the PPA with Respondent on 09.09.2021.
- e. The only issue that arises is whether the tariff that has been discovered in the bidding process is to be adopted by the Commission or not. The terms and conditions of the bidding documents and any deviations thereof does not arise for consideration at this stage.
- f. The deviations/modification are permissible prior to bidding process approve by the Commission as per Article 2.8 & 2.14 of the RfP
- g. The bidding documents and the PPA specifically deal with a situation where the source is not available and supply is to be made from a different source.
- h. The various decisions cited by the Petitioner on the power of the Commission to vary the tariff contrary to the PPA is also misconceived. All the decisions are in the case of Section 62, where the tariff is determined by the Commission. In such cases, the Commission may retain the right to vary the tariff subsequently.
- i. If the contention of the Petitioner is to be accepted, the bidding process would cease to be transparent and fair, as the rules of the bidding process would be altered in the case of one bidder, after the bidding process is over.

- j. It could be that certain other parties would have participated and quoted lower tariff, if the change in source was permitted in the bidding process, or the source was considered to be irrelevant.
- k. The Respondent as a public authority and having conducted the bidding process in a transparent and fair manner, cannot possibly agree to any such amendment at this stage. Such an amendment would vitiate the entire bidding process and ought not to be permitted.
- l. In the present case, not only has the bidding process concluded, the tariff has already been adopted by the Commission for 500 MW capacity out of the 1000 MW capacity bid. Further, 4 out of 5 parties for which tariff have been adopted have already commenced supply under the PPA.
- m. The very sanctity of the bidding process would be jeopardised if any terms of the bidding documents are amended after the bidding process has been concluded.
- n. The adoption of tariff is only for accepting the tariff discovered in the bidding process, provided the bidding process was done in a transparent manner and in terms of the guidelines. The Commission is only called upon to either adopt the tariff or reject the same.
- o. The Commission has already adopted the tariff for 500 MW and it is only the tariff for the balance 500 MW at the same tariff that is to be adopted. There is no other issue to be gone into at this stage. The Petitioner is seeking to expand the scope of Section 63 of the Electricity Act, which is misconceived.
- p. The AEL, Petitioner vide letter dated 03.09.2021 sought to change the counterparty to the PPA from the Petitioner to M/s Raigarh Energy Generation Limited (REGL). The Petitioner sought to substitute itself only as a guarantor. The aforesaid request of the Petitioner to bring third party as a counter party

to the PPA to be signed by the Respondent was rejected as not being in accordance with terms & conditions of the Tender documents.

- q. In any event, no deviation from the bidding process and the bidding documents can be done at this stage.
- r. Under Article 10.3 of the PPA, the Petitioner has the right to supply electricity from alternative sources in case the conditions specified in this Article are fulfilled.
- s. The Petitioner had earlier contended that the generating station at Madhya Pradesh was not functioning on account of withdrawal of the pollution permission. This was specifically argued on behalf of the Petitioner.
- t. During the course of hearing on 28.09.2021, when it was pointed that the generating station was actually functioning and generation schedules were available on the public domain, it is now contended by the Petitioner that the plant is functional as there is a moratorium operating. The Petitioner did not disclose this and it came to light only by the schedule available with the RLDC. As per daily Schedule displayed on WRLDC website, the Essar Power MP Ltd. power project has been scheduling around 400-450 MW i.e. 8-10 Million Units per day including sale of power in Power Exchange on day ahead basis during the period commencing from 28.08.2021 upto 30.09.2021.
- u. The Petitioner has not given any explanation as to why it does not seek to invoke Article 10.3 of the PPA if the Petitioner's case of there being a genuine difficulty is to be believed. There is no time restriction in Article 10.3 for supply from alternate sources in the event the conditions specified therein are fulfilled. There is no requirement for any deviation in the bidding documents and PPA and the same condition is available with all the bidders.
- v. The request/prayer of the AEL is impermissible and the present Petition is liable to be dismissed.

- 19.2 The Bidding Documents require unconditional acceptance of the bidding terms and conditions to participate in the process. In this regard, Clause 1 of Appendix 1 to the Request for Proposal, providing for the letter comprising the bid to be submitted by the bidders, reads as under:

“With reference to your Bidding Document dated, comprising of the RFQ & RFP, I/we, having examined the Bidding Document and understood their contents, hereby submitted my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.”

- 19.3 It is submitted that the reliance in the case of *Energy Watchdog* (2017) 14 SCC 80 by the Petitioner is misconceived. On the other hand, the said decision holds contrary to what is being contended by the Petitioner. The Hon’ble Supreme Court has held that the adoption of tariff by the Commission ought to be in terms of the bidding guidelines and documents and it is only when such guidelines and documents are absent that the regulatory powers of the Commission can be invoked. It has been, inter-alia, held as under:

“19.One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

20.For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to “regulate” tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions.As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given

situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used.

- 19.4 Further, the various decisions cited by the Petitioner on the power of the Commission to vary the tariff contrary to the PPA is also misconceived. All the decisions are in the case of Section 62, where the tariff is determined by the Commission. In such cases, the Commission may retain the right to vary the tariff subsequently.
- 19.5 However, in the case of *GUVNL v. Solar Semiconductor*, (2017) 16 SCC 498 the Hon'ble Supreme Court after considering all previous decisions including in the case of *Tarini Infrastructure* has held that even in Section 62 cases, the PPA is binding on the parties and cannot be unilaterally altered. It has been held as under:

64.As pointed out earlier, the tariff is determined by the State Commission under Section 62. The choice of entering into contract/PPA based on such tariff is with the power producer and the distribution licensee. As rightly contended by the learned Senior Counsel for the appellant, the State Commission in exercise of its power under Section 62 of the Act, may conceivably redetermine the tariff, it cannot force either the generating company or the licensee to enter into a contract based on such tariff nor can it vary the terms of the contract invoking inherent jurisdiction.

Sanctity of power purchase agreement

65. It is contended that Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees and the terms and conditions of the PPA cannot be set to be inviolable. Merely because in PPA, tariff rate as per Tariff Order, 2010 is incorporated that does not empower the Commission to vary the terms of the contract to the disadvantage of the consumers whose interest the Commission is bound to safeguard. Sanctity of PPA entered into between the parties by mutual consent cannot be allowed to be breached by a decision of the State Commission to extend the earlier control period beyond its expiry date, to the advantage of the generating company, Respondent 1 and disadvantage of the appellant. Terms of PPA are binding on both the parties equally.

66. In Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd. [Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd., (2016) 11 SCC 182 : (2016) 4 SCC (Civ) 624] , facts were similar and the question of law raised was whether by passing the terms and conditions of PPA, the respondent can assail the sanctity of PPA. This Court held that power producer cannot go against the terms of the PPA and that as per

the terms of the PPA, in case, the first respondent is not able to commence the generation of electricity within the “control period” the first respondent will be entitled only for lower of the tariffs.”

- 19.6 In a bidding process, the only aspect to be considered by the courts is in relation to the transparency and fairness in the bidding process. The basic requirement is to maintain transparency and to treat all bidders alike. This is a well settled principle of law and reiterated by the Hon’ble Supreme Court has in the case of Monarch Infrastructure (P) Ltd. v. Ulhasnagar Municipal Corpn., (2000) 5 SCC 287, inter-alia, held as under:

10. There have been several decisions rendered by this Court on the question of tender process, the award of contract and have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus:

- (i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest.*
- (ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate.*
- (iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.*

11. Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

12. If we bear these principles in mind, the High Court is justified in setting aside the award of contract in favour of Monarch Infrastructure (P) Ltd. because it had not fulfilled the conditions relating to clause 6(a) of the Tender Notice but the same was deleted subsequent to the last date of acceptance of the tenders. If that is so, the arguments advanced on behalf of Konark Infrastructure (P) Ltd. in regard to the allegation of mala fides of the Commissioner of the Municipal Corporation in showing special favour to Monarch Infrastructure (P) Ltd. or the other contentions raised in the High Court and reiterated before us are insignificant because the High

Court had set aside the award made in favour of Monarch Infrastructure (P) Ltd. The only question therefore remaining is whether any contract should have been awarded in favour of Konark Infrastructure (P) Ltd. The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had begun and, therefore, if the Government or the Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High Court in the circumstances is justified because by reason of deletion of a particular condition a wider net will be permissible and a larger participation or more attractive bids could be offered.

20 Findings of the Commission:

- 20.1 The GUVNL has filed Petition No. 2006 of 2021 under Section 63 of the E.A., 2003 wherein it is prayed to adopt the tariff discovered under the tariff based Competitive Bidding Process followed by Reverse Auction and L1 matching mechanism through GUVNL's Tender/Medium Term/Lumpsum Tariff/2021-22/ET-5 and addendum/clarification thereto.
- 20.2 It is for approval of procurement of 1000 MW power for a period of 23 months. The petitioner, GUVNL, has initiated Bidding Process under the Guidelines for procurement of power by the distribution licensees issued by Ministry of Power dated 30.1.2019. The petitioner, GUVNL, had also sought certain amendments in the bidding documents by filing Petition No. 1978 of 2021 and the Commission has approved certain deviations vide Order dated 4.8.2021 in the said Petition No. 1978 of 2021. The approval was sought by the petitioner for the Bidding Process carried out by it under Section 63 of the Electricity Act, 2003 read with the Guidelines issued by the Ministry of Power dated 30.1.2021 for procurement of power by Distribution Licensees notified by the Commission vide Notification NO. 2 of 2013. Hence, it is necessary to refer the relevant provisions of the Act and the Guidelines issued by the Ministry of Power, which are as under:

"Section 63:

Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government;"

As per above Section, whenever competitive bidding is conducted under Section 63 of the Electricity Act, 2003 in accordance with the guidelines issued by the Central Government, the tariff discovered under such bidding has to be adopted by the Commission.

"Section 86(1) The State Commission shall discharge the following functions, namely: -----

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State."

As per the provisions of above Section, the Commission has to regulate the power procurement of the Distribution Licensees, including the procurement process, the price at which electricity shall be purchased from the generating company or the Licensees or through other sources through agreement for purchase of power for distribution and supply within the State.

- 20.3 The Central Government has issued Model Bidding Documents to be adopted by the Distribution Licensees for procurement of power and also made out amendment in it from time to time. Clause 4 of the Bidding Guidelines dated 30.1.2019 provides that any deviation in the Bidding Documents shall be made by the Distribution Licensee only with the prior approval of the Appropriate Commission.
- 20.4 It is observed that the Petitioner has carried out the Bidding Process with the approved draft Bidding Documents i.e. RFQ, RFP and PPA consisting of the deviations approved by the Commission. It is also observed that the petitioner has invited Bids on the Deep Portal up to 20.8.2021. In response to the aforesaid, the Petitioner received Bids from 11 Bidders. Out of the said 11 Bidders, 10 Bidders were qualified and one Bid received after the last date of registration intimated by the petitioner i.e. 1.5.2021 was declared

as disqualified. It is also observed that the price offered for the technically qualified bids was open on the Deep Portal on 23.8.2021 and reverse auction was conducted on the Deep Portal on 23.8.2021. It is also observed that the process of L1 matching was also conducted on the Deep Portal wherein participating bidders were allowed to submit their revised Bids by matching L1 as per the reverse auction.

- 20.5 In the aforesaid process, the Bidders along with the quantum which have been matched the L1 tariff and selected under the bucket filling procedure on Deep Portal e-bidding as under:

Sr.	Bidder	Cost of Generation	Cost of Transmission Charges	Cost of Transmission Losses	Total	Allotted Quantity
		Rs/kWh	Rs/kWh	Rs/kWh	Rs/kWh	MW
1	Adani Enterprises Ltd/91094	1.535	0.48	0.13	3.68	500
2	Tata Power Trading Co. Ltd/74244	1.535	0.48	0.13	3.68	200
3	Sembcorp Energy India Ltd./74297	1.545	0.48	0.11	3.68	100
4	GMR Warora Energy Ltd/138044	1.535	0.48	0.13	3.68	150
5	Manikaran Power Ltd/78172	1.54	0.48	0.13	3.68	50
Total – 1000 MW at Rs. 3.68/unit at GETCO periphery						1000 MW

Note: As per the Bid parameters, the bidders are required to quote only cost of generation. While, fixed charge shall be deemed to be equal to cost of generation quoted by bidders.

- 20.6 It is also observed that the petitioner requires to issue LoA to the successful Bidders within 10 days of the Reverse Auction and L1 matching. Accordingly, the petitioner issue LoA on 28.8.2021 to 5 successful Bidders who have matched L1 rate on Deep Portal. The successful Bidders have signed the Agreement for Power Purchase (APP) after accepting LoA unconditionally. It is also observed that the tariff rate of Rs. 3.68 per unit discovered in the Reverse Bidding Auction carried out by GUVNL at GETCO periphery includes Rs.0.48 towards transmission charge through medium-term open

access and Rs. 0.11 to Rs. 0.13 towards transmission losses for Inter-State transmission system. Thus, the effective tariff at generator Bus-Bar works out to around Rs. 3.07 per unit.

20.7 The aforesaid Bidding Process was put up before the Bid Evaluation Committee who had given its Report for the process for procurement of power on medium-term basis carried out on Deep Portal by the Petitioner, GUVNL, is in conformity with the MoP Guidelines dated 30.01.2019 and Bid Documents. The said report uncontroverted and undisputed is not reproduced here.

20.8 That the Bidding Process carried out by the petitioner, GUVNL, is in accordance with the provisions of the MoP Guidelines dated 30.1.2019. It is relevant to refer to clause (3) of the said Guidelines, which is reproduced below:

“(3) The tariff determined through the 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....”

As per the aforesaid provision, once the e-Bidding process using e-reverse Auction based on the Guidelines comprising of Model Bidding Documents carried out by the Licensee on Deep Portal, the Commission is required to adopt the tariff as per Section 63 of the Act and the issue before the Commission is limited to adoption of the tariff.

20.9 We note that the rate discovered under the aforesaid bidding process is lower than the rate discovered under the medium-term tender of PFC Pilot Scheme-II for 2500 MW under medium-term basis which is around Rs. 3.93 per unit which works out to Rs. 3.31 per unit at Generator's Bus-Bar. Thus, the price discovered under the Competitive Bidding carried out by the petitioner seems to be lower than the tariff discovered under PFC Pilot Scheme-II for 2500 MW on medium-term basis.

20.10 The Bid Evaluation Committee has recorded that the Petitioner GUVNL floated public notice inviting tenders in two national newspapers on 6.4.2021. The last date for

registration of the bidder was 15.4.2021 and it was extended upto 1.5.2021. The bid documents i.e., RFQ, RFP and APP consist of deviations approved by the Commission vide order dated 4.8.2021 in Petition No. 1978 of 2021. After approval of the Commission, the final bidding documents were released on 5.8.2021 and the last date for bid submission on Deep Portal was 28.8.2021. The petitioner, GUVNL, opened the technical bids on the Deep Portal on 21.8.2021. The bids were received from 11 bidders as stated in the Evaluation Committee Report. Out of 11 bids, 10 bids were qualified and 1 bid was disqualified as it was received after the last date for registration intimated by GUVNL i.e. 1.5.2021.

- 20.11 The Bid Evaluation Committee has also in its Report stated that pursuant to opening of initial price offer reverse auction started on Deep Portal from 18.15 to 20.15 hours on 23.8.2021. Reverse auction was concluded at 21.48 hours. The Bid Evaluation Committee has also stated the details of bidders, tariff and quantum which have matched the L1 tariff and selected under bucket filling procedure on Deep Portal specifying 5 successful bidders' name. It is also certified by the Evaluation Committee that the bid process followed by GUVNL in the tender is in accordance with the MoP Guidelines dated 30.1.2019 and the tender documents, RFQ, FRP and APP floated by the petitioner, GUVNL.
- 20.12 As stated in earlier para, as per the provisions of Section 63 of the Electricity Act, 2003, the Commission requires to adopt the tariff discovered under the Competitive Bidding Process if the bidding is carried out in transparent manner. We also note that the petitioner has obtained deviations on the Bid documents by filing Petition No. 1978 of 2021 wherein the Commission has approved the deviations vide Order dated 4.8.2021.
- 20.13 The petitioner ensured wider participation and competition by publishing the notice inviting tenders in English newspapers having large readership and organised pre-bid conference and also incorporated necessary changes suggested by the prospective bidders and approved deviations by the Commission in the bid documents. As the Bid Evaluation Committee in its Report stated that on Deep Portal the technical bids were opened and it was found that there are 11 bidders out of which 10 bidders became

technically qualified and 1 bidder was disqualified as its bid was received after the last date for submission of bids.

- 20.14 We note that as per the bid sheet of the Deep Portal submitted by the petitioner indicates that the bid quantity specified by the bidder in the tender, quantity and rates consist of 1790 MW as against the requirement of 1000 MW as per the bid documents.
- 20.15 In view of the above, upon satisfaction regarding the facts of the Petition the Commission has therefore passed an Interim Order dated 19.09.2021 in Petition No. 2006 of 2021 and decided the tariff for 500 MW for procurement of power by GUVNL @ Rs. 3.68 per unit from the selected 4 bidders, except Adani Enterprises Ltd.
- 20.16 Thus, as per the above order, we have already approved and adopted the tariff discovered in the tender invited by the petitioner pursuant to tariff based Competitive Bidding Process followed by Reverse Auction and L1 matching mechanism through GUVNL's Tender/Medium-Term/Lumpsum Tariff/ 2021-22/ET-5 and addendum/clarification thereto for procurement of 500 MW out of total 1000 MW power from the selected bidders (except APL) under Deep Portal e-reverse auction and L1 matching mechanism with consideration of Bid Evaluation Committee Report. Now, this matter rests only for the adoption of remaining 500 MW which is to be procured from APL.
- 20.17 We note that an Impleadment Application is filed by Adani Enterprises Ltd. by filing IA No. 18 of 2021 in Petition No. 2006 of 2021, wherein the Applicant has requested for impleadment as party Respondent. The Applicant has also prayed for issuing necessary direction and approving the request of the Applicant to change the developer from Essar Power MP Ltd. to Raigarh Energy Generation Ltd. and direct the Petitioner to execute Supplementary Agreement recording such change.
- 20.18 Moreover, AEL has also filed Petitioner No. 2008 of 2021 seeking direction to the Respondent to agree to the substitution of Essar Power MP Ltd. by Raigarh Energy Generation Ltd. as the Developer and to tag present Petition with Petition No. 2006 of

2021 for being heard together and exercise its regulatory powers and pass such other order or direction, as the Commission may deem fit and appropriate under the circumstances of the case. Also, in this Petition, IA No. 19 of 2021 seeking prayers that pending hearing and final disposal of Petition filed by AEL under Section 86(1) of the Electricity Act, 2003, ex parte ad interim and/or interim relief be granted by deferring the hearing of Petition No. 2006 of 2021 until above Petition is heard and decided or alternatively, tag the same with Petition No. 2006 of 2021 so that both are heard together with further direction to the Respondent not to take any coercive steps against the Applicant including invocation of seven Bank Guarantees dated 11.8.2021 given as Bid Security.

Since, the Commission has taken up hearing of all the matters together, the final decision would cover and dispose of all the matters together.

- 20.19 As the disputes arose with regards to change of source as desired by AEL, it is necessary to refer the clause parties are disputing with regard to change of source desire by the AEL, it is necessary to refer Article 2.8 & 2.14 of the RfP and Clause 1 of Appendix 1 to the Request for Proposal, providing for the letter comprising the bid to be submitted by the bidders, reads as under:

In this regard, Clause 1 of Appendix 1 to the Request for Proposal:

"With reference to your Bidding Document dated, comprising of the RFQ & RFP, I/we, having examined the Bidding Document and understood their contents, hereby submitted my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified."

- 20.20 Article 2.8 of the RfP referred by the GUVNL is reproduced below:

"2.8 Amendment of RFP.

2.8.1. At any time prior to Bid Due Date the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by Bidder, modify the RFP by the issuance of addenda.

2.8.2. Any addendum issued hereunder will be in writing and shall be available at the DEEP Portal. The Bidders are advised to check the DEEP Portal for any amendments or notifications.

2.8.3. In order to afford the Bidders a reasonable time for taking an addendum in to account, or for any reason, the utility, in its sole discretion, extend Bid Due Date.”

As per Article 2.8 of RfP the utility may for the reason whether at its own initiation or in response to clarification sought by the bidder modify the RfP by issuance of addendum which is available at DEEP Portal. The bidder be given reasonable time to take in account an addendum. The utility may its sole discretion extend bid due date.

20.21 Article 2.14 of the RfP referred by the GUVNL is reproduced below:

“2.14. Modifications/ Substitution/ Withdrawal of Bids

2.14.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that such modification, substitution or withdrawal is made prior to the Bid Due Date. The DEEP Portal shall provide the option to Bidders, after submission of the Bid as per this Bidding Document, to withdraw and delete Bids. Clicking on withdraw Bid, will withdraw the Bidder’s Bid and no further submission will be allowed whatsoever. While clicking on Delete Bid, will delete all the encrypted data saved on the DEEP Portal and the Bidder may submit fresh Bids prior to the Bid Due Date.

2.14.2. However not withstanding this Clause, all Bids submitted in L1 Matching round will be considered final and cannot be modified after the bid has been accepted by the system. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.14.3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.”

The aforesaid Article provides as under:

- a. As per aforesaid Article bidders have a choice to modify/substitute or withdraw its Bid after submission prior to Bid due date. After submissions of Bid on DEEP Portal bidder may withdraw or delete Bid.

- b. All bids submitted in L1 matching ground will be considered final and cannot be modified after the Bid has been accepted by the system. No Bid shall be modified/substitute or withdrawn by the bidder on or after Bid due date.
- c. Any alteration/modification in the Bid or additional information supplied sub-sequent to the bid due date unless the same has been expressly sought by the utility shall be disregarded. Thus, it is provided that after Bid due date the modification/alteration is permissible only expressly sought by the utility.

The aforesaid Article 2.14 state about the procedures for modification/substitution/withdrawal in the bid documents permissible with regard to bids submitted by the bidder on or after Bid Due Date.

20.22 It is also recorded that GUVNL has filed the Petition No. 1978 of 2021 seeking certain deviations in the bid documents and the same were approved by the Commission vide its order dated 4.08.2021. Accordingly, the bid documents were revised by the GUVNL and invited bids from the bidders wherein the Petitioner AEL has participated and become one of the successful bidder.

20.23 The Appendix-1 of the RfP states about letter comprising the bid referring clause 2.1.5 and 2.13 of Section B, signed copy to be submitted to utility and uploaded with Bid, consist of Clause 1 which is relevant in this case is reproduced below:

"1.....With reference to your Bidding Document dated, comprising of the RFQ & RFP, I/we, having examined the Bidding Document and understood their contents, hereby submitted my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified."

The aforesaid provision provides that the bidder has examined the bidding documents and understood the contents thereof. The Bid submitted by it is unconditional and unqualified. The Petitioner AEL has vide communication dated 6.09.2021 unconditionally accepted LoA issued by the GUVNL and signed PPA dated 09.09.2021 after completion of bidding process on 28.08.2021.

20.24 The Petitioner AEL has also contended that the Article 10.3 of the APP is pertaining to breach of contract in various conditions, whenever arise the successful bidder may substitute source of supply subject to approval of the utility i.e. GUVNL in this case. The prayer of the Petitioner is with regards to change of source of supply from Essar MP Ltd. to Raigarh Energy Generation Ltd. prior to the commencement of Rights and Obligations of the parties under the APP to ensure uninterrupted power supply of 500 MW at discovered tariff rate, which is in interest of consumers, licensee and State. It is in public interest at large. Non allowing the change in source lead to multiplicity of dispute and proceedings and also affect the power supply availability at agreed rate to the GUVNL. Moreover, the Commission has regulatory power under Section 86 while adopting the tariff under Section 63 of the Act. The proceedings under Section 63 of the Act relates to adoption of tariff. However, the same is subject to regulate the power procurement of the distribution licensee as specified under Section 86 of the Act. The regulatory powers are wide and the Commission has power to add/amend/alter/modify the provisions of the agreement executed between the parties as well as amend the tariff.

20.25 We note that the Petition No. 2006 of 2021 filed by the GUVNL for adoption of tariff under Section 63 of the Act. Moreover, the said Petition filed following the bidding process carried out by them for procurement of 1000 MW power supply from successful bidder as per the bid documents. The bid documents consist of RfP, RfQ and APP/PPA. After completion of the bidding process and signing of APP the buyer i.e. utility and seller are supposed to carry out power sell and purchase as per the provisions of APP.

20.26 The APP consists of Article 10.3 which provides for substitute supply by the supplier i.e. bidder in different conditions, which is relevant in this case is reproduced below:

“10.3. Substitute Supply

In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the

Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge. For avoidance of doubt, it is to clarify that, the Utility may deny in its sole discretion to accept supply from such alternative source which is ineligible in accordance with Clause 2.6.2 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.”

The aforesaid provision provides an option to the successful bidder who sign the agreement for power supply to the GUVNL eligible to substitute availability of power supply reduce in following situations:

- (i) Schedule maintenance
- (ii) Unscheduled maintenance
- (iii) Shortage of Fuel
- (iv) Force Majeure

In aforesaid situations supplier have an option with prior consent of the utility i.e. GUVNL to supply electricity from any alternate source subject to consent of the utility i.e. GUVNL who has discretion or convey acceptance with such condition as it may deem fit with consideration of other condition of said provision.

20.27 We note that the agreement consists of substitution of supply as per Article 10.3 provides rights to the supplier i.e. successful bidder to substitute supply in different situation as stated in preceding para. The aforesaid rights are available to the bidder/supplier in the present case AEL that it can substitute the supply of power in the event the availability of power station from Essar MP Ltd. reduce on account of the aforesaid condition specified in Article 10.3 which include force majeure also.

20.28 We note that the mechanism is provided in Article 10.3 of the APP/PPA for substitution of source of power supply.

20.29 We have carefully considered the arguments advanced and judgements relied upon by both the sides. From the above we sum up as follows:

20.30 Firstly, the Commission has necessary power under section 86 (1) (b) of the Electricity Act, 2003 to regulate power procurement. The Petition No. 2006 of 2021 of GUVNL is for adoption of tariff under Section 63 of the Electricity Act, 2003 and we note that there is due compliance of the respective provision thereunder and therefore, it will be proper to adopt the tariff as prayed for under Section 63 of the Electricity Act, 2003.

Secondly, the counter Petition No. 2008 of 2021 of AEL is for directing the GUVNL to agree with substitution of source of power supply without affecting the rights and obligations of the parties or other terms & conditions of the APP/PPA executed between them as AEL has difficulty to supply power from a particular source.

Thirdly, GUVNL has clearly made out a case of urgency for availing cheaper power at agreed rate in present scenario but AEL, one of the successful bidders with 500 MW out of total 1000 MW has shown its disability to supply the same from Essar Power MP Ltd. and at the same time shown its willingness and ability to supply the contracted quantum of 500 MW power on the same terms & conditions without affecting tariff and made his submissions in advance so that there may not be delay in procurement and supply of power and that too by avoiding future litigation.

20.31 Under the above facts and circumstances, we note that the tariff discovered under the Competitive Bidding Process by GUVNL is in accordance with law. It is necessary to see that this contracted power at discovered tariff is supplied by the successful bidders without delay, whereas; AEL has expressed its difficulty in implementation of the PPA regarding the source of power supply as Essar Power MP Ltd. Thus, it is shown as subsequent impossibility of the contract (APP/PPA) which has occurred after the execution of the PPA. AEL has offered power from Raigarh Energy Generation Ltd. on

same terms & conditions. The contract (APP) requires continued supply of electricity. Difficulties and disappointments may occur in contracts and involves ordinary risk of business. It is always expected that such technicalities if possible are avoided in the interest of consumers and general public.

20.32 This Commission is of the view that in the present facts and circumstances of the matter, the Commission cannot direct the GUVNL to make alteration in contract. We believe that the prayers in Petition No. 2008 of 2021 and IAs appear prematured as the mechanism under Article 10.3 of the APP/PPA permits the substitution of supply. With these observations in the largest public interest considering power situation on one hand and availability of cheaper power on other hand, without going in to technicality of the matters the Commission is of the opinion, that in peculiar facts and circumstances of power scenario, GUVNL may in its wisdom, if necessary, consider the request of AEL for change of source of supply.

21 **Final Order:**

21.1 In furtherance of our earlier interim order dated 19.09.2021 allowing adoption of tariff for 500 MW discovered under the transparent competitive bidding process conducted by GUVNL pursuant to tariff based competitive bidding process followed by reverse auction and L1 matching mechanism through its Tender 'GUVNL Medium Term Lumpsum Tariff/2021-22/ET-5' and addendums/clarifications for 1000 MW power supply at discovered tariff of Rs. 3.68 per unit from following successful bidders, we also adopt the discovered tariff for 500 MW of M/s. Adani Enterprises Ltd. (AEL).

Sr.	Bidder	Cost of Generation	Cost of Transmission Charges	Cost of Transmission Losses	Total	Allotted Quantity
		Rs/kWh	Rs/kWh	Rs/kWh	Rs/kWh	MW
1	Adani Enterprises Ltd/91094	1.535	0.48	0.13	3.68	500
2	Tata Power Trading Co. Ltd/74244	1.535	0.48	0.13	3.68	200
3	Sembcorp Energy India Ltd./74297	1.545	0.48	0.11	3.68	100
4	GMR Warora Energy Ltd/ 138044	1.535	0.48	0.13	3.68	150

5	Manikaran Power Ltd/78172	1.54	0.48	0.13	3.68	50
Total – 1000 MW at Rs. 3.68/unit at GETCO periphery						1000

Note: As per the Bid parameters, the bidders are required to quote only cost of generation. While, fixed charge shall be deemed to be equal to cost of generation quoted by bidders.

- 21.2 The Petitioner GUVNL who has already been allowed to commence off-take of power under the agreement (APP) signed with successful bidders except M/s Adani Enterprises Ltd. in terms of Order dated 19.09.2021 by the Commission is now also allowed to commence off-take of power from M/s Adani Enterprises Ltd. in accordance with this Order.
- 21.3 Both the Petition Nos. 2006 of 2021 and 2008 of 2021 and IAs stand disposed of according to the observations made in above paras 20.30 to 20.32 and as per this Order.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 08/10/2021.