

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2069 of 2022

In the Matter of:

Petition under Clause 3.1.1 (c) of guidelines for Tariff based Competitive Bidding Process notified by Ministry of Power on 03.08.2017 as amended from time to time for Procurement of Power from Grid Connected Solar PV Power Projects read with Section 86 of the Electricity Act for approval of deviations from the said Guidelines

Petitioner : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Adv. Ms. Harsha Manav alongwith Ms. Sailaja Vachhrajani and Mr. Parthik Joshi

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 19/05/2022

ORDER

1. The present Petition has been filed by the Petitioner seeking following reliefs:
 - a) To approve the deviations from Guidelines dated 03.08.2017 as proposed by Petitioner as per para 19 (i) and the proposal regarding Greenshoe option mentioned at para 19 (ii) in the present Petition.
 - b) To allow Petitioner to issue a fresh tender with the proposed deviations as an interim measure during pendency of the Petition and the aforesaid tender may be opened processed only after final decision of the Commission in the matter and in accordance with the directives of the Commission.

2. The facts mentioned in the Petition in brief are as under:
 - 2.1. The Government of Gujarat has notified the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003 in May, 2003 for reorganization of the entire power sector in the State of Gujarat. Pursuant to this the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme, 2003 notified under the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003, erstwhile Gujarat Electricity Board was reorganized and its functions have been vested in different entities.
 - 2.2. The activities of Generation, Transmission, Distribution, Bulk power purchase and supply undertaken by erstwhile Gujarat Electricity Board have been entrusted to separate seven functional entities. The generation activity is assigned to Gujarat State Electricity Corporation Limited (GSECL), transmission activity is assigned to Gujarat Energy Transmission Corporation Limited (GETCO), and the distribution activity is assigned to four distribution companies viz. Uttar Gujarat Vij Company Limited (UGVCL), Madhya Gujarat Vij Company Limited (MGVCL), Dakshin Gujarat Vij Company Limited (DGVCL) and Paschim Gujarat Vij Company Limited (PGVCL). Further, the function of bulk purchase and bulk sale of power is assigned to the Petitioner, Gujarat Urja Vikas Nigam Limited, as per the re-organization scheme.
 - 2.3. The Commission under Section 86(1)(e) of the Electricity Act, 2003 has notified GERC (Procurement of Energy from Renewable Energy Sources) Regulations and its subsequent amendment from time to time. As per aforesaid Regulations, the Distribution Companies are mandated to procure power from Renewable Energy Sources as per the provisions of aforesaid Regulations.

- 2.4. The Petitioner on behalf of its four Distribution Companies has been entering into Power Purchase Agreements amongst others with various Renewable Energy Generators for procurement of power from time to time.
- 2.5. One of the key objectives of the Electricity Act, 2003, is promotion of competition in the electricity industry. Power purchase costs constitute the largest cost element for distribution licensees. Competitive procurement of electricity by the distribution licensees is expected to reduce the overall cost of procurement of power and lead to reduction in prices of electricity and significant benefits for consumers.
- 2.6. The Section 61 and 62 of the Electricity Act, 2003, empowers the State Commissions to specify the terms and conditions for the determination of tariff for generation, transmission, distribution and supply of electricity in their State. Section 63 of the Electricity Act, 2003, provides that the State Commission adopt tariffs, which have been determined/ discovered through a transparent process of Competitive Bidding Guidelines issued by the Central Government.
- 2.7. The Section 86(1)(b) of the Electricity Act 2003 provides that the State Commission shall discharge its functions of regulating power procurement of the distribution licensee with regards to quantum of power, price of power and agreements of power procurement.
- 2.8. The Ministry of Power (MoP), Government of India on 03.08.2017, has notified the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects". However, Standard Bidding Documents are yet to be published by MoP, Government of India.
- 2.9. The Section 3.1.1 of the aforesaid Guidelines provide conditions to be met by the Procurer. It provides that till the time the SBDs are notified by the Central

Government, if the Procurer prepare the draft RfS, draft PPA, draft PSA and other Project agreements, the same has to be with detailed provisions that are consistent with the Guidelines and such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

2.10. The Petitioner on behalf of the four Distribution Companies has been conducting tendering process from time to time for procurement of grid connected power from Solar Projects through Competitive Bidding (followed by e-reverse auction).

2.11. It is submitted that pending the issuance of Standard Bidding Documents by Central Government, Bid Documents (RFS and PPA) have been prepared by GUVNL, which provide detailed provisions that are consistent with the Guidelines along with deviations approved by the Commission vide Order dated 15.03.2018 in Petition No. 1706 of 2018 and Order dated 13.01.2020 in Petition No. 1848 of 2019.

2.12. One deviation sought by the Petitioner with regard to “Change in Law” provision provided in Clause 5.7 of the Guidelines of Ministry of Power and the same was approved by the Commission vide Order dated 15.03.2018 in Petition No. 1706 of 2018 is summarized and stated below:

“any Changes in Law that result in additional tax, duty, cess etc on generation of electricity (leviable on the final output in the form of energy) or sale of electricity shall only be allowed as pass through under Change in Law provisions”.

2.13. The above clause did not cover the implication of imposition of Safeguard Duty/Anti-Dumping Duty as pass through in tariff at a time when such imposition was under consideration of Government of India. The tender invited by Petitioner through RFS dated 08.02.2018 (Phase II) with the above

clause resulted into discovery of high tariff of Rs 2.98 – 3.09 / unit in the reverse auction conducted on 28.03.2018. The discovery of high price was primarily due to ambiguity regarding safeguard duty/anti-dumping duty.

2.14. Thereafter, the above tender was scrapped and re-tendering was carried out by the Petitioner vide RFS dated 04.06.2018 under intimation to the Commission vide letter dated 28.05.2018 in accordance with Clause 3.1.1 (c) of the MoP Guidelines dated 03.08.2017, wherein the revised clause for “Change in Law” was incorporated under intimation to the Commission and the revised bid documents were also forwarded to the Commission. The revised Change in Law clause therein was as under.

“9.1.1 "Change in Law" shall refer to the occurrence of any of the following events after the Bid Deadline.

a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.

b) Introduction of safeguard duty and/or anti-dumping duty which has direct effect on the Project cost.”

2.15. The Commission accorded the approval to the tariff stated in the PPA while adopting tariff of Rs 2.44 / unit discovered in the above re-tendering process vide Order dated 19.06.2019 in Petition No. 1768 of 2018. In the subsequent tenders, the Petitioner, retained the provisions regarding safeguard duty / anti-dumping duty and included the custom duty in the ambit of ‘Change in

Law' clause in the bid documents along with other clarificatory changes pursuant to discussions during pre-bid meetings of subsequent tenders.

- 2.16. In the reverse auction conducted by the Petitioner on 16.03.2022 in the recently concluded bidding process vide RFS dated 03.01.2022 (Phase XIII) the tariff of Rs 2.29/unit has been discovered for which the Petitioner has approached the Commission for adoption of tariff. The Change in Law provisions of this tender cover Goods & Services Tax under the ambit of Change in Law provisions of PPA.
- 2.17. The Petitioner is planning to issue a tender for procurement of 500 MW Non-Park Solar Project through Competitive Bidding process (Phase XIV) under MoP Guidelines dated 03.08.2017. In accordance with Clause 3.1.1 of aforesaid Guidelines, the Petitioner has intimated the Commission regarding initiation of bidding process. The draft bid documents i.e., RFS and PPA are also submitted with the Petition.
- 2.18. The Petitioner submitted that while approval of the Commission for the recent tariff of Rs. 2.29/unit discovered in the previous tender is pending, the Petitioner has issued another tender for non-park based looking to the availability to cheaper rates prevailing in the market. The Petitioner has proposed and requested certain changes/deviations in the draft bid documents of upcoming tenders while all other provisions of bid documents are consistent with the bid documents of earlier bidding process.
- 2.19. The bidders have represented to the Petitioner that the GST on critical components of project such as inverters and balance of systems should also be covered under Change in Law in addition to GST on PV modules as these items contribute significant portion of the project cost.
- 2.20. The Petitioner submitted that in the earlier tender, the GST was covered under ambit of Change in Law provisions limited to GST on Solar PV modules.

In the present Petition, the Petitioner has proposed to include the Goods and Services Tax having direct effect on project cost under the ambit of Change in Law provisions under Article 9 of the PPA for better participation in the tender. Accordingly, the revised Change in Law proposed to be incorporated in the upcoming tenders is as under:

"9.1.1 "Change in Law" shall refer to the occurrence of any of the following events after the Bid Deadline.

- a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*
- b) Introduction / modification / changes in rates of safeguard duty and/or anti-dumping duty and/or custom duty and/or Goods and Services Tax including surcharge thereon which has direct effect on the Project cost."*

2.21. In the reverse auction conducted by the Petitioner on 16.03.2022 in the concluded bidding process vide RFS dated 03.01.2022 (Phase XIII), the tariff of Rs 2.29 / unit has been discovered for which the Petitioner has approached the Commission for adoption of tariff separately.

2.22. In the above reverse auction, out of 2270 MW capacity for which the reverse auction was conducted, the discovered tariff for 500 MW is Rs 2.29 / unit, whereas; the quoted tariff of unsuccessful bidders to the tune of 270 MW capacity was Rs 2.29 – 2.30 / unit, but the same could not be allocated due to bucket size of 500 MW.

2.23. There was no Green shoe Option / discretion to allot additional capacity beyond 500 MW in the tender condition. Therefore, in the upcoming tender, the Petitioner is contemplating a Green shoe option of additional 500 MW in order to tie up cheaper capacity beyond bucket size at L1 tariff. The terms of allotment under Green shoe option are stipulated at Clause 3.3.5 of the RFS. The MoP Guidelines are silent regarding Green shoe option and therefore the addition of Green shoe option in the tender may not be considered as a deviation from the Guidelines.

2.24. Based on above, the Petitioner requested to approve the deviations stated above in accordance with Clause 3.1.1 (c) of the Guidelines of Ministry of Power on 03.08.2017 as amended from time to time.

3. The Commission vide Daily Order dated 13.04.2022 had directed the Petitioner to issue Public Notice in one Gujarati newspaper and one English newspaper having wide circulation in the State/National level and upload the present Petition on their website to invite objections/suggestions on the Petition from the stakeholders. The staff of the Commission was also directed to upload the Petition on the website of the Commission and invite comments/suggestions from the stakeholders.

3.1. In compliance to the aforesaid direction, the Petitioner issued Public Notice in Daily Newspapers - Gujarat Samachar and Indian Express dated 16.04.2022 and also uploaded the Petition on its website. Thereafter, the Petition was also uploaded on website of the Commission in accordance with the Commission's directives. Thus, the Petitioner has complied with the directions given by the Commission in its Daily Order dated 13.04.2022.

4. We note that pursuant to directives of the Commission in Daily Order dated 13.04.2022 to issue Public Notice, the Petitioner had published public notices on 16.04.2022 and also placed the copy of Petition along with public notice

on its website (www.guvnl.com) inviting comments/objections/suggestions from the stakeholders in the present Petition. We also note that the Petitioner has filed compliance affidavit dated 16.04.2022 before the Commission. However, the Petitioner has not received any comments from the stakeholders / objectors.

- 4.1. We also note that the staff of the Commission also uploaded the present Petition along with the relevant documents on the Commission's website (www.gercin.org) for inviting comments/suggestions from the stakeholders but the office of the Commission has also not received the comments/suggestions from the stakeholders in the present matter.
- 4.2. Thereafter, the matter was kept for hearing on 27.04.2022. Ld. Adv. Ms. Harsha Manav on behalf of the Petitioner reiterated the facts stated in the para 2 & 3 above and requested that the Commission may allow the Petition and approve the deviations sought by the Petitioner.
- 4.3. We have considered the submissions made by the Petitioner. It is a fact that the Petitioner has filed the present Petition limited to approval of only two deviations from the Competitive Bidding Guidelines and allow the Petitioner to initiate Competitive Bidding Process for procurement of Solar power with the deviations sought by the Petitioner.
- 4.4. The Petitioner has requested for approval of two deviations as stated above and also requested to allow initiation of Tendering process for procurement of power from 500 MW grid connected Solar Power projects through Competitive Bidding Process as envisaged under Section 63 of the Electricity Act, 2003.
- 4.5. The Petitioner, with an aim of procuring the Renewable Energy based generation at competitive rate, has initiated the procurement of 500 MW power from the Solar Power Projects with a Greenshoe option for additional

500 MW through Competitive Bidding (followed by e-reverse auction) as per the Guidelines for Tariff based Competitive Bidding process for Procurement of Power from grid connected Solar PV Power Projects as notified by Ministry of Power on 03.08.2017 under Section 63 of the Act read with Tariff Policy, 2016. Hence, it is necessary to refer the relevant Sections of the Act and Clauses of the Guidelines.

Section 63 of the Electricity Act, 2003 reads as under:

*“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.”*

The aforesaid provision provides that when the tariff is discovered under Competitive Bidding through transparent process in accordance with bidding guidelines issued by the Central Government, the Appropriate Commission shall adopt it.

4.6. Further, the National Tariff Policy, 2016 formulated by the Ministry of Power under Section 6.4 (2) records as under:

“(2) States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources, above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government. However, till such notification, any such procurement of power from renewable energy sources Projects, may be done under Section 62 of the Electricity Act, 2003.”

The aforesaid provision provides that the procurement of energy from the renewable energy sources done by the distribution licensees through Competitive Bidding process from the date notified by the Central Government except Waste to Energy Projects.