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**Form for Verifying the Petition/ Appeal under Regulations 26 to 30 Gujarat
Electricity Regulatory Commission (Conduct of Business) Regulations, 2004**

Name of the Petitioner /Applicant: **MPSEZ Utilities Limited**

In the matter of filing of Petition under Section 86 (1) (b) read with Section 63 of the Electricity Act, 2003 alongwith "Guidelines for procurement of power by the distribution licensees issued by the Commission for seeking approval for Quantum and Deviations in Model Bidding Documents as per the Ministry of Power guidelines dated 30.01.2019 for procurement of Electricity for Medium Term from Power Stations set up on Finance, Own & Operate basis.

Sr No	Particulars	Remarks
1	All Petitions/appeal filed before commission shall be typewritten, cyclostyled or printed neatly and legibly on one side of ledger paper and every page shall be consecutively numbered. Wherever possible, Petitions and replies must also be filed with the commission in soft Copy.	
2	Relevant, Provisions of all the central/state act in support of petition / Appeal	
3	General heading should be given	
4	Affidavit in support of the Petition / Appeal	
5	Petition / Appeal is couched in decorous language and does not contain any allegation	
6	Jurisdiction is to be see if pending before any other judicial/Quasi- Judicial Authority (then not to accept the Petition / Appeal)	
7	Petition / Appeal relating to same subject is filed and proceedings before commission is pending such Petition / Appeal from the party should not be accepted	
8	All Petitions / Appeals and replies shall be in five copies along with fee as prescribed by the commission	
9	A copy of Petition / Appeal shall be served to other parties(respondents) simultaneously	
10	Petition / Appeal should be complete in all respect with supporting documents, Any further submission shall be done with prior permission of the commission	
11	Additional information should not change the nature of the Petition / Appeal	
12	Petition / Appeal is to be filed in person or by any authorized person can be sent by Registered post with Vakalatnama in favour of advocate	
13	Acknowledgement will be given by the authorized person of the commission	
14	If above requirements are not fulfilled, secretary can refuse to get it registered and keep in objection. If any objections are not removed in specific time limit , the petition shall stand dismissed (Rule 34)	
15	On finalization of scrutiny, Petition / Appeal shall be numbered and put up before commission for preliminary hearing and admission	

Prepared By:

Approved By:

WORKSHEET

Petition No. _____

MPSEZ Utilities Limited:

Petitioner/s

Coram/Bench(s):

Hon'ble Chairman

Hon'ble Member

Hon'ble Member

[illegible]

[illegible]

[illegible]

[illegible]

adani

Ref: MUL/GERC/MBD/2021-22/15022022

Date: 15th Feb, 2022

To,
The Secretary,
Gujarat Electricity Regulatory Commission (GERC)
6th Floor, GIFT ONE,
Road 5-C, Zone 5, GIFT CITY,
Gandhinagar-382355, Gujarat - India

AD (Legal) / Ex (Legal)
Process
16/02/22

FILED - 1028

Date: 16 FEB 2022

Sub.: Submission of Petition for seeking approval for Quantum and Deviations in Model Bidding Documents as per the Ministry of Power guidelines dated 30.01.2019 for procurement of Electricity for Medium Term

Dear Sir,

We file herewith the application (Original + 4 copies) in respect of the subject matter for kind consideration of the Hon'ble Commission.

Detail of the payment for this application is as below:

Particulars	Details
(1) Name of the Petitioner/Applicant	MPSEZ Utilities Limited
(2) Address of the Petitioner/Applicant	Adani Corporate House, Shantigram, Nr. Vaishno Devi Circle, S.G. Highway, Khodiyar, Navrangpura, Ahmedabad - 382 421
(3) Petition No., if any	*****
(4) Subject Matter	Submission of Petition for seeking approval for Quantum and Deviations in Model Bidding Documents as per the Ministry of Power guidelines dated 30.01.2019 for procurement of Electricity for Medium Term
(5) Details of fee remitted:	
(a) UTR/Transaction No.	0LSUTRDG2748 (Transaction detail enclosed)
(b) Date of remittance	15-02-2022
(c) Amount remitted	10,000/-
(d) Bank name & Branch	Axis Bank Ltd., Mundra

Kindly acknowledge the receipt of the same.

Thanking you,

Yours Sincerely,

For MPSEZ Utilities Limited

Authorized Signatory



MPSEZ Utilities Limited
(Formerly MPSEZ Utilities Private Limited)
Adani Corporate House, Shantigram,
Nr. Vaishno Devi Circle, S. G. Highway,
Khodiyar, Ahmedabad - 382421
Gujarat, India

Tel +91 79 2555 5801
Fax +91 79 2555 6490
info@adani.com
www.adani.com
CIN: U45209GJ2007PLC051323

Registered Office: Adani Corporate House, Shantigram, Nr. Vaishno Devi Circle, S. G. Highway, Khodiyar, Ahmedabad - 382421, Gujarat, India

Transaction Details

(1829373)

Transaction Details

From Account : XXXXXXXXXXXX9801
Amount : Rs.10000
Nick Name : GERC
Payee Account No: XXXXXXXXXXXX0041
Payee Bank : CANARA BANK
IFSC: CNRB0017083
Payee Name : Gujarat Electricity Regulatory Commission
Payment Mode : IMPS
Frequency : One time
Remarks: MUL Petition Fees
Reference No: 0L5UTRDG2748
Date : 15 Feb 2022

**BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATORY
COMMISSION AT GANDHINAGAR**

Filing No. _____

Case No. _____

IN THE MATTER OF



Petition under Section 86(1)(b) read with Section 63 of the Electricity Act, 2003 along with "Guidelines for Procurement of Power by the Distribution Licensees" issued by Hon'ble GERC for seeking approval of the Quantum, and deviations from the Model Bidding documents as per the Ministry of Power guidelines dated 30.01.2019 for Procurement of Electricity for Medium Term from Power Stations set up on Finance, Own & Operate (FOO) basis.

AND

IN THE MATTER OF

MPSEZ Utilities Limited,
Adani Corporate House, Shantigram,
Near Vaishno Devi Circle,
S.G Highway, Khodiyar,
Ahmedabad - 382 421

...PETITIONER

THE PETITIONER RESPECTFULLY SHOWETH AS UNDER:

1. MPSEZ Utilities Limited (hereinafter referred to as "**MUL**" or "**Petitioner**") (Formerly known as MPSEZ Utilities Private Limited) is a company incorporated under the Companies Act, 1956 having its registered office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, Khodiyar, Ahmedabad-382 421.
2. The Petitioner has been granted Distribution License by Hon'ble Gujarat Electricity Regulatory Commission (hereinafter referred to as "**Hon'ble GERC**") vide order no. GERC/ Legal / 2010 / 0609 order dated 26.04.2010 for distribution of electricity in the Licensed area.
3. In order to cater to the demand of power in the License area, the Petitioner entered into Long Term Power Purchase Agreement for 50 MW with Thermal Generators and 12 MW with Wind Energy Generator (WEG).
4. In order to provide reliable and quality power to the consumers of the distribution license area, the Petitioner is continuously involved in discussions

with the existing and upcoming consumers. to better serve the needs of consumers of its license area.

5. Based on the discussion with various existing & upcoming consumers, the Petitioner is envisaging a substantial increase in demand in its license area from Apr-2023 onwards. It is expected that demand will be increased by more than 300 MW from Apr-2023 on account of the expansion of already installed units and the addition of new units in the license area of the Petitioner.
6. Considering the past trend of uncertainty in the short term power procurement prices and to fulfill universal supply obligation, the Petitioner intends to tie up power under Long term / Medium term basis to fulfill its future demand.
7. Till the time projected demand gets stabilized, the Petitioner intends to procure aforesaid 300 MW power under the medium-term basis for 5 years i.e. Apr-2023 to Mar-2028 through a competitive bidding process.
8. Further, the Petitioner intends to make certain deviations in the Model Bidding Documents issued by the Ministry of Power (MoP) on 29.01.2019 for Procurement of Electricity under Medium Term Basis to ensure commercial clarity about contractual provisions and to safeguard the interest of the consumers. Further, certain modifications in the Bid Documents are proposed to align contractual terms in accordance with the prevailing Rules and Regulations and to avoid cost implication on the Petitioner, and avoid burden on end consumers.

REGULATORY FRAMEWORK

9. Section 86 (1) (b) of the Electricity Act, 2003 states that the State Commission shall regulate the 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 the purchase of power for distribution and supply. For reference, the excerpt of Section 86 (1)(b) is as follows –

"Section 86. (Functions of State Commission): --- (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;"

10. In order to fulfill the duty enshrined in Section 86 (1) (b) of the Electricity Act, 2003, Hon'ble GERC framed the "Guidelines for Procurement of Power by the Distribution Licensees" in the State of Gujarat (hereinafter referred to as "**GERC Guidelines**").



11. Section 42 and 43 of the Electricity Act, 2003, states that **it is the duty of a Distribution Licensee (herein The Petitioner) to ensure electricity supply to the consumers within the licensed area of supply on request.** It is to be noted that Hon'ble GERC vide GERC Guidelines has directed all the Distribution Licensees in the State of Gujarat to follow the procedure laid down in the said guidelines for procurement of power. A copy of GERC Guidelines is marked and annexed as **Annexure - 1.**
12. As per GERC Guidelines, for procurement of power by the Distribution Licensees (In case of procurement of power through competitive bidding), the Distribution Licensees (herein The Petitioner) shall initiate the process for long-term/medium-term power procurement in accordance with the Ministry of Power's Guidelines for "Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees" (hereinafter referred to as "**MoP Guidelines**") notified by the Ministry of Power on 19.01.2005 and in force from time to time.
13. Furthermore, MoP Guidelines states that if there is any deviation from the Model Bidding Documents, then the same shall be subject to approval by the appropriate Commission (herein Hon'ble GERC). Hon'ble GERC shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days.
14. Ministry of Power vide letter dated 29.01.2019 has issued revised Model Bidding documents and vide resolution dated 30.01.2019, Ministry of Power notified Revised Guidelines for Procurement of Electricity for Medium Term from Power Stations set up on Finance, Own & Operate (FOO) basis which provides as under:
- a. The aforesaid guidelines provide for Model Bidding Documents comprising Request For Qualification (RFQ), Request For Proposal (RFP) & Agreement for Power Procurement (APP).
 - b. The guidelines would be applicable for the purchase of power with a contract period between one and five years.
 - c. 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 Appropriate Commission in pursuance of the provisions of Section 63 of the Electricity Act, 2003.
 - d. Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission.
- Provided, however, that any project-specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.
- A copy of the Ministry of Power Letter dated 29.01.2019 & Guidelines dated 30.01.2019 is annexed herewith as **Annexure - 2.**



15. In view of the above, the Petitioner intends to make certain deviations to Model Bidding Documents to ensure commercial clarity about contractual provisions and to safeguard the interest of the consumers in the Petitioner's License area. Further, certain modifications in the Bid Documents are proposed to align contractual terms in accordance with the prevailing Rules and Regulations and to avoid cost implication on the Petitioner.

16. The Petitioner is seeking the following deviations/modifications in the Model Bidding Documents for simplifications of commercial aspects and to optimize the overall cost of power procurement in the interest of the consumers.

a. Extension of Contract Period:

Clause 3.2 of the APP provides for damages to be paid by the Utility to Supplier in case of non-extension of contract after expiry of the original period. The said clause may be deleted as the contract period is pre-defined and any extension would be on a mutual basis in accordance with the terms & conditions of the tender documents.

b. Transmission Charges, Losses & Open Access:

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

It is humbly submitted that the above clarification & modification would enable evaluation of bids from various Projects at a uniform level, provide transparency about the applicability of Gujarat InSTS & ISTS transmission charges as well as pass-through of the transmission charges & losses during the contract period, in addition, to bring clarity on responsibility of open access.

c. Impact of additional expenditure due towards compliance to revised Environmental norms:

The following clause may be added in the APP to avoid incurring subsequent expenses & litigation w.r.t. additional expenditure towards compliance of revised environmental norms:



"5.12 It is to clarify that any impact on Tariff on account of compliance to revised environmental norms shall be on account of the Supplier / Trader at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions."

d. Contracted Capacity:

Based upon discussion with existing & upcoming customers, Utility is envisaging an increase in power demand in its license area which requires long-term / medium term power purchase tie-up. However, considering the experience of probable delay in development/expansion of established units and materialization of upcoming units, Utility is of the view that additional power would be procured under medium-term mode with a right to the Utility to vary the contracted capacity annually with advance notice to have flexibility. The utility would have a right to reduce the contracted capacity for a Contracted Accounting Year 30 days before its commencement and the above-mentioned reduced capacity shall become the contracted capacity for the said Accounting Year.

In view of the above, Utility proposes to amend clause 10.1 of the Agreement for Power Procurement (APP) to provide flexibility to the Utility to vary (increase/decrease) the contracted capacity (but not exceeding 300 MW) for every Accounting year to protect the interest of end consumers.

e. Non-Availability as a consequence of shortage of Fuel:

As per clause 11.4.5 of the APP, in case of non-availability of a generating station as a consequence of shortage of fuel caused by an event of Force Majeure, for payment of Fixed Charges, deemed availability to the extent of 30% of Non-Availability shall be considered. As the responsibility, as well as risk for assured supply of fuel thereof, is on the account of Supplier/Bidder, the provision about deemed availability to the extent of 30% for payment of a fixed charge to Supplier may be deleted.

f. Cost of Transmission Charges:

Model Bidding Documents provides that Cost of Transmission Charges shall be a part of Base Variable Charge which would be payable to Supplier by Utility as per actual despatch of electricity. Accordingly, the Utility proposed to incorporate a new provision (Clause 12.6) to clarify that in case the Utility schedules less power than availability actually declared by supplier, Utility shall reimburse/ adjust the cost of transmission charge to the extent of normative availability or actual availability whichever is lower. Further, it is proposed to clarify that the Supplier shall be responsible for applying for open access. In the case of power flow under STOA, transmission charges towards MTOA would not be payable to Supplier by Utility (Clause 5.11 of PPA). The linking of



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

g. Payment Security Mechanism:

The Model Bidding Documents vide clause 13.1 provides for the establishment of Default Escrow Agreement and Deed of Hypothecation by the Utility in addition to Letter of Credit equal to 20% of annual capacity charge payable by Utility for a month. Considering the contract period of 5 years, implementation of multiple payment security mechanisms and their associated cost, under the arrangement, should be avoided. Hence, Utility intends to seek deviation towards the removal of Default Escrow Agreement and Deed of Hypothecation as a payment security mechanism to Supplier / Bidder. In lieu of the same, it is proposed to increase the amount of Letter of Credit equivalent to one month Tariff (at Normative Availability) for the first year and for subsequent years at the average monthly payment for the previous year to ensure adequate risk coverage to Supplier.

h. Settlement of UI Charges:

Clause 14.2.2 & 14.2.3 of the PPA, provides for sharing of revenue from UI charges and waiver of fixed charges for UI energy supplied by Supplier to Utility which may be deleted as any gain or loss on account of UI would be on account of Supplier and in accordance with UI regulation.

i. Force Majeure:

There are various provisions of APP about Force Majeure conditions and sharing of cost implications thereof which has to be deleted to avoid any unfettered cost implication on Utility as the same would be more relevant in power tie-up under long term basis. The details of clauses that are proposed to be deleted are as under:

- (i) Clause 17.2(d) – This clause is regarding the delay or failure of an overseas contractor to deliver equipment in India. The said clause may be deleted as the same would not be relevant in the present tender proposed to be floated by the Utility wherein participation would be predominantly from operational projects.
- (ii) Clause 17.4(a) – As per this clause, any Change in Law event shall be considered as Political Event under Force Majeure if consequences thereof cannot be dealt with under Article 21 (Change in Law) and its impact in financial terms exceed the sum specified in Article 21. To avoid interpretational dispute like whether it qualifies under Change in Law or Force Majeure and its consequential implications on the Utility, the Utility intends to delete the same.

