

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 2057 of 2022.**

**In the Matter of:**

**Petition approval of Short-Term Power Purchase arrangement for sourcing of power to cater to the demand of Dahej SEZ and Dholera SIR License Area under the provisions of the Guidelines for Power Procurement by distribution Licensees issued by the Commission read with Section 86 (1) (b) of the Electricity Act, 2003, for the period from 01.04.2022 to 30.09.2022.**

Petitioner : Torrent Power Limited,

Represented By : Mr. Chetan Bundela, Mr. Jignesh Langalia & Ms. Luna Pal

**CORAM:**

**Anil Mukim, Chairman  
Mehul M. Gandhi, Member  
S. R. Pandey, Member**

**Date: 04/04/2022.**

**ORDER**

1. This Petition has been filed by the Petitioner M/s Torrent Power Limited in its capacity as distribution licensee of Dahej SEZ and Dholera SIR License areas seeking approval of Short Term Power Purchase arrangement for sourcing of 70 MW Round-the-Clock (RTC) power (i.e. from 0000 hours to 2400 hours) during the period from 01.04.2022 to 31.03.2023 to cater to the demand of Dahej SEZ and Dholera SIR License areas under the provisions of the Guidelines for Power Procurement by Distribution licensee issued by the Commission read with Section 86 (1) (b) & Section 63 of the Electricity Act, 2003.
2. The facts mentioned in the Petition, in brief, are as under:
  - 2.1. The Petitioner Torrent Power Limited (TPL) is a company incorporated under the provisions of the Companies Act, 1956 and has planned to make necessary short

term power purchase arrangements from bilateral sources for FY 2022-23, to cater to the demand of its consumers for Dahej SEZ and Dholera SIR License areas and also to procure top power from the power exchanges as may be required in view of uncertainty of demand.

- 2.2. It is stated that power exchange has recently witnessed sharp increase in prices, *inter alia*, due to deficit in generation along with uncertainty in clearance of volume. Additionally, the coal based stations are already facing domestic coal shortage and cost of imported is higher and also expected to remain higher. Accordingly, in order to cater to the demand of its consumers, the Petitioner planned to procure 70 MW Round-the-Clock (RTC) power (i.e. from 0000 hours to 2400 hours) during the period from 01.04.2022 to 31.03.2023 through short term bidding process.
- 2.3. The Petitioner has made following deviations from the MoP bidding guidelines in the bidding documents filed i.e. RFP & PPA for availing better terms and flexibility to reduce the overall cost of power procurement which have been approved by the Commission vide its Order dated 24.04.2017 in Petition No. 1636 of 2017:
- Take or Pay Penalty: The penalty for “take or pay” and “supply or pay” shall be Rs. 2 per unit.
  - Take or Pay Quantum: The minimum quantity for “take or pay” and “supply or pay” shall be 80%.
- 2.4. The Petitioner published a tender notice on 09.12.2021 for procurement of power on short term basis through e-tendering and on Reverse Auction basis in the following newspapers:
- Business Standard (All India Edition)
  - Mint (All India Edition)
- 2.5. The bidders were required to bid on website of MSTC [www.mstcecommerce.com](http://www.mstcecommerce.com) (DEEP Portal) and last date for submission of offers was 14.12.2021. Bids from six (6) bidders were received at IPO stage and e-reverse auction was conducted on MSTC’s portal on 18.12.2021. Since the rates discovered in e-Reverse Auction were on higher side, the Petitioner TPL asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum. Based on final offers received from bidders, the Petitioner approached the Committee with all the details and in

turn the Committee recommended to issue “Letter of Award” (LOA) to certain bidders.

2.6. The details of bidders to whom LOA are issued by the Petitioner are as under:

Month	Time Slot	Bidder/Ref. No.	Source	Revised volume and rate	
				Quantity (MW)	Price (Rs. / unit)
01-04-2022 to 30-09-2022	0000 hours to 2400 hrs. (RTC)	Tata Power Trading Company Limited /74176	Jindal Power Limited	70	4.78

2.7. It is submitted that the Standing Committee Certificate for compliance of MoP guidelines is filed and the LOA issued by the Petitioner to the successful bidders and the bidders have accepted the same which is also filed. Accordingly, the Petitioner has requested the Commission to approve the power purchase arrangement as above to procure 70MW Round-the-Clock (RTC) power (i.e., from 0000 hours to 2400 hours) during the period 01.04.2022 to 30.09.2022, through short term bidding process.

3. The matter was heard on 14.03.2022 and Mr. Chetan Bundela on behalf of the Petitioner while reiterating the facts stated in para 2 above submitted that after the Reverse Auction conducted on MSTC’s portal on 18.12.2021, the rates discovered were on higher side and therefore, the Petitioner asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum. Based on final offers received from bidders, the Petitioner approached the Standing Committee for bid evaluation with all the documents and as recommended by the said Committee to issue “Letter of Award” (LOA) to bidder and accordingly, the Petitioner has provided the details of bidder to whom LOA is issued in the Petition.

3.1. It is submitted that the Standing Committee Certificate for compliance of MoP guidelines and copy of LOA issued to the successful bidder and acceptance by the bidders is filed by the Petitioner and requested the Commission to admit the Petition and approve the power purchase arrangement.

3.2. It is submitted by the Petitioner that in present case the tariff is discovered through competitive bidding process and although the Petitioner has mentioned Section 86(1)(b) in the subject matter but it is clarified that this Commission is also being

approached for adoption of tariff discovered under competitive bidding process and accordingly, present Petition be considered as filed under Section 86(1)(b) along with Section 63 of the Electricity Act, 2003 read with GERC Power Procurement Guidelines by the Commission for approval of Short-Term Power Purchase arrangement for sourcing of power to cater to the demand of Dahej SEZ and Dholera SIR License Area at competitive rate discovered through e-tendering and e-reverse auction for the period from 01.04.2022 to 30.09.2022.

- 3.3. Moreover, in response to further query from the Commission in respect to negotiation carried out with the bidders and reduction of 10 paisa per unit in the rate also by bidder and whether there are any supporting documents filed thereto by the Petitioner, it is submitted that it is mentioned in the Petition that since the rate discovered in e-Reverse Auction were on higher side, all bidders were asked to submit their best offer in terms of reduction in rate and increase in quantum and based on final offers received from bidders, the Petitioner approached the Bid Evaluation Committee with all the details. Also, referring to the Standing Committee Certificate, it is submitted that original rate and revised rate offered by bidders was already stated and based on final offers, the Petitioner approached Committee and it was recommended by the Committee to issue LOA to the successful bidder.
4. Accordingly, in pursuance to the directives of the Commission, the Petitioner has filed additional submissions vide affidavit dated 28.03.2022 on (a) Clarification that the Petition is filed under Section 63 and 86 (1) (b) of the Electricity Act, 2003 by amending the cause title and (b) Submission of documents exchanged between the bidder and the Petitioner in respect of negotiation as under:
  - 4.1. Regarding clarification of filing under Section 63 and 86(1)(b), it is clarified by the Petitioner that this Petition has been filed seeking approval of short-term power purchase arrangement for sourcing of power to cater to the demand of Dahej SEZ and Dholera SIR License areas as per the Guidelines for Power Procurement by Distribution licensee issued by the Commission under Section 86(1)(b) of the Act.
  - 4.2. As per the Electricity Act, there are two options available for procurement of power i.e., under Section 62 of the Act (Regulated Tariff) or under Section 63 (tariff identified through competitive bidding process). The Petitioner has carried out the

competitive bidding process under Section 63 of the Electricity Act for procurement of power on short term basis through e-tendering and on reverse auction basis and discovered the competitive rate whereas Section 86 requires the approval of the Commission for adoption of tariff discovered under competitive bidding process. Accordingly, the Petitioner has approached this Commission for adoption of tariff discovered under competitive bidding process in accordance with the provisions of the Act and in compliance to directive of the Commission, the Petitioner has amended the cause title to clarify that the present Petition is for approval of short term power purchase arrangement for sourcing of power to cater to the demand of Dahej SEZ and Dholera SIR License areas under Section 63 of the Electricity Act, 2003 read with the Guidelines for Power Procurement by Distribution licensee issued by the Commission.

- 4.3. Regarding submission of documents exchanged between the bidders and the Petitioner in respect of negotiation, the Petitioner submits that since the rate discovered in e-Reverse Auction were on higher side, all bidders were asked to submit their best offer in terms of reduction in rate and increase in quantum and based on final offer received from bidder, the Petitioner approached the Bid Evaluation Committee with all the details. The original rate and revised rate offered by bidders have been referred in the Standing Committee Certificate and based on final offers, the Petitioner approached Committee and it was recommended by the Committee to issue LOA to the successful bidder and in compliance to the direction, the Petitioner is submitting copy of correspondence with bidder.
5. We have considered the submissions made by the Petitioner. The Petitioner has filed the present Petition seeking approval for Short Term Power purchase arrangement of 70 MW Round-the-Clock (RTC) power (i.e., from 0000 hours to 2400 hours) during the period from 01.04.2022 to 30.09.2022 tied-up through competitive bidding process in order to cater to the demand of its consumers. We also note that the Petitioner, being a distribution licensee, has the Universal Service Obligation to ensure uninterrupted electricity supply to the consumers within its license area as provided under Section 43 of the Electricity Act, 2003.
- 5.1. The Petitioner has prayed to approve the arrangement for sourcing quantum of power for period from 01.04.2022 to 30.09.2022 from source at rate as stated in

the Petition and table above through short term bidding process to cater to the demand of Dahej SEZ and Dholera SIR License areas. The Petitioner published tender notice inviting bids through e-tendering and on e-Reverse Auction basis and the bidders were required to bid on MSTC's website and accordingly it is stated by the Petitioner that tendering was undertaken through transparent e-bidding process on DEEP Portal and had prayed for approval under the provisions of the Guidelines for Power Procurement by the Distribution Licensee issued by the Commission vide Notification No. 02 of 2013 dated 14.08.2013 read with Section 86 (1) (b) of the Electricity Act, 2003. Subsequently, it is also clarified vide affidavit dated 28.03.2022 that the present Petition is for approval of short-term power purchase arrangement for sourcing of power to cater to the demand of Dahej SEZ and Dholera SIR License areas under Section 63 of the Electricity Act, 2003 read with the Guidelines for Power Procurement by Distribution licensee issued by the Commission.

- 5.2. Section 86 (1) (b) empowers the Commission to regulate the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured. Section 63 of the Act is regarding determination of tariff by bidding process to be adopted by the Commission if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. It is, therefore, necessary to refer the relevant provisions of Section 86 (1) (b) and Section 63 of the Electricity Act, 2003:

“ .....

*Section 86. Functions of State Commission, --*

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

.....

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

.....”

As per the aforesaid provision, it is the function of the Commission to regulate the electricity purchase and procurement process of the Distribution Licensee including price, quantum and agreement.

“.....

*Section 63. (Determination of tariff by bidding process):*

*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 the above provision, the Commission to adopt tariff if such tariff is determined through transparent bidding process in accordance with the guidelines issued by the Government of India.

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

“.....

*13. Where the Distribution Licensee is to procure power on a short-term basis or there is a shortfall due to any reason whatsoever, or failure in the supply of electricity from any approved source of supply during the year, for any reason whatsoever, the licensee may enter in to a short-term arrangement or agreement for procurement of power through power exchanges or through a transparent process of open tendering and competitive bidding.*

*14. In case of procurement of power through competitive bidding, the Distribution Licensee shall initiate the process for short-term power procurement in accordance with the Ministry of Power’s Guidelines for Short Term Procurement of Power by Distribution Licensees through Tariff based bidding process’ notified by the Ministry of Power on 15/05/2012 and in force from time to time. As provided in the MoP Guidelines:*

- a) The bid documentation shall be prepared in accordance with the MoP guidelines and the approval of the GERC shall be obtained unless the bid*

*documents are as per the standard bid documents issued by the Central Government.*

*b) Generally, no deviation shall be allowed from these Guidelines. However, if it is essential to have the deviation from these Guidelines, the same could be done with the prior approval of the GERC.*

*c) The Procurer(s) shall procure short-term power as per the plan approved by the GERC or appropriate body as may have been constituted for the purpose by the GERC. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the GERC.*

*d) In case procurement of short-term power exceeds the approved annual short-term procurement plan, the Procurer(s) shall obtain prior approval from the GERC or any appropriate body as may have been constituted for the purpose by the GERC.*

*15. For procurement on short-term basis, a single-stage bid process by inviting Request for Proposal (RFP) shall be adopted. Procurer or authorized representative shall prepare bid document in line with these Guidelines. The Procurer shall publish an RFP notice in at least two national newspapers and upload the same on company website to accord it wide publicity. The bidding shall necessarily be by way of competitive bidding.*

*16. The PPA shall be signed with the selected bidder(s) consequent to the selection process.*

*(a). After the conclusion of bid process, the Standing Committee constituted for evaluation of RFP bids shall provide appropriate certificate on conformity of the bid process evaluation to the provisions of the RFP document. The Procurer shall provide a certificate on the conformity of the bid process to these Guidelines to the GERC.*

*(b). If the quantum of power procured and tariff determined are within the overall approval granted by the GERC in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the GERC.*

*In all other cases, the Procurer(s) shall submit a petition to the GERC for adoption of tariff within two days from the date of signing of PPA. The GERC should*



*communicate the decision within seven days from the date of submission of petition. ....”*

As per Clause 13 of the aforesaid guidelines, when the Distribution Licensee needs to procure the power to meet the demand of the consumers on the short-term basis, the Distribution Licensee may do so through energy exchange or through transparent process of open tendering and competitive bidding.

Clause 14 of the aforesaid Guidelines provides that in case of procurement of power through the competitive bidding, the Distribution Licensee shall initiate the process for Short-Term Power Procurement in accordance with the Guidelines for Short-Term Procurement of Power by the Distribution Licensee through tariff-based bidding process notified by the Ministry of Power, Government of India on 15<sup>th</sup> May, 2012. The bid documents submitted by the Petitioner are as per the MoP guidelines consist of the deviations earlier approved by the Commission. Thus, the bid documents are in accordance with the MoP guidelines.

Sub-clause (b) of Clause 14 of the aforesaid Guidelines provides that whenever there is any deviation from these Guidelines, the same could be done with prior approval of the Commission. Further, sub-clause (c) of the Clause 14 of the aforesaid Guidelines provides that the procurer shall procure the short-term power as per the plan approved by the Commission.

Clause 15 of the said Guidelines provides that for Procurement of Power on short-term basis a single stage bid process by inviting Request for Proposal (RFP) shall be adopted. Further, it is also provided that the procurer/distribution licensee shall publish an RFP notice in at least 2 national newspapers and upload the same on the company's website to accord wide publicity. The bidding shall necessarily be by way of competitive bidding.

Sub-Clause (a) of Clause 16 of the aforesaid Guidelines provides that the Standing Committee needs to be constituted for evaluation of RFP bids who shall provide appropriate certificate on conformity of the bid process evaluation to the provisions of RFP document and conformity of the bid process to these guidelines to the Commission.

Sub-Clause (b) of Clause 16 of the aforesaid Guidelines provides that if the quantum of power procured and tariff determined are within the overall approval granted by the Commission in the Aggregate Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the Commission.

5.4. The Petitioner published a tender notice on 09.12.2021 in Business Standard (All India Edition) and Mint newspaper (All India Edition) for procurement of power on short term basis inviting bids through transparent e-bidding Reverse Auction process on DEEP Portal whereby the bidders were required to submit their bid/offers on MSTC website and last date for submission of same was 14.12.2021. Thus, the tender notice issued by the Petitioner in 2 (two) newspapers is in compliance with Clause 15 of the Guidelines for Procurement of Power issued by the Commission.

5.5. The Petitioner has filed the RFP dated 08.12.2021 and draft PPA whereby bids were invited for supply of power with delivery point as GETCO periphery for its license areas of Gujarat for following quantity and duration vide its Tender No. Torrent Power Limited/Short/21-22/ET/83 and Torrent Power Limited/Short/21-22/RA/75 dated 08.12.2021:

<b>Requisition</b>	<b>Period</b>	<b>Time slot</b>	<b>Total Quantum* (MW)</b>	<b>Minimum Quantum (MW) to be offered by seller</b>
1	01-04-2022 to 30-09-2022	0000 hours to 2400 hours	70	70
2	01-10-2022 to 31-03-2023	0000 hours to 2400 hours	70	70

5.6. The Petitioner received bids from six (6) bidders at IPO stage and e-reverse auction was conducted on MSTC's portal on 18.12.2021. Since the rates discovered in e-Reverse Auction were on higher side, the Petitioner TPL asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum. Based on final offers received from bidders, the Petitioner approached the Committee with all the details and in turn the Committee recommended to issue "Letter of Award" (LOA) to certain bidders.

5.7. We note that the Petitioner has submitted the tender bid documents (RFP) dated 08.12.2021 and draft PPA along with the present Petition. We take cognizance of submission of the deviations with regard to 'Take or Pay' Penalty and 'Take or Pay' Quantum incorporated by the Petitioner in the RFP and at Article 5.2.3 of the draft PPA which were approved by the Commission in the Order dated 24.04.2017 in Petition No. 1636 of 2017.

5.8. We further note that the Petitioner has constituted a Standing Committee as per Clause 7.2 of the Guidelines for Short-Term (i.e., for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process (MoP Guidelines) vide Notification No. 23/25/2011/-R&R (Vol-III) dated 30<sup>th</sup> March, 2016 issued by Ministry of Power. As per Clause 11.2 of the MoP Guidelines and Clause 16 (a) of the GERC Guidelines issued by the Commission as quoted above, the Standing Committee constituted for evaluation of bids is required to submit appropriate certificate on conformity of the bid process evaluation according to the provisions of the RFP document. Further, as per Clause 11.3 of the MoP Guidelines, the Procurer for the purpose of transparency is required to make the bids public by indicating the tariff quoted by all the Bidders, after signing of the PPA or PPA becoming effective, whichever is later and while doing so, only the name of the Successful Bidder(s) to be made public and tariffs quoted by other Bidders to be made public anonymously. The relevant provisions of the Guidelines of Ministry of Power and this Commission read as follows:

“.....

*7. Bid submission and evaluation*

.....

*7.2 The Procurer shall constitute a Standing Committee for evaluation of the Bids.*

.....

*11. Contract award and conclusion:*

.....

*11.2. After the conclusion of bid process, the Standing Committee constituted for evaluation of RFP bids shall provide appropriate certification on conformity of the bid process evaluation according to the provisions of the RFP documents. The Procurer shall provide a certificate on the conformity of the bid process to these Guidelines to the Appropriate Commission.*

11.3 For the purpose of transparency, the Procurer shall make the bids public by indicating the tariff quoted by all the Bidders, after signing of the PPA or PPA becoming effective, whichever is later. While doing so, only the name of the Successful Bidder(s) shall be made public and tariffs quoted by other Bidders shall be made public anonymously.

.....”

5.9. In compliance to above, we observe that the Petitioner has submitted the Standing Committee Certificate dated 22.12.2021 along with the Petition on affidavit. It is certified in said certificate of Standing Committee that the bid process evaluation is done according to the provisions of the RFP documents and the bidding process is in conformity with the guidelines for Short-Term power procurement issued by the Ministry of Power vide Notification No. 23/25/2011-R&R dated 30<sup>th</sup> March, 2016 in respect of said requirement of power from 01.04.2022 to 30.09.2022. The aforesaid certificate also states that bids were invited for different periods, with different quantum and time slots for the period from 01.04.2022 to 31.03.2023. The relevant portion of the Standing Committee Certificate read as follows:

“ *Standing Committee Certificate*

*Standing Committee:*

- |                                       |          |
|---------------------------------------|----------|
| 1. Shri Kashyap Desai, Vice President | Chairman |
| 2. Shri Naimesh Shah, Vice President  | Member   |
| 3. Shri Mayank Gupta, Vice President  | Member   |

*Background*

*Torrent Power Limited (TPL) decided to invite bids for supply of power for its license areas of Gujarat for following quantity and duration vide its tender no Torrent Power Limited/Short/21-22/ET/83 dated 8<sup>th</sup> Dec' 2021:*

<b>Requisition</b>	<b>Period</b>	<b>Time slot (Hours)</b>	<b>Total Quantum (MW)</b>	<b>Minimum Quantum (MW) to be offered by seller</b>
1	01-04-2022 to 30-09-2022	0000 to 2400	70	70
2	01-10-2022 to 31-03-2023	0000 to 2400	70	70

*Publication of tender*

TPL issued tender on DEEP portal of MSTC website on 8<sup>th</sup> December 2021 and published the tender notice on 9<sup>th</sup> December 2021 for procurement of Power on short term basis during 1<sup>st</sup> April, 2022 to 31<sup>st</sup> March 2023 in the following newspapers:

- (1) Business Standard (All Edition-Eng.): Delhi, Lucknow, Chandigarh, Kolkata, Bhubaneswar, Mumbai, Pune, Ahmedabad, Chennai, Kochi, Bangalore, Hyderabad
- (2) Mint- All Edition: Ahmedabad, Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, (Chandigarh & Pune - Satellite editions)

#### Bid evaluation

Bids from seven bidders were received at IPO stage. E-reverse auction was conducted on MSTC's portal on 18<sup>th</sup> December, 2021. The result of e-reverse auction is as under:

Sn.	Period	Time Slot	Requisitioned Qty (MW)	Bidder/Ref. No.	Quantity	Price
1	01-04-2022 to 30-09-2022	0000 to 2400	70	Tata Trading/74176	70	4.88
2	01-10-2022 to 31-03-2023	0000 to 2400	70	Tata Trading /74185	70	4.83

Since the rate discovered in e-Reverse Auction were on higher side, TPL asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum.

#### Outcome:

1. Tata Power Trading Company Limited:  
Generation source (Jindal Power Limited)

Month	Duration (hrs.)	RA Offer (Rs. /kWh)	Revised Offer (Rs. /kWh)
01-04-2022 to 30-09-2022	00:00-24:00	4.88	4.78

Based on final offers received TPL approached the Committee and Committee recommended to issue Letter of Award (LOA) to following bidders:

Sn.	Period	Time Slot	Bidder/Ref. No.	Quantity	Price
1	01-04-2022 to 30-09-2022	0000 to 2400	Tata Trading/74176	70	4.78

The Committee hereby certifies that the bid process evaluation is done according to the provisions of the RfP document and the bidding process is in conformity with the Guideline for short term power procurement issued by Ministry of Power vide notification no 23/25/2011-R&R dated 30<sup>th</sup> March 2016.

Sd/-  
Kashyap Desai  
Chairman

Sd/-  
Naimesh Shah  
Member

Sd/-  
Mayank Gupta  
Member

Date: 22<sup>nd</sup> Dec' 21  
Place: Ahmedabad  
....."

From the above it is observed that the Standing Committee has confirmed that the tender notice was published in the newspapers, viz, (i) Business Standard (All Editions): Delhi, Lucknow, Chandigarh, Kolkata, Bhubaneswar, Mumbai, Pune, Ahmedabad, Chennai, Kochi, Bangalore, Hyderabad and (ii) Mint (All Editions): Ahmedabad, Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, (Chandigarh & Pune – Satellite Editions).

- 5.10. The aforesaid certificate dated 22.12.2021 issued by the Standing Committee states that bids were invited for supply of power during 01.04.2022 to 30.09.2022 for its license areas of Gujarat for specified quantity for the aforesaid duration.
- 5.11. The Certificate also states that bids were received from 6 bidders and thereafter e-reverse auction was conducted on MSTC's Portal on 18.12.2021. It also states that the rates discovered in e-Reverse Auction were on higher side and therefore, the Petitioner TPL asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum. It appears from the above certificate that revised offers were submitted by M/s Tata Power Trading Company Limited with generation source as Jindal Power Limited by revising rate with reduction of 10 paise per unit for RTC power up to end of September-2022 only. However, for RTC power the rate of Rs. 4.83 per unit seems to not been revised for the period from 01.10.2022 to 31.03.2023.
- 5.12. The said certificate also states that based on the final offer received, the Petitioner TPL approached the Committee and the Committee decided to issue Letter of Award bidders as per table stated in certificate to M/s Tata Power Trading Company Limited. Accordingly, the Petitioner issued Letter of Awards dated 22.12.2021 filed with the Petition to the bidder as under:

<b>Tata Power Trading Company Limited.</b>					
<b>Period</b>	<b>MSTC No.</b>	<b>Time Duration</b>	<b>Quantum (MW)</b>	<b>Rate at GETCO Periphery (Rs./kWh)</b>	<b>Injecting Source</b>
<b>01<sup>st</sup> April 2022 to 30<sup>th</sup> September 2022</b>	74176	00 hours to 2400 hours	70	4.78	Jindal Power Limited

5.13. We also note that the Ministry of Power has notified the Electricity (Late Payment Surcharge) Rules, 2021. The Rules have come into force on the date of their publication in the Official Gazette i.e., 22.02.2021. The said Rules read as under:

“ .....

2 Application. -

.....

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

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

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

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

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

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

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

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

4. Late Payment Surcharge.

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

(2) *The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the*

*Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:*

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

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

The aforesaid rules are statutory Rules notified under the Electricity Act, 2003. Therefore, it needs to be given an effect in the power procurement by the distribution licensee. We note that the Petitioner has made necessary changes in Article 5.3.3 of the draft Power Purchase Agreement as noted hereinafter.

- 5.14. We also note that the Petitioner has incorporated deviations from the MoP bidding guidelines as approved by the Commission vide its Order dated 24.04.2017 in Petition No. 1636 of 2017 in Clause 5.2.3 of Article 5 pertaining to 'Billing & Payment' of the draft PPA filed for availing better terms and flexibility to reduce the overall cost of power procurement which are as under:

“.....

**5.2.3. Liquidated Damages:**

- a). *Both the parties would ensure that actual scheduling does not deviate by more than 20% of the contracted power as per the approved open access on calendar monthly basis.*
- b). *In case deviation from Procurer side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Procurer shall pay compensation at Rs. 2.00 per kWh for the quantum, of shortfall in excess of permitted deviation of 20% in energy off-take while continuing to pay open access charges as per contract.*
- c). *In case deviation from Seller side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Seller shall pay compensation to Procurer at Rs. 2.00 per kWh for the quantum, of shortfall in excess of permitted deviation of 20% in energy supplied and pay for the open access charges to the extent of energy not supplied by the Seller.*

.....”



5.15. We note that the Petitioner has specified at Clause 5.3.3 under Article 5 of the Draft Power Purchase Agreement filed with this Petition regarding Late Payment Surcharge in terms of Electricity (Late Payment Surcharge) Rules, 2021 notified by the Ministry of Power, Government of India which reads as under:

“.....

**5.3.3. LATE PAYMENT SURCHARGE**

*(1) Late Payment Surcharge shall be payable on the payment outstanding after the 15<sup>th</sup> day of the date of receipt of bill, at the base rate of Late Payment Surcharge applicable for the period for the first month of default.*

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

*Provided that the rate at which Late Payment Surcharge shall be payable under Article 5.3.3 (1) or Article 5.3.3 (2) shall not be higher than 15%.*

5.16. We also note that the Petitioner has defined ‘base rate of Late Payment Surcharge’ under Article 1 which reads as under:

“.....

*“Base rate of Late Payment Surcharge” means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1<sup>st</sup> April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:*

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

5.17. The Petitioner has filed certificate of the ‘Standing Committee’ mentioning that since the rate discovered in e-Reverse Auction were on higher side, the Petitioner asked bidders to submit their best offer in terms of reduction in rate and increase in quantum. Thereafter, the Petitioner approached the Committee and based on

recommendation by the Standing Committee, the Petitioner has issued LoA. Moreover, in its certificate, the Standing Committee has also certified and confirmed that the bid process evaluation has been done in accordance with the provisions of the RFP document and the bidding process carried out in conformity with the Guidelines for Short-Term Power Procurement issued by the Ministry of Power vide notification No. 23/25/2011- R&R dated 30<sup>th</sup> March, 2016. Thus, the Petitioner has complied with the requirement of the guidelines issued by the MoP as well as this Commission. The Petitioner in compliance to the directives of the Commission has also filed copy of correspondence with bidders through additional submissions vide affidavit dated 28.03.2022.

5.18. Based on the above, we decide that the process for procurement of power is carried out by the Petitioner in conformity with the Guidelines for Short-Term Procurement of Power by Distribution Licensee through Tariff based bidding, issued by the Ministry of Power vide Notification dated 30<sup>th</sup> March, 2016 and the Guidelines for Procurement of Power by Distribution Licensee issued by the Commission vide Notification No. 2 of 2013 dated 14<sup>th</sup> August, 2013.

5.19. We, therefore, decide to approve the procurement of power by the Petitioner for the period from 01.04.2022 to 30.09.2022 as per the recommendation of the Standing Committee constituted for bid evaluation, which is as under:

Sn.	Period	Time Slot	Requisitioned Qty (MW)	Bidder/Ref. No.	Quantity	Price
1	01-04-2022 to 30-09-2022	00 hours to 2400 hours	70	Tata Power Trading Company Limited/74176	70	4.78

5.20. As already mentioned above, the Petitioner in terms of recommendations by the Standing Committee has issued 'Letter of Award' (LoA) dated 22.12.2021 to M/s Tata Power Trading Company Limited.

6. In view of above, this Petition is allowed and it is decided to approve the above Short Term Power Purchase of 70 MW Round-the-Clock (RTC) power (i.e. from 0000 hours to 2400 hours) for the period 01.04.2022 to 30.09.2022 as recommended by the Standing Committee of Bid Evaluation. The Petitioner is directed to submit copies of duly executed PPAs to the Commission confirming on

affidavit that the PPAs consist of terms and conditions in conformity as per the bidding guidelines documents and deviations approved by the Commission. It is also directed to the Petitioner that for the purpose of transparency, it shall make the bids public by indicating the tariff quoted by all the Bidders. While doing so, only the name of the Successful Bidder(s) shall be made public and tariffs quoted by other Bidders shall be made public anonymously in terms of Clause 11.3 of the Guidelines for short-term (i.e., for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process notified by Ministry of Power vide Notification No.23/25/2011-R&R dated 30<sup>th</sup> March, 2016.

7. With this, the present Petition stands disposed of.

8. We order accordingly.

**Sd/-**  
**[S. R. Pandey]**  
**Member**

**Sd/-**  
**[Mehul M. Gandhi]**  
**Member**

**Sd/-**  
**[Anil Mukim]**  
**Chairman**

Place: Gandhinagar.  
Date: 04/04/2022.

