

9	<i>Coal India Limited</i>	500
10	<i>Adani Renewable Energy Holding Twelve Limited</i>	200
11	<i>ABREL SPV 2 Limited</i>	180
12	<i>Project Nine Renewable Power Private Limited</i>	150
13	<i>Hinduja Renewable Energy Private Limited</i>	240
14	<i>Bharat Petroleum Corporation Limited</i>	25
15	<i>SolarXL Alpha Energy Private Limited</i>	200
16	<i>Gujarat Industries Power Company Limited</i>	75
17	<i>Amsa Solar Energy Private Limited</i>	80
18	<i>Azure Power Sixty-One Private Limited</i>	100
19	<i>Tera Renewables India Private Limited</i>	70
20	<i>Gujarat State Electricity Corporation Limited</i>	180
	<b>Total</b>	<b>3150</b>

#### **4. Principles of Evaluation**

*The approach to evaluation has been that all the bidders who qualify under the terms specified in the bidding documents, the financial bid of such qualified bidders shall be opened. Also, in case of a perceived non-responsiveness, clarifications are to be sought from the concerned bidders.*

*Following conditions relating to qualification requirements have been specified in the RFS documents –*

##### **Net worth:**

- (i). The Net-Worth of the Bidder or its Affiliate or Parent / Ultimate Parent as on date of financial year ending 31.03.2021 or 31.12.2020 or as on latest available date as the case may be, shall not be less than INR 0.80 Crores per MW (of the capacity quoted).*
- (ii). The net worth to be considered for the above purpose will be the cumulative net-worth of the bidding company or consortium together with the net worth of those Affiliates of the bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so in accordance with the RfS.*
- (iii). For avoidance of doubt, “net worth” as per section 2 (57) of the Companies Act 2013 means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and*

*miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.*

- (iv). *For meeting the above financial eligibility criteria, if data is provided by the Bidder in USD/SAR, equivalent rupees of Net Worth and other financial parameters will be calculated by Bidder using Reserve Bank of India's reference rates prevailing on the date of closing of accounts for the respective financial year.*
- (v). *Pursuant to evaluation of Net Worth Criteria as part of technical bid, if it is found by GUVNL that the Bidder is eligible for lesser quantum than the quantum for which bid has been submitted, then the Bidder shall be qualified for such lesser quantum, provided that such quantum is not less than minimum bid capacity.*
- (vi). *In case the final audited accounts are not available, GUVNL shall accept the Provisional Accounts provided that an undertaking is submitted by the bidder confirming that Final Audited Annual Accounts for the last financial year are not available as on date of bid submission. Such financial accounts shall have to be certified by at least two Directors or the Company Secretary instead of one Director.*
- (vii). *The companies which have recently raised funds and are not able to meet net-worth as per the Clause 3.4.4 (i) i.e., as 31.03.2021 or 31.12.2020 then the certificate issued by a Chartered Accountant certifying net worth as on latest available date based on provisional Balance Sheet, Profit & Loss account, Schedules and cash flow statement supported with bank statement (if available) shall be required to be submitted.*

## **5. Responsiveness Issues**

*On scrutiny of the bid documents submitted by participating bidders, responsiveness issue were observed in respect of bids submitted by the following bidder*

- (1) SolarXL Alpha Energy Private Limited*
- (2) Adani Renewable Energy Holding Twelve Limited*

- (3) *Ib vogt Singapore Pte Limited*
- (4) *Bharat Petroleum Corporation Limited*
- (5) *Tata Power Renewable Energy Limited*
- (6) *Amsa Solar Energy Private Limited*
- (7) *Tera Renewables India Private Limited*
- (8) *Gujarat State Electricity Corporation Limited*
- (9) *ABREL SPV 2 Limited*
- (10) *Project Nine Renewable Power Private Limited*
- (11) *SJVN Limited*

*Queries were raised by GUVNL on E-bidding portal against The responsiveness issues raised by GUVNL and the responses / compliance submitted by bidders are discussed in the subsequent section.*

## **6. Specific Issues**

### **(1) SolarXL Alpha Energy Private Limited**

**Query raised by GUVNL:** *Upon scrutiny of documents submitted with the bid, it was observed that the certificate of practising CA certifying Net Worth of the bidding company has not been submitted (Although the Net worth certificate of Affiliate is submitted). It is pertinent to mention that as per clause 3.4.4 (ii) of Rfs the Cumulative Net worth of bidding company as well as those affiliates whose credentials are relied upon for qualification is required to be considered. M/s SolarXL ALPHA is required to submit certificate of practising CA certifying Net worth of bidding company within 2 days for ensuring Technical Qualification.*

**Response:** *M/s SolarXL ALPHA has uploaded certificate of practising CA certifying Net worth of bidding company on the bidding portal.*

### **(2) Adani Renewable Energy Holding Twelve Limited**

**Query raised by GUVNL:** *Upon scrutiny of documents submitted with the bid, it was observed that the capacity mentioned in the covering letter dated 02.03.2022 was 300 MW whereas in the Electronic Form on E Bidding Portal as well as in the covering envelope the capacity mentioned was 250 MW. As per tender conditions "If variation is noted between the information contained in the Electronic Forms and the 'Main-*

*Bid', the contents of the Electronic Forms shall prevail". In this regard, M/s Adani Renewable is required to submit revised covering letter within 2 days for ensuring Technical Qualification.*

***Response:*** *M/s Adani Renewable has uploaded the revised covering letter on the e-bidding portal.*

***(3) Ib vogt Singapore Pte Limited***

***Query raised by GUVNL:*** *Upon scrutiny of documents submitted with the bid, it was observed that the certificate of practising CA certifying Net Worth of the bidding company has not been submitted (Although the Net worth certificate of Affiliate is submitted). It is pertinent to mention that as per clause 3.4.4 (ii) of Rfs the Cumulative Net worth of bidding company as well as those affiliates whose credentials are relied upon for qualification is required to be considered. M/s Ib Vogt Singapore Pte Limited is required to submit certificate of practising CA certifying Net worth of bidding company alongwith supporting financial statements within 2 days for ensuring Technical Qualification.*

***Response:*** *M/s Ib vogt Singapore Pte Limited has uploaded certificate of practising CA certifying Net worth of bidding company alongwith supporting financial statements on e-bidding portal.*

***(4) Bharat Petroleum Corporation Limited***

***Query raised by GUVNL:*** *Upon scrutiny of documents submitted with the bid, it was observed that the detailed calculation of Networth as per Companies Act, 2013 has not been provided in the Certificate of Practising CA certifying Net worth. BPCL is required to submit a duly signed CA certificate showing detailed calculation of Net worth as per above requirement within 2 days for ensuring Technical Qualification.*

***Response:*** *M/s BPCL has uploaded the CA certificate showing detailed calculation of Net worth on e-bidding portal.*

***(5) Tata Power Renewable Energy Limited***

**Query 1 raised by GUVNL:** Upon scrutiny of documents submitted with the tender, it was observed that Para 7 (Familiarity with relevant Indian laws & Regulations) in the covering letter dated 03.03.2022 is not as per Format 6.1 of the Rfs document. In this regard, M/s Tata Power is required to submit revised covering letter dated 03.03.2022 as per Format 6.1 of the Rfs for ensuring technical qualification within a period of 2 days.

**Query 2 raised by GUVNL:** Upon scrutiny of documents submitted with the tender, it was observed that M/s Tata Power has not submitted the annual accounts for FY 2020-21 based in which the Net worth has been certified by the Chartered Accountant. In this regard, M/s Tata Power is required to submit the copy of annual financial accounts for the year ending on 31.03.2021 within 2 days for ensuring technical qualification.

**Response:** M/s TATA has uploaded the requisite documents on e-bidding portal.

**(6) Amsa Solar Energy Private Limited**

**Query 1 raised by GUVNL:** Upon scrutiny of documents submitted with the bid, it was observed that in the covering letter dated 02.03.2022 the last date of validity of bid in Para 13 has not been provided. In view of the same, M/s AMSA Solar is required to submit the revised covering letter within 2 days for ensuring technical qualification.

**Query 2 raised by GUVNL:** Upon scrutiny of documents submitted with the bid, it was observed that the certificate of practicing CA certifying Net Worth of bidding company has not been submitted (Although the Net worth certificate of Affiliate is submitted). It is pertinent to mention that as per clause 3.4.4 (ii) of Rfs the Cumulative Net worth of bidding company as well as those affiliates whose credentials are relied upon for qualification is required to be considered for technical qualification. M/s AMSA Solar Energy Pvt. Limited is required to submit certificate of practicing CA certifying Net Worth of bidding company along with supporting financial statements within 2 days for ensuring Technical Qualification.

**Response:** M/s AMSA Solar has uploaded the requisite documents on e-bidding portal.



**(7) Tera Renewables India Private Limited**

**Query 1 raised by GUVNL:** Upon scrutiny of documents submitted with the bid, it was observed that the CA Certificate of Net worth depicts the Networth of M/s Enel Green (Parent) as on 31.12.2021 whereas the annual audited accounts of the parent for the year ending on 31.03.2021h have been submitted as supporting documents. In view of above you are requested to submit the revised CA certificate certifying the Net worth as on 31.03.2021 as per the audited annual accounts.

**Query 2 raised by GUVNL:** Upon scrutiny of documents submitted with the bid, it was observed that the certificate of practicing CA certifying Net Worth of M/s Tera Renewables India Private Limited (Bidding Company) has not been submitted (Although the Net worth certificate of Affiliate is submitted). As per clause 3.4.4 (ii) of Rfs Document, the cumulative Net worth of bidding company as well as those affiliates whose credentials are relied upon for qualification is required to be considered for technical qualification. In view of above, you are required to submit certificate of practicing CA certifying Net worth of bidding company as per annual accounts within 2 days for ensuring Technical Qualification.

**Response:** M/s Tera Renewables has uploaded the requisite documents on e-bidding portal.

**(8) Gujarat State Electricity Corporation Limited**

**Query 1 raised by GUVNL:** Upon scrutiny of documents submitted with the bid, it was observed that the soft copy of various documents like Format 6.1, 6.3A, 6.4, 6.6, 6.8 have not been submitted on the bidding portal although hard copy has been submitted. In this regard, GSECL is required to upload the soft copy of aforesaid documents within 2 days for ensuring technical qualification. Further, in the physical copy of covering letter dated 03.03.2022 various important information such as Name of Bidder in the opening Para of the Covering Letter, Last date of Validity of Bid in Para 13 has not been provided. In view of the same, GSECL is required to submit revised covering letter within 2 days for ensuring technical qualification along with other documents including Format 6.1, 6.3A, 6.4, 6.6, 6.8.

**Query 2 raised by GUVNL:** *The covering letter submitted in response to GUVNL's Query No. 1 has been taken on record. However, the other documents mentioned in Query No. 1 are yet to be uploaded by GSECL/*

**Response:** *M/s GSECL has uploaded the requisite documents on e-bidding portal.*

**(9) ABREL SPV 2 Limited**

**Query raised by GUVNL:** *Upon scrutiny of documents submitted with the bid, it was observed that the certificate of practicing CA certifying Net Worth of bidding company has not been submitted (Although the Net worth certificate of Affiliate is submitted). It is pertinent to mention that as per clause 3.4.4 (ii) of Rfs the cumulative Net worth of bidding company as well as those affiliates whose credentials are relied upon for qualification is required to be considered for technical qualification. M/s ABREL SPV 2 Limited is required to submit certificate of practicing CA certifying Net worth of bidding company along with supporting financial statements within 2 days for ensuring Technical Qualification.*

**Response:** *M/s ABREL SPV 2 Limited has uploaded the requisite documents on e-bidding portal.*

**(10) Project Nine Renewable Power Private Limited**

**Query raised by GUVNL:** *Upon scrutiny of documents submitted with the bid, it was observed that the certificate of practicing CA certifying Net Worth of bidding company has not been submitted (Although the Net worth certificate of Affiliate is submitted). It is pertinent to mention that as per clause 3.4.4 (ii) of Rfs the cumulative Net worth of bidding company as well as those affiliates whose credentials are relied upon for qualification is required to be considered for technical qualification. Project Nine Renewable Power Pvt. Ltd. is required to submit certificate of practicing CA certifying Net worth of bidding company along with supporting financial statements within 2 days for ensuring Technical Qualification.*

**Response:** *M/s Project Nine has uploaded the requisite documents on e-bidding portal.*

### **(11) SJVN Limited**

**Query raised by GUVNL:** Upon scrutiny of documents submitted with the bid, it was observed that the scanned copy of Disclosure which is required to be uploaded as per Format 6.6 of the RfS document is not on the stamp paper although the physical copy has been submitted on stamp paper. M/s SJVN is required to upload the scanned copy of Disclosure duly signed on stamp paper on the e-bidding portal within 2 days for ensuring technical qualification.

**Response:** M/s SJVN has uploaded the requisite documents on e-bidding portal.

### **8. Evaluation of Responses**

The Status in brief is indicated in the following table:

<b>SN</b>	<b>Bidder</b>	<b>MW</b>	<b>Status</b>
1	Avaada Energy Private Limited	300	Qualified
2	Juniper Green Energy Private Limited	40	Qualified
3	SJVN Limited	100	Qualified
4	ReNew Solar Power Private Limited	150	Qualified
5	Tata Power Renewables Energy Limited	120	Qualified
6	Ib vogt Singapore Pte Limited	200	Qualified
7	Torrent Power Limited	100	Qualified
8	Vector Green New Energies Private Limited	90	Qualified
9	Coal India Limited	500	Qualified
10	Adani Renewable Energy Holding Twelve Limited	250	Qualified
11	ABREL SPV 2 Limited	180	Qualified
12	Project Nine Renewable Power Private Limited	150	Qualified
13	Hinduja Renewable Energy Private Limited	240	Qualified
14	Bharat Petroleum Corporation Limited	25	Qualified
15	SolarXL Alpha Energy Private Limited	200	Qualified
16	Gujarat Industries Power Company Limited	75	Qualified
17	Amsa Solar Energy Private Limited	80	Qualified
18	Azure Power Sixty-One Private Limited	100	Qualified
19	Tera Renewables India Private Limited	70	Qualified
20	Gujarat State Electricity Corporation Limited	180	Qualified
	<b>Total</b>	<b>3150</b>	

### **7. Way Forward**

Based on the records put up before the Committee, the Committee recommends that the Financial bids of above 20 (Twenty) bidders may be opened.

<b>Sr. No.</b>	<b>Name</b>	<b>Designation</b>	<b>Signature</b>
1.	Shri K P Jangid	General Manager, Commerce	Sd/-



2.	<i>Smt. Sailaja Vachhrajani</i>	<i>General Manager, IPP</i>	<i>Sd/-</i>
3.	<i>Shri Parthiv Bhatt</i>	<i>Company Secretary, GUVNL</i>	<i>Sd/-</i>
4.	<i>Shri Nilay Joshi (in lieu of CFM (F&amp;A))</i>	<i>Controller of Accounts</i>	<i>Sd/-</i>

.....”

From the Technical Evaluation Report, it is apparent that all the 20 bidders offering capacity of 3150 MW were found to be responsive and hence were deemed qualified for opening of their financial bids. Accordingly, the financial bids of all 20 bidders were opened on 16.03.2022 on e-bidding portal in presence of the Bid Evaluation Committee.

- 4.9. The Financial Evaluation report prepared and signed by the Members of the Committee and submitted with the Petition is reproduced below:

<b>Result of Financial Bids (1<sup>st</sup> Round) in GUVNL's 500 MW Solar Tender dated 03.01.2022 (Phase XIII)</b>				
<b>Sr No</b>	<b>Name of Bidder</b>	<b>MW</b>	<b>Rs./kWh</b>	
1	<i>Hinduja Renewable Energy Private Limited</i>	240	2.39	<i>Qualified for Reverse Auction – 2270 MW</i>
2	<i>Amsa Solar Energy Private Limited</i>	80	2.39	
3	<i>SolarXL Alpha Energy Private Limited</i>	200	2.41	
4	<i>ABREL SPV 2 Limited</i>	180	2.42	
5	<i>Ib vogt Singapore Pte Limited</i>	200	2.43	
6	<i>ReNew Solar Power Private Limited</i>	150	2.45	
7	<i>Coal India Limited</i>	500	2.45	
8	<i>Tera Renewables India Private Limited</i>	70	2.45	
9	<i>Project Nine Renewable Power Private Limited</i>	150	2.48	
10	<i>Azure Power Sixty-One Private Limited</i>	100	2.53	
11	<i>Avaada Energy Private Limited</i>	300	2.56	
12	<i>SJVN Limited</i>	100	2.58	
13	<i>Juniper Green Energy Private Limited</i>	40	2.62	<i>Not Qualified for Reverse Auction</i>
14	<i>Adani Renewable Energy Holding Twelve Limited</i>	250	2.62	
15	<i>Vector Green Energies Private Limited</i>	90	2.66	
16	<i>The Tata Power Company Limited</i>	120	2.72	
17	<i>Torrent Power Limited</i>	100	2.74	
18	<i>Gujarat State Electricity Corporation Limited</i>	180	2.99	
19	<i>Gujarat Industries Power Company Limited</i>	75	3.03	
20	<i>Bharat Petroleum Corporation Limited</i>	25	3.30	
	<b>Total</b>	<b>3150</b>		

*(Signed by Members)*

- 4.10. In view of the above situation, as per Clause 4.3.2 of the RfS documents, the

Petitioner had to conduct e-reverse auction for the subscribed capacity of 500 MW. In this regard, it is necessary to refer Clause 4.3.2 of the RfS document as reproduced below:

“4.3 Reverse Auction (Step-3)

.....

4.3.2. Total eligible bidders for reverse auction shall be decided as mentioned below:

Assuming

$T$  = Total number of techno-commercially qualified bidders, and

$S_T$  = Capacity of the total number of techno-commercially qualified bidders

$S_K$  = Cumulative capacity till the 'k<sup>th</sup> serial number bidder (not the 'k<sup>th</sup> rank bidder) after ranking is done in ascending order from L1 onwards

$S_M$  = Total capacity of techno-commercially qualified bidders after ranking is done in ascending order from L1 onwards) such that ( $S_{M-1} < S_E$  MW and  $S_M \geq S_E$

$S_E$  = Eligible Capacity for Award

$S_E$ = (Eligible capacity for award)	(i) In case $S_T < 500$ MW; $S_E = 0.8 \times S_T$ , (ii) In case $S_T \geq 500$ MW; $S_E = 0.8 \times S_T$ , subject to maximum eligible capacity being 500 MW.				
$n = \{$	<table border="1"> <tr> <td><math>T</math>, if <math>T = m</math> or <math>m + 1</math></td> <td rowspan="3">Where <math>m</math> = Total number of techno-commercially qualified bidders (after ranking is done in ascending order from L1 onwards) such that (<math>S_{M-1} &lt; S_E</math> MW and <math>S_M \geq S_E</math>) and <math>1 \leq m \leq T</math></td> </tr> <tr> <td><math>m + (T - m) / 2</math>, if <math>S_m \geq S_E</math> and</td> </tr> <tr> <td><math>m + (T - m + 1) / 2</math>, if <math>S_m \geq S_E</math> and</td> </tr> </table>	$T$ , if $T = m$ or $m + 1$	Where $m$ = Total number of techno-commercially qualified bidders (after ranking is done in ascending order from L1 onwards) such that ( $S_{M-1} < S_E$ MW and $S_M \geq S_E$ ) and $1 \leq m \leq T$	$m + (T - m) / 2$ , if $S_m \geq S_E$ and	$m + (T - m + 1) / 2$ , if $S_m \geq S_E$ and
$T$ , if $T = m$ or $m + 1$	Where $m$ = Total number of techno-commercially qualified bidders (after ranking is done in ascending order from L1 onwards) such that ( $S_{M-1} < S_E$ MW and $S_M \geq S_E$ ) and $1 \leq m \leq T$				
$m + (T - m) / 2$ , if $S_m \geq S_E$ and					
$m + (T - m + 1) / 2$ , if $S_m \geq S_E$ and					

Total eligible bidders for e-Reverse Auction = Bidders from Sl. No. 1 to Sl. No. n. For For e.g. (Shortlisting of bidders for reverse auction):

Total bid capacity of techno-commercially shortlisted bidders =  $S_T = 770$  MW

Eligible capacity for award =  $S_E = 500$  MW

$S_M = 550$  MW

Therefore,  $n = [7 + (11 - 7) / 2] = 9$  as per the above formula.

Sl. No.	Techno commercially qualified Bidder	Rank	Capacity (MW)	T	M	SE	N	Shortlisted Bidders
1	B8	L1	55	11	7	500 MW	9*	B8
2	B5	L2	45					B5
3	B1	L3	125					B1
4	B4	L4	75					B4
5	B2	L5	80					B2

6	B3	L6	95				B3
7	B7	L7	75				B7
8	B6	L8	60				B6
9	B10	L9	50				B10
10	B9	L10	55				
11	B11	L11	55				

\* Thus,  $n = 7 + (11 - 7)/2 = 9$  as per the above formula."

4.11. As per above referred clause, 12 bidders with aggregate capacity of 2270 MW qualified for e-reverse auction and the Petitioner had conducted e-reverse auction.

4.12. In the E-Reverse auction of 16.03.2022 a report generated on the web-portal of Bharat-electronictender is reproduced below:

S#	Bidder's Name	Quoted Value	Loaded Value	Date/Time of Bidding	Bidder's Quantity	Special Remarks	Difference in % (Bid- Value Vs Start- Price)
1	SJVN LIMITED (ETS-IN-2019-RS000002)	2.29	2.29	16-Mar-2022 15:56:46 RTZ	100.00	Field Not Filled	4.18%
2	SolarXL ALPHA ENERGY PRIVATE LIMITED (ETS-IN-2022-RS000020)	2.29	2.29	16-Mar-2022 15:57:03 RTZ	200.00	Field Not Filled	4.18%
3	AMSA SOLAR ENERGY PRIVATE LIMITED (ETS-IN-2022-RS000067)	2.29	2.29	16-Mar-2022 15:57:25 RTZ	80.00	Field Not Filled	4.18%
4	HINDUJA RENEWABLES ENERGY PRIVATE LIMITED (ETS-IN-2021-RS0000181)	2.29	2.29	16-Mar-2022 15:57:53 RTZ	240.00	Field Not Filled	4.18%
5	ReNew Solar Power Limited (ETS-IN-2019-RS0000087)	2.30	2.30	16-Mar-2022 15:56:46 RTZ	150.00	Field Not Filled	3.37%
6	PROJECT NINE RENEWABLE POWER LIMITED (ETS-IN-2021-RS0000151)	2.39	2.39	16-Mar-2022 14:48:12 RTZ	150.00	Field Not Filled	0%
7	ABREL SPV 2 LIMITED (ETS-IN-2021-RS0000128)	2.42	2.42	16-Mar-2022 13:45:10 RTZ	180.00	Field Not Filled	-1.26 %
8	IB VOGT SINGAPORE PTE LIMITED (ETS-IN-2021-RS0000179)	2.43	2.43	16-Mar-2022 13:45:10 RTZ	200.00	Field Not Filled	-1.67 %
9	COAL INDIA LIMITED (ETS-IN-2021-RS0000085)	2.45	2.45	16-Mar-2022 13:45:10 RTZ	500.00	Field Not Filled	-2.51 %
10	TERA RENEWABLES INDIA PRIVATE LIMITED (ETS-IN-2022-RS0000071)	2.45	2.45	16-Mar-2022 13:45:10 RTZ	70.00	Field Not Filled	-2.51 %
11	AZURE POWER SIXTY-ONE PRIVATE LIMITED (ETS-IN-2022-RS0000070)	2.53	2.53	16-Mar-2022 13:45:10 RTZ	100.00	Field Not Filled	-5.86 %
12	Avaada Energy Private Limited (ETS-IN-2019-	2.56	2.56	16-Mar-2022 13:45:10 RTZ	300.00	Field Not Filled	-7.11 %

	RS0000038)						
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4.13. It can be observed from above that at the end of E-Reverse auction, four bidders, i.e., SJVN Limited, SolarXL Alpha Energy Private Limited, AMSA Solar Energy Private Limited and Hinduja Renewables Energy Private Limited were found successful bidders with quoted tariff of Rs. 2.29 per unit for total 620 MW capacity. However, since the tender was for 500 MW, allocation was to be for 500 MW and hence there is partial capacity allocation of 120 MW against quoted quantum of 240 MW with quoted tariff of Rs. 2.29 per unit in case of Hinduja Renewables Energy Private Limited in terms of Clause 4.4.2 of the RfS document.

4.14. We further note that Clause 4.4 of the RFS document pertains to 'Selection of Successful Bidders' and pertains to partial capacity allocation. It is therefore, necessary to refer Clause 4.4 of the RFS documents which reads as under:

“.....

*4.4 Selection of Successful Bidders*

*4.4.1 (not used)*

*4.4.2 The lowest quoting bidder will be allotted its qualified project capacity and then, next higher bidder will be allotted its qualified project capacity and so on, till the total capacity is exhausted.*

*4.4.3 In case of the last selected bidder, if the balance project capacity is less than the total project capacity mentioned by the bidder, then the balance capacity shall be awarded to the bidder till the total capacity is exhausted subject to a minimum allocation of 25 MW. Provided that, in case the partial capacity (balance capacity till the total capacity on offer is exhausted) offered to the last Bidder after completion of the e-reverse auction is lower than 50% of the total quoted capacity by such Bidder, the Bidder shall have an option to refuse such offered partial capacity within seven days of issuance of Letter of Award and the BG against EMD submitted by such Bidder shall be returned alongwith with those of the unsuccessful Bidder*

*Further, in case the partial capacity offered is greater than or equal to 50% of the total quoted capacity by such Bidder, then it shall be mandatory for the last Bidder to accept such partial capacity offered against its quoted capacity, subject to the total cumulative capacity awarded after e-RA to the successful Bidders not exceeding 500 MW. In case the last bidder refuses to accept such partial capacity offered by GUVNL, the Bank Guarantee against EMD submitted by such Bidder shall be encashed by GUVNL.*

.....”



- 4.15. As already recorded earlier, the Petitioner ensured wider participation and competition by publishing the Notice Inviting Tender in English Newspapers having large readership, also organized pre-bid conference and further incorporated necessary changes suggested by the prospective bidders. As the Bid Evaluation Committee evaluated the technical bids and declared 20 bidders as qualified for opening the financial bids were opened in presence of Bid Evaluation Committee. As per terms & conditions of tender, 12 bidders with aggregate capacity of 2270 could qualify for the e-reverse auction and accordingly, e-reverse auction was conducted by the Petitioner and as per the criteria mentioned in the RfS document the Petitioner has submitted that it is in process of issuing Letter of Award (LOA) to the 4 successful bidders for tender capacity of 500 MW with 100 MW capacity allocation to M/s SJVN Limited, 200 MW to SolarXL Alpha Energy Private Limited, 80 MW to Amsa Solar Energy Private Limited and 120 MW to Hinduja Renewables Energy Private Limited with quoted tariff of Rs. 2.29 per unit. We also note that there is partial capacity allocation of 120 MW against quoted quantum of 240 MW with quoted tariff of Rs. 2.29 per unit in case of Hinduja Renewables Energy Private Limited.
- 4.16. In view of the foregoing, the Commission is satisfied with the entire tendering process including the e-reverse bidding conducted by the Petitioner in a transparent manner and discovered tariff of successful bidders with quoted capacity and allocated capacity to them as stated below:

<b>Sr. No.</b>	<b>Name of the Company</b>	<b>Quoted Capacity (MW)</b>	<b>Allocated Capacity (MW)</b>	<b>Tariff (Rs. /Unit)</b>
1	M/s SJVN Limited	100	100	2.29
2	SolarXL Alpha Energy Private Limited	200	200	2.29
3	AMSA Solar Energy Private Limited	80	80	2.29
4	Hinduja Renewables Energy Private Limited	240	120	2.29

- 4.17. The Commission, therefore, decides to adopt the discovered tariff of Rs. 2.29 per unit quoted by above referred four bidders, viz., (i) SJVN Limited, (ii) SolarXL Alpha Energy Private Limited, (iii) AMSA Solar Energy Private Limited and (iv) Hinduja Renewables Energy Private Limited for allocated capacity as above and aggregate capacity of 500 MW of Solar PV projects to be set up in Gujarat, as prayed by the

Petitioner.

4.18. 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.

4.19. We note that the Petitioner has specified under Article 6.3 of the Draft Power Purchase Agreements 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 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.*

*(3) Provided further that all payments shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.*

We note that the Petitioner has partly incorporated the Clause of “Late Payment Surcharge” in Article 6.3.3 of the draft Power Purchase Agreements as noted hereinabove. Accordingly, we direct the Petitioner GUVNL to incorporate and align the Clause of “Late Payment Surcharge” in Power Purchase Agreements as per the provisions of Electricity (Late Payment Surcharge) Rules, 2021 as stated hereinabove

- 4.20. We also note that the Petitioner has defined ‘base rate of Late Payment Surcharge’ under Article 1 of draft PPA 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;”*

- 4.21. With regard to approval of revisions made by the Petitioner in the Change in Law provisions of the bid documents as mentioned in the Petition, which have been made pursuant to discussion with prospective bidders during the pre-bid meeting conducted by GUVNL in the interest of better participation and better price discovery and prior approval of the Commission, we note that the Petitioner had obtained prior approval of the Commission for deviations in Petition No. 1706 of 2018 and Petition No. 1848 of 2019. In the present bidding process, it is submitted by the Petitioner that clause regarding ‘Change in Law’ is amended whereby GST including surcharge which has direct effect on the cost of solar PV modules is also included. Moreover, in this regard not only in the Petition but also in oral submissions, the Petitioner has submitted that at the time of floating of present tender, provisions regarding ‘Change in Law’ in the bidding documents were kept



by the Petitioner in accordance with the provisions of previous bidding documents in Competitive Bidding process that were conducted by GUVNL but changes in rates of GST/Surcharge on Solar modules was not covered in the aforesaid 'Change in Law' provisions of the tender documents issued. The said bidding documents i.e. RfS and draft PPA were thereafter, published on the Petitioner's website for information as well as on bidding portal for downloading the official copy of the Tender Documents for participation in bidding procedure including e-reverse auction. It is submitted that during the pre-bid meeting with the prospective bidders held on 18.01.2022, bid parameters, provisions of bid documents & timelines were discussed. Moreover, Ministry of Finance, Government of India vide its notification dated 30.09.2021 increased rate of GST on Solar Modules from 5% to 12%. During pre-bid meeting; certain bidders suggested for incorporating 'Change in Law' clause to include Goods & Service tax including surcharge thereon, which has direct effect on cost of Solar Modules in the bidding documents so as to enable the prospective bidders to submit their bid quotation with consideration of such clause because otherwise it is difficult for the bidders to anticipate future change in rates of taxes, duties, levies etc. and by allowing change in rate of GST / Surcharge as pass through under 'Change in Law' provisions, presumptive loading by the bidders can be avoided. Accordingly, the Petitioner had modified the 'Change in Law' provision in draft PPA by including GST including Surcharge thereon which has direct effect on the cost of solar PV modules. It is also submitted that the 'Change in Law' provisions as per Guidelines issued by the Ministry of Power are very wide to include changes in taxation, duties, cess etc. as well as other legal/statutory changes as pass through in tariff with restitution principle. However, the relevant provision in earlier bidding documents of the Petitioner were restrictive in nature. Hence, with the aforesaid modified clause of 'Change in Law' by the Petitioner incorporated in the bidding documents is towards aligning with the provisions of the Guidelines issued by MoP and according to the Petitioner's view it is not a deviation requiring prior approval of the Commission. It is further submitted that during the pre-bid meeting, the Petitioner had addressed the queries raised by the prospective bidders and subsequently made some of the acceptable changes in the tender documents pursuant to discussions with bidders, uniformly applicable to all the participating bidders and the minutes

of Pre-bid meeting were also issued and hosted on websites of GUVNL and on e-bidding portal for information / consideration of the prospective bidders. According to the Petitioner, it has not much deviated from Guidelines wherein the stipulated 'Change in Law' provisions are having broad scope covering changes in taxes, duties as well as other legal / policy aspects as pass through in tariff with restitution principle and in order to avoid potential disputes / litigations that may frequently take place for tariff revision on account of broad scope of said provisions regarding 'Change in Law', the Petitioner had in past approached this Commission for approval of deviation proposing to limit the scope of Change in Law only in respect to changes in tax rates & duties applicable on generation or sale of electricity leviable on final output in form of energy. However, in a subsequent tender the tariff discovered with said deviation during e-reverse auction in March-2018 being higher in the range of Rs. 2.96 – 3.06 per unit was scrapped by the Petitioner. Thereafter, in subsequent tendering process conducted from time to time, pursuant to discussions with the developers during pre-bid process, modified certain clauses which are consistent and nearer to the provisions of the Guidelines issued by the MoP, Govt. of India were incorporated and such deviations are incorporated in interest of the Petitioner alongwith the bidders and end consumers to have more clarity, avoid disputes / litigation etc. in future. It is submitted that modified clauses are consistent and nearer to the provisions of the Guidelines issued by the MoP, Govt. of India. It is also reiterated that as such according to the Petitioner, changes made in different bidding documents may not qualify as deviations because the modified clauses are in furtherance towards the provisions in the guidelines. The submissions made by the Petitioner above, which are beyond the scope of the present Petition for earlier bidding processes are irrelevant and not admissible.

4.22. We note that with regard to requirement of prior approval of the Commission for any deviation(s) from the guidelines and thereafter, incorporating the same in any tendering process, Ms. Sailaja Vachhrajani for the Petitioner has agreed that henceforth, the Petitioner undertakes to take prior approval from the Commission before incorporating it in the bidding documents.

4.23. Now we deal with the issue with regard to amendments in Article 9.1.1 & 9.2.1 of

the PPA of the bidding documents of present bid for Phase – XIII sought by the Petitioner is concerned, without expressing any opinion on above, we deem it appropriate to only note the same, while reiterating our direction in para 5.13 of Order dated 15.03.2018 in Petition No. 1706 of 2018 that the Petitioner to obtain the approval for any deviations from Guidelines and/or the Standard Bid Documents, if any, from the Commission prior to issue of the Bid Documents to the bidders.

4.24. We also note that the Petitioner is in process of issuing the LoAs to all the four successful bidders and is yet to sign the PPAs with them.

6. In view of above, this Petition is partly allowed and as the Petitioner is in process of issuing the LoAs to all the four successful bidders and is yet to sign the PPAs with them because as per terms and conditions of tender, the PPAs are to be signed with successful bidders within 30 days from issuance of LoA, the Petitioner is directed to issue LoA(s) and to execute the PPAs with the four successful bidders as per decision in this Order. We note that the Petitioner is required to submit the copy of the signed PPAs and therefore, the Petitioner is directed to submit copies of duly executed PPAs to the Commission alongwith an affidavit stating that the Articles/provisions of the PPA are as per the directions as stated above, bidding guidelines and deviations approved by the Commission from time to time. We also direct the Petitioner that for the purpose of transparency, after execution of the PPAs, to publicly disclose the name (s) of the successful bidder(s) and the tariff quoted by them together with the break up with the component, for 30 days on its website in terms of Clause 10.3 of the bidding guidelines as amended for knowledge and information of the stakeholders.

**7. SUMMARY OF DECISIONS:**

7.1 We decide to adopt the tariff discovered under the transparent competitive bidding process conducted by the Petitioner through RfS No. GUVNL/500 MW/ Solar (Phase XIII) dated 03.02.2022 as under:

Sr. No.	Name of the Company	Quoted Capacity (MW)	Allocated Capacity (MW)	Tariff (Rs. /Unit)
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1	M/s SJVN Limited	100	100	2.29
2	SolarXL Alpha Energy Private Limited	200	200	2.29
3	AMSA Solar Energy Private Limited	80	80	2.29
4	Hinduja Renewables Energy Private Limited	240	120	2.29

- 7.2 Apart from the directives of the Commission in this Order, the Petitioner to sign the Power Purchase Agreement(s) with the successful bidders with allocated capacity and tariff as per above table.
- 7.3 We direct the Petitioner to submit the copies of duly executed PPAs to the Commission alongwith an affidavit stating that the Articles/provisions of the PPA are as per the directions as stated above, bidding guidelines and deviations approved by the Commission from time to time. We also direct the Petitioner that for the purpose of transparency, after execution of the PPAs, publicly disclosed the name (s) of the successful bidder(s) and the tariff quoted by them together with the break up with the component, for 30 days on its website in terms of Clause 10.3 of the bidding guidelines as amended for knowledge and information of the stakeholders.
8. We order accordingly.
9. With this order the present petition stands disposed of.

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

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

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

Place: Gandhinagar.  
Date: 30/05/2022.