

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 2050 of 2021**

**In the Matter of:**

**Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Ministry of Power guidelines for Long Term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B (III) and B (IV) of Shakti Policy.**

Petitioner : Gujarat Urja Vikas Nigam Limited  
Represented by : Mr. K. P. Jangid, Mr. Sanjay Mathur and Mr. Pratik Joshi  
Vs.  
Objector No. 1 : Adani Power Limited  
Represented By : Mr. Abhishek Tyagi and Mr. Meet Pathak  
Objector No. 2 : Jindal India Thermal Power Limited  
Represented By : Mr. Sanjay Mittal & Mr. Shivkant  
Objector No. 3 : Sadbhavna Charitable Trust  
Represented By : Mr. Vishal Raval  
Objector No. 4 : Association of Power Producers  
Represented By : Ld. Adv. Mr. Venkatesh and Mr. Jayant Bajaj

**CORAM:**

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

**Date: 01/08/2022**

**ORDER**

1. The Petitioner Gujarat Urja Vikas Nigam Ltd. (GUVNL), has filed this Petition No. 2050 of 2022 under Section 86 read with Section 63 of the Electricity Act, 2003 for approval of deviations from the Model Bidding Documents dated 05.03.2019 and in Model Bidding Guidelines dated 06.03.2019 issued by Ministry of Power for Long-Term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B (III) and B (IV) of SHAKTI Policy (Scheme for Harnessing and Allocating Koyala Transparently in India) and prayed as under:
  - (a) To approve the deviations from Guidelines dated 06.03.2019 including modifications as proposed by Petitioner as per details stated in the present Petition.
  - (b) To approve the Draft Bidding Document (RFQ, RFP & PSA).
2. The facts mentioned in the Petition in brief are as under :
  - 2.1. The Petitioner GUVNL is a licensee procuring power in bulk on behalf of the State Distribution Licensees (DISCOMs) and supplying to them. The Petitioner has been tying up power on long term, medium term as well as short term basis from time to time in order to ensure availability of adequate power as per the requirement at competitive rates.
  - 2.2. It is submitted that as on 31.12.2021, GUVNL has tied up capacity of 19,099 MW from Conventional sources on long / medium term basis out of which around 2645 MW capacity is Gas based capacity. The peak power demand of State DISCOMs has reached up to 17,300 MW during the year 2021.
  - 2.3. The State has implemented Kisan Suryodaya Yojana (KSY) with an objective to enable utilization of generation from upcoming solar capacity for meeting power demand of agriculture sector during day period instead of present arrangement of supplying power to Agriculture sector under various groups during day & night period.

- 2.4. It is submitted that with implementation of said scheme, State has witnessed increase in power demand during day period (5 AM- 9 PM) due to shifting of Agriculture load. Further, with shifting of additional load in phased manner in upcoming period, the day power demand to be catered by State DISCOMs is anticipated to increase considerably.
- 2.5. It is submitted that there are no new thermal units / capacity under development stage in the State of Gujarat. Further, the existing coal / lignite based capacity will have to be decommissioned / retired in phased manner during upcoming years.
- 2.6. The State is having 8969 MW Wind capacity operational out of which capacity of the Petitioner is 4280 MW. Further, the State is having total 6158 MW Solar capacity operational out of which capacity of the Petitioner is 3007 MW. The generation from Wind and Solar is contingent to wind velocity and solar irradiance and is infirm in nature. Accordingly, same cannot be considered as firm capacity for meeting peak demand and adequate thermal generation capacity is required to be operated for balancing the grid requirement.
- 2.7. The Government of Gujarat had requested Ministry of Power, Government of India for allocation of domestic coal under SHAKTI scheme to enable the State to invite competitive bids for around 4000 MW capacity for meeting future power requirements. Ministry of Power vide Office Memorandum dated 03.05.2018 had recommended Ministry of Coal, Govt. of India to assign coal quantity of 19.712 MTPA (Grade 13) to Gujarat and the Standing Linkage Committee (Long Term), Ministry of Coal has recommended the allocation of 19.712 MTPA (Grade 13) coal to Gujarat.
- 2.8. It is submitted that Coal India has conveyed that supply of coal would commence from the year 2022-23 based on coal availability at different collieries during that period. Moreover, with implementation of Kisan Suryodaya Yojana, it is anticipated that aggregate load curve may witness incremental load due to shifting of load of around 4250 MW by 2022-23 assuming power is supplied in two shifts during a day. This incremental load during day period would be in addition to growth of demand for other category of consumers.

2.9. The details of anticipated demand-supply scenario for GUVNL / State DISCOMs during next five years with anticipated demand-supply scenario is as under:

(in MW)

Year	Capacity	Demand @ 7% incl. KSY Load	Capacity required at 85%	Total RE availability during peak	(Deficit) after excl. SPOT gas based capacity
As on Dec-21	19099	17370	20435	2408	-1328
2021-22	20999	19620	23082	3170	-1313
2022-23	20843	22568	26551	5195	-2757
2023-24	20003	23851	28060	8521	-1779
2024-25	19593	25223	29674	9923	-2402

2.10. In the above background it is submitted that it would be necessary to have in-place adequate conventional generation capacity available as balancing generation for meeting base / peak load and ensuring uninterrupted power supply to the consumers of the State at economical rates more specifically when Renewable Generation is unavailable.

2.11. It is submitted that domestic coal linkage allocated by Ministry of Coal under SHAKTI Policy to the Petitioner (equivalent to 3915 MW capacity) wherein coal supply is envisaged from 2022-23 onwards which can be put to use by tying up coal based capacity on long term basis through tariff based competitive bidding for meeting future power demand of State DISCOMS.

2.12. With regard to domestic coal allocation, it is submitted that M/s Coal India has confirmed that coal supply would be based on coal availability at different collieries during relevant period at trigger level of model Fuel Supply Agreement (FSA). In case, coal availability is less, requirement may be met from other coal companies, where coal is available.

2.13. In order to meet the power requirement of its subsidiary DISCOMs and with an objective to meet its long-term demand forecast, the Petitioner intends to procure

power through competitive bidding process on long-term basis (15 years) for the period from 2023 onwards.

- 2.14. It is submitted that Ministry of Power vide letter dated 05.03.2019 has issued Model Bidding documents and vide resolution dated 06.03.2019 has issued Guidelines for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy. The guidelines mainly provides as under:
  - 2.14.1. The aforesaid guidelines provide for Model Bidding Documents comprising RFQ (Request for Qualification), RFP (Request for Proposal) and PSA (Power Supply Agreement).
  - 2.14.2. The application of these Guidelines shall be restricted to projects constructed and operated in accordance with a Power Supply Agreement signed for Supply of electricity for a period of 7 years and above up to a period of 25 years from the Date of commencement of supply of power with provision of extension of 5 years at the option of either party in accordance with the Power Supply Agreement.
  - 2.14.3. The tariff determined through the bidding process based on these Guidelines comprising the Model Bidding Documents shall be adopted by the Appropriate Commission in pursuance of the provisions of Section 63 of the Electricity Act.
  - 2.14.4. Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission. Provided, however, any project specific modifications expressly permitted in Model Documents shall not be construed as deviations from the Model Bidding Documents.
- 2.15. The Petitioner has referred Notification dated 2/2013 pertaining to Guidelines for Procurement of Power by Distribution Licensees notified by the Commission and submitted that proposed quantum of capacity for which tender is to be floated by the Petitioner is within the projected additional forecast for the next three years

following the year of expected commencement of supply under the aforesaid tender based on SHAKTI coal, i.e. 2023.

- 2.16. In accordance to the above Guidelines, the Petitioner has appraised the Commission vide its letter No. GUVNL:GM(Comm):927 dated 26.08.2021 regarding the initiation of stakeholders consultation process for tying up of 3000 MW power on long-term basis.
- 2.17. The Petitioner has submitted that it has published a Notice Inviting Tender in two national newspaper and one newspaper of vernacular language on 25.08.2021. Further, the Petitioner has also uploaded the Draft Bid Documents (RFQ, RFP & PSA) on DEEP Portal of Ministry of Power and website of the Petitioner to accord wider publicity. As per the Guidelines, the Petitioner has invited the suggestions/queries/comments as well as suggestions from various bidders and has released the clarification to the queries of interested bidders.
- 2.18. The Petitioner has prepared Draft Bid Documents based on Model Bid Documents of Ministry of Power. However, the Petitioner intends to make certain deviations to Model Bidding Documents in order to ensure commercial clarity with regard to contractual provisions and in order to safeguard the interest of the Petitioner. Further, certain modifications in the Bid Documents are proposed in order to align contractual terms in accordance with prevailing Rules and Regulations, taking into consideration the fuel being allocated to Supplier by the Petitioner and to avoid undue cost implication on the end consumers.
- 2.19. The Petitioner has sought following major deviations / modifications from the Model Bidding Documents (MBD) for simplification of commercial aspects and to optimize the overall cost of power procurement.

**(a). Delivery Point – Definition**

**MBD:** Delivery Point means any point in the Intra-State Grid where the electricity supplied under this Agreement is received by the Utility.

**Revised:** As various Intra-State & Inter-State Generators are expected to participate, the delivery point has been suitably amended for ensuring evaluation of bid on uniform basis.

Delivery Point is modified as Gujarat / GETCO Periphery i.e. For Projects connected with Gujarat State Transmission Utility (STU) network i.e. GETCO – Delivery Point shall be Interconnection of Generator & Gujarat STU in intra-state Grid where supply is received by Utility.

For Projects connected to network other than Gujarat State Transmission Utility i.e. GETCO – Delivery Point shall be Interconnection Point of Central Transmission Utility (CTU) with Gujarat STU network.

It is submitted that the above modification is proposed in order to have clarity with regard to evaluation of bids from projects connected at different network and to have landed cost working of all Projects at equal interconnection point for comparison and to have parity for evaluation of bids for projects in Gujarat or outside Gujarat.

**(b). Minimum Capacity for participation (in MW): (Clause 1.1.1 & 1.1.4 - RFQ)**

**MBD:** As per the Model Bid documents, Minimum Capacity to be submitted by the bidders shall not be less than 25% of Capacity required (in MW) under the tender.

The aforesaid tender proposed to be invited by the Petitioner is for total 3000 MW for which 25% of capacity works out to 750 MW.

**Revised:** The Petitioner submitted that various requests have been received to reduce the aforesaid capacity on the grounds that considerable capacities are lying unutilized with the operational projects which can be offered under this bid at competitive rates. Further, it has been stated that if such minimum capacity criteria is kept, huge sub-critical technology based capacity with operational project would not be able to participate who would be having competitive rate of generation.

Taking into consideration that total quantum requirement of GUVNL is 3000 MW and the selection under the bid being on L1 matching mechanism on DEEP Portal, it is essential to encourage participation to ensure discovery of competitive rate.

Further, the Petitioner has allowed operational projects to submit bids under the tender so as to ensure better participation and competitive rates. Accordingly, under the draft Bid Documents, category of projects have been defined as under:

Type 1: Projects / Units that are already commercially operationalised on or after 1<sup>st</sup> January 2013

Type 2: New Projects that are yet to be commercially operationalized

It is submitted that the Petitioner has proposed the minimum MW requirement at 300 MW under the tender i.e. 10% which would enable larger capacity to participate under the tender more particularly from operational projects.

**(c). Right to accept or reject any Bid / Application (Clause 2.7.2 - RFQ)**

It is submitted that the Petitioner at present is having litigations pending with Generator(s) regarding non-fulfilment of contractual obligations which are pending at various forum. Accordingly, allowing / making eligible such applicant(s) for participation under this tender may compromise / dilute the stand taken by the Petitioner (GUVNL) before regulatory forum and judicial body and may pose consequential implications.

**Revised:** In order to avoid any implications under the pending litigations of the Petitioner (i.e. Utility), an additional clause has been incorporated in the Draft Bid Documents under RFQ (Clause 2.7) clarifying that the Petitioner shall have a discretion to accept / reject such bids at qualification stage. The same is stated below:

*“2.7. Right to accept or reject any or all Applications/ Bids*

*2.7.1. Notwithstanding anything contained in this RFQ - DBFOO, the utility reserves the right to accept or reject any application and annul the Bidding Process and reject*



*all Applications/Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.*

*2.7.2. The Utility reserves the right to reject any Application and / or Bid if:*

- (a) at any time, a material misrepresentation is made or uncovered, or*
- (b) the Applicant does not provide, within the time specified by the Utility, the supplemental information sought by the Utility for evaluation of the Application.*
- (c) Utility considers that the implementation of the Award and / or PSA is affected by implications of any pending litigation or otherwise disputes with the bidder / supplier or the Award and / or PSA under this RFP will have any impact of implication on the pending litigation or otherwise disputes with the bidder/supplier.*

*If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then the Utility reserves the right to:*

- (a) invite the remaining Bidders to match the Lowest Bidder / submit their Bids in accordance with the RFP-DBFOO; or*
- (b) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.*

*2.7.3. In case it is found during the evaluation or at any time before signing of the PSA-DBFOO or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Utility, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LOA or entering into of the PSA-DBFOO, and if the Applicant/SPV has*

*already been issued the LOA or has entered into the PSA-DBFOO, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ - DBFOO, be liable to be terminated, by a communication in writing by the Utility to the Applicant, without the Utility being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Utility may have under this RFQ-DBFOO, the Bidding Documents, the PSA-DBFOO or under applicable law.*

*2.7.4. The Utility reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ - DBFOO. Any such verification or lack of such verification by the Utility shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Utility thereunder."*

**(d). Bid Security: (Clause 2.20 – RFQ & Clause 1.2.4 – RFP)**

**MBD:** In the aforesaid Clauses of RFQ and RFP, it is provided that Bidder to provide Bank Guarantee (BG) issued by Nationalized Bank or Scheduled Bank in India having a net worth of at least Rs. 1000 Crores. Further it is provided that in case BG is issued by Foreign Bank outside India, nationalized bank in India shall be required to confirm the same.

**Revised:** In this regard, clarification added that the Bank Guarantee should be as per the list approved by Govt. of Gujarat vide GR no. EMD/10/2021/7729/DMO dated 28.06.2021, as amended from time to time. Moreover, the provision regarding issuance of Bank Guarantee by a Foreign Bank located outside India has been deleted. Further, the provision with regard to submission of Bid Security in form of Demand Draft has been deleted in view of short tenure of DD and payment of Bid Security through NEFT / RTGS / IMPS mode of payment has been allowed.

**(e). Appendix I – Letter comprising of Bid (RFP)**

**MBD:** Appendix I of MBD provides for the format / parameters for the Bid to be submitted by the Bidder as on Bid Due Date.

**Revised:** The Petitioner has incorporated certain conditions regarding bid component of transmission charges & losses for uniformity. Further, principle has been clarified with regard to charges / losses to be quoted by the Bidder and adjustment for the variation in the same after Bid Due Date.

The same is to ensure parity in evaluation of various bids having connectivity at STU & CTU level. It is proposed to include following clarification at the end of aforesaid Appendix-I:

Bid parameters	Unit	Rs and paise (in two decimals)
<b>Fixed Charge for the base year---(1)</b>	per kWh	
<b>Fuel Charge = Sum of (a)+(b)+(c)-... (2)</b>		
(a) Cost of Fuel	Per kWh	
(b) Cost of transportation	Per kWh	
(c) Cost of Washing	Per kWh	
<b>Transmission Cost = Sum of (a) + (b)--- (3)</b>		
(a) ISTS Transmission Charges* (for Drawal State)	Per kWh	
(b) ISTS Transmission Losses* (for Drawal State)	In %	
ISTS Transmission Losses (for Drawal State)	Per kWh	
<b>Total Tariff = Sum of (1) + (2) + (3)</b>	per kWh	

*\*To be pre-specified by Utility prior to bid submission date*

**Additional clarifications regarding submission of bid:**

- (i). Utility to pre-specify transmission charges in Rs./unit (ISTS network) to be quoted by Bidder while submitting the bid online on DEEP Portal while variation thereafter shall be adjusted in tariff as per the Bid Documents.
- (ii). Utility to pre-specify transmission losses (in %) (ISTS network) for the purpose of online bid submission by bidders on DEEP Portal while variation thereafter shall be adjusted in tariff as per the Bid Documents. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre- specified by Utility.

- (iii). In the DEEP Portal bid; field of “Cost of Fuel in Rs per Kwh”, Bidder to input single figure after summing “Cost of Fuel” & “Cost of Washing”. While both these components have to be separately quoted and submitted as per the Appendix-1 of the RFP (i.e. Letter comprising the Bid)
- (iv). Intra-State Transmission charges & losses for the host State (other than the State of Gujarat) wherein Generator / Bidder is located, if any, applicable from time to time, shall be on the account of Generator / Bidder at all times during the contract tenure. Further, all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier at all times during the contract tenure. Bidders are advised to factor in such costs in the tariff. No separate reimbursement / adjustment shall be allowed under Contract.
- (v). For the Projects connected with Gujarat STU, the “Transmission Cost” Parameter under above Table shall be assumed as NIL.
- (vi). At Sr. 34 of Appendix I under RFP, following additional details are to be submitted:

Sr.	Particulars	Unit	Details
1	CIL's Notified Price of Coal	Rs./Tonne	
2	GCV of Coal	Kcal/kg	
3	Freight payable to Indian Railways for coal transportation (inclusive of taxes)	Rs./Tonne	
4	Distance considered for transportation of coal from mines to plant location	Kms.	

*\*Bidder to refer clause 22.2.1 & 22.2.4 of PSA*

**(f). Cost of Transmission Charges & Losses: (Clause 5.5, 5.6 & 21.13 of PSA)**

**MBD:** Transmission charges & losses upto delivery point are to be borne by Bidder / Supplier out of the tariff offered as on bid due date and any changes thereafter are pass through under the agreement.

**Revised:** The Petitioner submitted that as per the CERC Sharing of Inter State Transmission Charges & Losses, only drawl charges for each State is applicable. Further, the transmission bill is raised by PGCIL on drawee Utility on monthly basis.

Accordingly, in order to have uniformity for the purpose of bid parameters, prior to Bid Due date, the Petitioner shall specify the cost of transmission charge (in Rs./unit) for Projects connected to network other than Gujarat STU (after grossing up at normative availability level), based on the prevailing NLDC notified charges (for Inter-State Transmission Network) and Bidders shall be required to quote the same while submitting the bid.

Further, the ISTS losses are applicable on drawal side and Utility shall pre-specify transmission losses (in %) (ISTS network) to be quoted by Bidder while submitting the bid online on DEEP Portal while variation thereafter shall be adjusted in tariff as per the Bid Documents in reference to the rate quoted by the bidders as on bid due date. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre-specified by Utility.

Whereas, those projects which are connected to Gujarat STU, no transmission charges & losses would be applicable. Accordingly, cost of transmission charge & transmission loss for Project connected with Gujarat STU shall be considered as NIL for the purpose of bid submission.

In accordance with the modality incorporated under the RFP for Bid Parameters (as stated in detail at Point (e) above), GUVNL has appropriately modified the provision of PSA. Further, clarification has been added that in case, Utility is required to pay the transmission charges (to PGCIL) on behalf of Supplier, the Supplier shall be responsible for reimbursing same to Utility or Utility is authorized to adjust the same from monthly Energy Bills.

Moreover, the Model Bidding Documents does not explicitly provide for sharing of transmission cost in the event the available declared capacity by Supplier is less than normative availability to Utility. Therefore, the transmission charge burden being sunk cost, in order to ensure that Supplier adopts Prudent Utility Practice and ensures availability of power from project, Petitioner has incorporated a new clause (as 21.13 under PSA) as per which in case the availability of Supplier reduces below Normative Availability during the month, the applicable transmission cost burden for such shortfall would be passed on to the Supplier:

***“21.13. Adjustment of Transmission Charges based on Availability:***

*In the case where the actual availability of the Supplier at Delivery Point is less than the Normative Availability during a month, then Supplier shall be obliged to bear the cost of actual applicable transmission charge for the respective month for shortfall i.e. difference between Normative Availability & Actual Availability.*

**(g). The Supply Contract (PSA – Clause 3.1)**

**MBD:** Not earlier than **3 years** and not later than **2 years** prior to completion of the contract period, Utility and Supplier are entitled to issue notice for extending the Contract Period by 5 years.

**Revised:** In view of the Contract Period under the proposed tender being 15 years, the above time period with regard to extension has been reduced to “not earlier than **1 year** and no later than **6 months**”. Further, the fuel being arranged by Petitioner (Utility), the proposal of extension, if any, would be required to be initiated by the Petitioner taking into consideration the power requirement & fuel availability and therefore the provision regarding entitlement of Supplier seeking extension in contract period has been deleted.

**(h). Extension of Contract Period (Clause 3.2 – PSA)**

**MBD:** In case the contract is not extended by Utility, it shall pay damages to Supplier on lump sum basis at the rate of fixed charge for the foregone period (i.e. period not extended).

**Revised:** In the bid to be invited by the Petitioner (Utility), the contract period is pre-defined i.e. 15 years and extension in contract period is allowed upto 5 years subject to PSA provisions. Further, as the fuel is arranged by the Utility under SHAKTI Scheme and operational projects are also allowed to participate, any extension would be contingent to coal availability, operational factors relevant at that time and power requirement of the Petitioner. Accordingly, the above clause 3.2 has been deleted in order to avoid cost implication on Utility in the event of non-extension of contract period.

**(i). Conditions Precedent (Clause 4.1 – PSA)**

**MBD:** Conditions Precedent required to be satisfied by the Supplier within a period of 180 days from the date of signing Power Supply Agreement (PSA).

**Revised:** The Petitioner submitted that Ministry of Environment, Forest and Climate Change (MoEF), Govt. of India vide notification dated 07.12.2015 has notified revised environment norms to be complied by thermal power plants originally by December 2021 / March 2022. The emission norms compliance timelines has been extended by MoEF upto 2023 / 2024.

Under the bid to be floated by the Petitioner, various operational projects are anticipated to participate. As the level of compliance met by various projects could be different based on technology and CAPEX incurred, the tariff component to be quoted by any bidder would be contingent to cost incurred, if any.

In order to remove anomaly towards the same, Petitioner has incorporated an additional clarification as Point (J) under Clause 4.1.3 (Conditions subsequent to be satisfied by Supplier within 180 days from date of signing PSA) regarding Undertaking to be submitted by Bidders for compliance to norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 07.12.2015 & subsequent amendments thereof. Further, it has been clarified that Petitioner (Utility) shall not be liable for any cost implication towards thereof. The draft of Undertaking would be shared by the Petitioner to maintain uniformity inter-se amongst bidders while submission of such Undertaking.

**New Clause 5.10 – PSA: Impact of additional expenditure due towards compliance to revised Environmental norms**

*“It is to clarify that any impact on Tariff on account of compliance to environmental norms as applicable / notified as on Bid Due Date shall be on account of the Supplier at all times during the contract period and the same shall not qualify for adjustment in Tariff under Change in Law provisions.”*

**(j). Fixed Charge for supply prior to COD (PSA – Clause 14.1.2)**

**MBD:** In the event COD is achieved prior to the Scheduled Completion Date, the Supplier shall be payable 70% of Base Fixed Charge for such period (for maximum 365 days)

**Revised:** In this regard, the fuel arrangement under the agreement is based on the coal allocation from CIL / subsidiaries. Accordingly, the date of commencement of supply would be as indicated by Petitioner prior to the Bid Due Date, based on commencement of coal supply under linkage. Accordingly, the above provision with regard to payment of fixed charge for supply prior to COD has been deleted.

**(k). Open Capacity (PSA – Clause 18.4):**

**MBD:** 20% of Contracted Capacity & Committed Capacity shall be Open Capacity under this Agreement i.e. available to the Supplier for production and supply of electricity to any person.

**Revised:** The Petitioner has submitted that under the above bid, the concessional fuel from Coal India / Subsidiaries is being arranged & allocated by the Petitioner with allocation from SHAKTI Scheme. Accordingly, concept of Open Capacity from Power Plant at the disposal of Supplier has been deleted in order to ensure availability of contracted capacity with the Petitioner (Utility) and prudent use of concessional fuel.

**(l). Substitute Supply (PSA – Clause 18.6):**

**MBD:** When Availability of Power Station is reduced due to Scheduled / Unscheduled Maintenance or Force Majeure, Supplier with prior consent of Utility, with consent the Utility may deny or accept with conditions, supply electricity from any alternative source, including Merchant Capacity, if any, and such supply shall, for payment of Fixed Charge and Fuel Charge be deemed to be supply under the Agreement.



**Revised:** The Petitioner under Clause 2.7 of RFQ has incorporated additional condition regarding the ineligibility for certain Projects/ Bidder with whom litigations of the Petitioner are pending.

In line with the same, under above Clause 18.6, the Petitioner has added clarification that it may deny to accept supply from such alternative source which is ineligible in accordance with Clause 2.7 of RFQ and therefore the same shall not be considered as compliance for the purpose of determination of availability and payment of Fixed Charge.

**(m). Termination due to failure to achieve Financial Close (PSA – Clause 20.2):**

**MBD:** In the event Financial closure does not occur within the provided timeline (180 days from signing of PSA), Agreement shall be deemed to have been terminated by mutual agreement. Further, Utility shall be entitled to encash the Bid Security.

**Revised:** The Petitioner revised the said provision stating that Bid Security (Rs. 5 Lakh / MW) submitted by Bidder shall remain valid for period of 180 days (inclusive 60 days claim period). Further, successful bidders shall be required to submit Performance Security (Rs. 30 Lakh / MW) upon which Bid Security submitted will be released by Utility. Accordingly, considering the timelines of events, in the above clause regarding encashment of Bid security upon failure to achieve financial close, the term “Bid Security” has been modified to “Bid Security / Performance Security, as the case may be” to safeguard the interest of the Petitioner (Utility).

**(n). Billing & Payment (Clause 21.10 – PSA) and Discount for early payment (Clause 21.12 – PSA)**

**MBD:** Monthly Invoice to be raised by the Supplier by 5<sup>th</sup> day of the month. Utility entitled to 1% rebate for payment within 5 days of submission of invoice. MBD does not provide clarification with regard to Regional Energy Account & State Energy Account which is essential for energy accounting and settlement. Further, there is no mention of Supplementary Invoice towards Change in Law, other claims etc.

**Revised:** The Petitioner submitted that in order to provide clarification with regard to raising of Monthly Invoice / Supplementary Invoice and discount for early payment, following modifications have been carried out by Petitioner.

- (a) Clarification regarding Regional and State Energy Account for raising of Energy Invoices
- (b) Definition added: Supplementary Invoice - means an Invoice other than a Monthly Invoice raised by any of the Parties in accordance with provisions under this Agreement
- (c) Clarification: The Payment Due Date of 30 days applicable to Monthly Invoice shall also be applicable for the Supplementary Invoice.
- (d) Modification: 2% rebate shall be allowed to the Petitioner towards discount for early payment for payment within 7 working days from the Date of receipt of Invoice (T0+ 7 days)
- (e) Clarification: Discount for early payment (2%) shall not be applicable on the invoices raised on account of Change in Law relating to taxes, duties, cess etc.
- (f) Modification: Supplier may raise invoices via email shall during office hours subject to submission of original invoice to the Petitioner within 5 working days.

**(o). Station Heat Rate (Clause 22.1 - PSA)**

**MBD:** Station Heat Rate is to be pre-specified by Utility while inviting the bids based on which the bidders would be required to quote their Tariff. Further, as a part of compliance towards achieving Commercial Operation, projects / units would be required to demonstrate fulfilment of SHR by performing tests which shall be considered successful only in case tests establish that SHR is equal to lower than SHR pre-specified by Utility (upto 2 % variation allowed).

As per MBD, SHR is to be considered after accounting for applicable dedicated transmission losses and Auxiliary consumption.

Prospective bidders have submitted that it would not be feasible to achieve the pre-specified SHR i.e. 2350 kcal/kwh by old / operational plants as the same is after considering the Auxiliary consumption and dedicated transmission losses. Considering the same, bidders have requested to increase the SHR upto 2500 kcal / kwh to enable participation from sub critical units and provide level playing field.

**Revised:** As per the Petitioner Bid documents, all plants (irrespective of commissioning status) would be required to demonstrate that the actual SHR is equal to or below the SHR pre-specified by the Petitioner while inviting the bid after carrying out the stipulated tests. PSA also provides for adjustment in fixed charge in case of variation in SHR with reference to pre-specified / actual SHR in accordance with the provisions of the PPA.

As per the provision of MBD, the Petitioner is required to pre-specify the Station Heat Rate for the purpose of participation by the prospective bidders. In order to encourage better participation from all categories of units including sub-critical, Petitioner has pre-specified the SHR as 2450 kcal/kwh which shall have to be taken into consideration by the bidders while submitting the bids.

**(p). Determination of Gross Calorific Value (Clause 22.3 – PSA)**

**MBD:** Weighted average GCV of fuel received at power station shall be considered as average GCV which would be worked out based on classification provided by CIL under FSA for computation of Fuel Charge for payment.

**Revised:** As per the tender documents, for the purpose of fuel cost working the GCV as well as coal cost as specified under the FSA shall be applicable at all times and any additional burden in this behalf shall have to be borne by Supplier at all times. However, there is no provision under PSA with regard to adjustment GCV towards variation due to storage.

As per CERC Tariff Regulations 2019-24, for Energy Charge working, Calorific value of coal is worked out based on Weighted Average GCV of coal as received less 85 Kcal/Kg on account of variation during storage at generating station. Accordingly,

Petitioner has proposed to allow the similar adjustment to the tune of 85 kcal/kg towards GCV adjustment in line with CERC Regulation for variation due to storage at generating station.

**(q). Additional Fuel Supply Agreement (AFSA) – (PSA – Clause 22.9)**

**MBD:** In the event of Fuel Shortage, Supplier shall make best efforts to tie up additional source of fuel supply and transportation to meet Fuel Shortage through AFSA. The Supplier shall, with the concurrence of Utility submit the AFSA for review and approval of the Appropriate Commission.

**Revised:** The tie up of additional fuel under AFSA would necessitate analysis and evaluation of landed cost by the Petitioner (Utility) in addition to terms of fuel supply to confirm the prudent practice in coal procurement. Accordingly, the above clause has been modified providing that Supplier shall submit AFSA for review and concurrence of the Petitioner (Utility) and thereafter Petitioner (Utility) shall submit AFSA for review and approval of Hon'ble Gujarat Electricity Regulatory Commission.

**(r). PSA – Clause 24.2.2 – Settlement of UI charges:**

**MBD:** Utility shall have the first right to Despatch, in the form of UI, any surplus electricity generated from the entitlement of the Utility in the Contracted Capacity by utilizing the allocated Fuel.

**Revised:** As Unscheduled Interchange (UI) has been replaced with Deviation Settlement Mechanism (DSM) by Hon'ble CERC, the term has been appropriately modified. Further, the above provision regarding first right to dispatch has been deleted as power under UI / DSM cannot be scheduled to Utility as per prevailing norms.

**(s). PSA – New Clause 24.5 added – Proportionate Availability:**

In the cases wherein entire installed capacity of any unit(s) are not tied up with Utility under PSA, there is a need to have an appropriate mechanism so as to ensure