

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.....

The aforesaid provision states that it is the duty of the distribution licensee to develop and maintain efficient, economical distribution system in the area of supply of the licensee. Thus, the duty cast upon the distribution licensee for development of the distribution system for supply of power to the consumer.

Now we refer to Section 43 of the Electricity Act, 2003, which is reproduced below:

Section 43:

“.....

Section 43. (Duty to supply on request): --- (1) 1[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply: Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

[Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

The aforesaid provision states that the distribution licensee shall provide the electricity supply to the consumer on its application in the premises within one month after receipt of application for supply. In case for providing such supply, establishment of extension of distribution mains, commissioning of the sub-station line etc. is required, in that case the period may be extended as specified by the Commission. Sub-section (3) of Section 43 provides that in case of failure of licensee to provide supply within time frame specified in sub-section (1) of Section 43 of the Electricity Act, 2003, in that case distribution licensee is liable to pay penalty, which may be extended to Rs. 1000 for each day of default. Thus, it is the duty of the licensee to create necessary infrastructure and also provide the supply in specified time period.

13.4. It is also necessary to refer Section 86(1) (b) of the Act, which reads as under:

“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

.....

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

The aforesaid provision states the function of the State Commission of regulating electricity power procurement of the distribution licensee including the quantum of power, price and agreement between supplier of power and distribution licensee. Thus, the power procurement of the distribution licensee needs approval of the Commission.

13.5. We note that the power procurement by the Petitioner distribution licensee is required to meet-out the need/demand of the consumers and also has to be through competitive bidding under Section 63 of the Act. The aforesaid procedure also needs some time for fulfilment of it. Hence, the procurement proposed by the Petitioner with consideration of anticipated demand in its licence area is approved.

13.6. The Petitioner has submitted that the power procurement of 3000 MW is proposed with consideration of long-term/medium-term requirement of power with anticipated demand as well as availability of power at relevant time as well as deficit which may be envisaged by them. In this regard the Petitioner has made following submissions:

- (a) The tied up capacity by Petitioner as on 31.12.2021 is of 19099 MW from conventional sources out of which around 2645 MW capacity is gas based capacity.
- (b) Peak power demand of the State reached upto 17300 MW in year 2021.
- (c) State has implemented Kisan Suryodaya Yojna (KSY) with an objective to utilise generation from upcoming solar projects to meet out power demand of agriculture sector during day time instead of arrangement of supply of power to agriculture sector in various groups during day and night period.
- (d) Due to above KSY scheme, power demand during day period i.e. 5 AM to 9 AM increased on account of shifting of agriculture load. Similarly, with additional load in phased manner in upcoming period, the day power demand to be catered by State Discoms, lead to anticipated increase in demand.
- (e) No new thermal unit or capacity is under development stage presently. Further, existing coal/lignite based capacity would be de-commissioned /retired in phased manner.

- (f) The State is having operational Wind capacity of 8969 MW out of which 4280 MW is tied up by GUVNL.
- (g) The operational Solar capacity is 6158 MW out of which 3007 MW is tied up by GUVNL.
- (h) The generation from Wind and Solar energy is contingent to wind velocity and solar irradiation and is infirm in nature. The same cannot be considered as firm capacity to meet out peak demand and adequate thermal generation capacity is required for balancing the grid.
- (i) With consideration of above, the Petitioner has submitted the details of anticipated demand-supply scenario for GUVNL / State DISCOMs during next five years 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

Considering the aforesaid submission of the Petitioner, it transpires that the Petitioner needs to procure adequate quantum of power supply through conventional generating station to balance the requirement of the base/peak load and ensuring un-interrupted power supply to the consumer at economic rate.

- 13.7. The Petitioner has submitted that coal linkage allocation given by Ministry of Coal under SHAKTI policy equivalent to the quantum of 19.712 MT (as per G13 grade of coal) for capacity of 3915 MW from 2022-23 onwards is granted. The Minutes of Meeting (MoM) of the Standing Linkage Committee - SLC (LT) submitted by the Petitioner state that on file No. 23014/1/2019-CLD dated 16.08.2019 of Ministry of Coal, GoI has recommended the allocation of 19.712 MT (as G13 grade of coal) for 4000 MW capacity to Gujarat from 2022-23. The relevant portion of the Minutes of Meetings dated 24.06.2019 is reproduced below:

Sl. No.	Issue	Summary of Discussion	Recommendation with reason																
Additional Agenda Item No. 1: Coal Linkage under B (iv) of SHAKTI Policy	<p>Ministry of Power have requested coal linkage under B (iv) of SHAKTI Policy, 2017 for the States of Gujarat, Uttar Pradesh and Madhya Pradesh. The requests are summarized as under:</p> <table border="1"> <thead> <tr> <th>State</th><th>Quantity of coal (in MT)</th><th>Capacity (in MW)</th><th>Requirement coming up from year</th></tr> </thead> <tbody> <tr> <td>Gujarat</td><td>19.712 (as per G13 grade of coal)</td><td>4000</td><td>2022-23</td></tr> <tr> <td>Uttar Pradesh</td><td>-</td><td>1600</td><td>2025-26</td></tr> <tr> <td>Madhya Pradesh</td><td>-</td><td>3000</td><td>2026-27</td></tr> </tbody> </table> <p>Coal India Limited have indicated coal availability under B (iv) of SHAKTI Policy, 2017 for these States from various coal subsidiaries.</p> <p>SLC (LT) to take a view on the matter.</p>	State	Quantity of coal (in MT)	Capacity (in MW)	Requirement coming up from year	Gujarat	19.712 (as per G13 grade of coal)	4000	2022-23	Uttar Pradesh	-	1600	2025-26	Madhya Pradesh	-	3000	2026-27	<p>The Additional Chief Secretary, Madhya Pradesh, stated that the requirement of Madhya Pradesh is for 2640 MW instead of 3000 MW and that the State Government of Madhya Pradesh is awaiting a formal letter from the coal company earmarking the linkage in favour of the State Government. He also informed that the Standard Bidding Documents has been finalized. Ministry of Power also recommended that earmarking of coal linkage may be done by the coal company.</p>	<p>SLC (LT) recommended for grant of linkages from Coal India Limited under Para B (iv) of SHAKTI policy to the States of Gujarat, Uttar Pradesh and Madhya Pradesh. CIL shall intimate the earmarked linkage with description to the respective State Governments with information to Ministry of Coal and Ministry of Power. The tripartite agreements in terms of LoA/FSA may be entered into between concerned coal company, State Government and successful bidder, as may be case. This information shall also be furnished to Ministry of Coal and Ministry of Power, SLC (LT) also recommended that in case the tariff based bidding gets delayed, then the same shall be informed by the concerned State Government to coal company, Ministry of Coal and Ministry of Power.</p>
State	Quantity of coal (in MT)	Capacity (in MW)	Requirement coming up from year																
Gujarat	19.712 (as per G13 grade of coal)	4000	2022-23																
Uttar Pradesh	-	1600	2025-26																
Madhya Pradesh	-	3000	2026-27																
Additional Agenda Item No. 2: Coal Linkage under B(v) of SHAKTI Policy	<p>Ministry of Power vide O.M dated 24.01.2019 had requested to earmark around 10 MT/Annum coal under para B (v) of SHAKTI Policy, 2017 for a period of three years so that the bidding agency can undertake tariff based competitive bidding for the Pilot Scheme – II for procurement of 2500 MW power by pre-declaring the coal linkage with description.</p> <p>CIL has indicated the subsidiary-wise coal sources along with the quantity and grades of coal that can be offered under para B (v).</p>		<p>SLC(LT) deliberated the request and recommendation for grant of linkage from CIL under Para B (v) of SHAKTI Policy. CIL shall intimate the earmarked linkage with description to Ministry of Power with information to Ministry of Coal. SLC</p>																

			<i>(LT) also recommended that in case the tariff based bidding gets delayed, then the same shall be informed by Ministry of Power to Ministry of Coal and to CIL.</i>
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- 13.8. The above MoM dated 24.06.2019 of the Standing Linkage Committee (Long Term) for Power Sector, Ministry of Coal states that CIL shall intimate the linkage with description to the respective State Government with information to Ministry of Coal and Ministry of Power. The Tripartite agreements in terms of LoA / FSA may be entered into between concerned coal company, State Government and successful bidder as case may be. From the aforesaid MoM and demand of quantum of coal by the Petitioner GUVNL was for 19.712 MT (as per G-13 grade of coal) for 4000 MW capacity coming up from 2022-23. We note that the present Petition filed by Petitioner is for seeking approval for carrying out competitive bidding by them for 3000 MW. However, the coal linkage demanded by them is equivalent to 3915 MW/4000 MW. Moreover, Minutes of Meeting of Standing Linkage Committee for Power also state the linkage of coal of aforesaid quantum i.e. 19.712 MT (as per G-13 grade of coal).
- 13.9. We direct to the Petitioner that the allocation of coal to the successful bidder(s) shall be limited to contracted quantum of power and correspondingly required quantum of fuel/coal for such generation.
- 13.10. Additional quantum of coal if any available after bidding process from the allocated coal quantum capacity by the Ministry of Coal, such remaining surplus coal under SHAKTI scheme to the Petitioner, the Petitioner is directed to approach the Commission for purchase of power from such allocated surplus coal with consideration of generation available from it with consideration of demand/supply of energy in the State and get approval for purchase of power by following necessary process from this Commission.
- 13.11. Further, we direct the Petitioner to ascertain the availability of coal received as linkage coal by the generator/successful bidder, utilisation of such coal on

monthly/yearly basis, corresponding generation from such coal and surplus coal/stock of coal available at the generator/successful bidder project and the same shall be utilised only for generation of electricity and supply to the Petitioner as per tariff specified in the PPA executed with successful bidder. The Petitioner shall also ensure that the coal received at generator/successful bidder power plant (generator end) should not be diverted for any other purpose or place than the utilisation of the same for generation and supply of electricity to the Petitioner as per tariff specified in the PPA. Moreover, if the surplus linkage coal is utilised for additional capacity of generation and supply to the licensee/Procurer than 3000 MW, the Petitioner shall get approved from the Commission.

- 13.12. Thus, the allocation of coal under SHAKTI scheme granted by the Ministry of Coal, GoI to the State of Gujarat as linkage coal is to generate the energy from it and meet out the power requirement.

Considering the above, we decide to approve the quantum of power generated from the coal allocated by Ministry of Coal, GoI under SHAKTI scheme to the Petitioner. We also decide to approve the procurement of power carried out by the Petitioner under Competitive Bidding process as per Section 63 of the Electricity Act, 2003.

- 13.13. It is also necessary to refer the necessary provisions of the MoP Guidelines as well as Guidelines issued by the Commission in the present case as the Petitioner desires to carryout procurement of power through competitive bidding process by following the Ministry of Power (MoP) Guidelines dated 06.03.2019. Further, the Commission has also notified the Guidelines for procurement of power by distribution licensee through Notification No. 2 of 2013.

- 13.14. The necessary provisions of the MoP Guidelines are reproduced below:

“4. Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents”.

The aforesaid provisions state that the Ministry of Power has issued the Model Bidding Documents. It also states that whenever there is any deviation in the Bid documents by the distribution licensee from the Model Bidding Documents desired to be incorporated, in that case, for other than any project specific modification permitted in the Model Bidding Documents, the same shall be subject to prior approval of the Appropriate Commission. In the present case the same is this Commission.

13.15. The Ministry of Power vide letter dated 05.03.2019 issued revised Model Bidding documents and vide Resolution dated 06.03.2019, the Ministry of Power notified Revised Guidelines for Long Term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own & Operate (DBFOO) basis which provides as under:

- i. The aforesaid guidelines provide for Model Bidding Documents comprising of Request For Qualification (RFQ), Request For Proposal (RFP) & Power Supply Agreement (PSA).
- ii. 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.
- iii. 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.
- iv. 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.

Thus, the Commission is empowered to decide the deviations from model bidding documents sought by the Petitioner in the present case.

- 13.16. It is also necessary to refer the necessary provisions of guidelines for procurement of power by distribution licensee notified by the Commission vide Notification No. 2 of 2013. The relevant provisions of the said guidelines are reproduced below:

“

7. *In case of procurement of power through competitive bidding, the Distribution Licensees shall initiate the process for long-term / medium-term power procurement in accordance with the Ministry of Power's 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees' notified by the Ministry of Power on 19/01/2005 and in force from time to time. As provided in the MoP Guidelines:*

- a. *The bid documentation shall be prepared in accordance with the MoP guidelines and the approval of the GERC shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government. In the latter case, intimation shall be sent by the Distribution Licensee to the GERC about initiation of the bidding process.*
- b. *Approval of the GERC shall be sought in the event of any deviations from the bidding conditions contained in the MoP guidelines, and in following the process described in the MoP guidelines.*
- c. *Approval of the GERC shall be sought prior to initiating the bidding process with regard to the following aspects:*
 - i. *For the quantum of capacity / energy to be procured, in case the same exceeds the projected additional demand forecast for the next three years following the year of expected commencement of supply proposed to be procured. Such demand forecast shall be based on the latest available (at*

the time of issue of RFQ) Electric Power Survey published by the Central Electricity Authority (Both for Case 1 and Case 2).

- ii. For the transfer price of fuel, in case of fuel specific procurement enquiry, if such price has not been determined by government, government approved mechanism or a fuel regulator (under Case 2).*

8. In case of long-term / medium-term procurement of power from generating sources, where tariff is to be determined / adopted by the Central Electricity Regulatory Commission, the Distribution Licensee shall take prior approval of the GERC before entering into any such arrangement.

9. In case of long-term / medium-term procurement of power from generating sources, where tariff is to be determined by the GERC, the Distribution Licensee shall enter into such arrangement or agreement only after getting prior approval of the power purchase agreement.

10. For getting approval of draft PPA, the Distribution Licensee shall submit an application along with the details of quantum of power, justification for selecting a particular source/technology and the draft PPA document.

- a. The Distribution Licensee shall, within 7 days after registration of the application, publish a notice of his application in at least two daily newspapers, one in English language and one in vernacular language, having wide circulation in the relevant area.*
- b. The suggestions and objections, if any, on the proposal for procurement of power and draft PPA, may be filed before Secretary, GERC, by any person within 30 days of publication of this notice with a copy to the applicant.*
- c. The GERC shall, within ninety (90) days from the date of registration of a complete application and after considering all suggestions and objections received from the public, issue Order approving/rejecting the proposal and draft PPA with such modifications or such conditions as may be specified in that Order.*

.....”

The aforesaid provision provides that the distribution licensee whenever initiate process for procurement of power on long term/medium-term basis the same shall be following MoP guidelines for determination of tariff by bidding process. The bid documents shall be in accordance with the MoP guidelines. In case of any deviation from the standard bid documents prior approval of the Commission is required. Further, the prior approval with regard to quantum of the capacity/ energy to be procured also be obtain from the Commission. It also provides that in case of power procurement from the generating stations whose tariff determined by CERC in that case an approval of this Commission is needed prior to entering in the power procurement arrangement.

- 13.17. It also provides that an approval of draft PPA/PSA needs to be obtained by the distribution licensee by filling an application along with the details of quantum of power, justification for it, etc. which needs to be submitted before the Commission. The Commission to decide the same within 90 days from the date of registering an application / Petition deciding that whether the modification/changes, if any, sought are approved or not specified in the Order.
- 13.18. In the present case we note that the Petitioner has followed the aforesaid provisions with regard to approval of quantum as well as deviations sought by it from Standard Bidding documents from the Commission. As far as quantum is concerned, the Commission has decided in previous para and in so far as the deviations in the bid documents sought by the Petitioner the same are dealt in the following paras of this Order.
14. Now we deal with the deviations proposed by the Petitioner in the Model Bidding Documents (MBD) framed under MoP Guidelines issued by Ministry of Power, Govt. of India.
- 14.1. The various deviations in the bidding documents proposed by the Petitioner and objections raised on it by the Objectors/stakeholders are dealt hereunder by the Commission:

- 14.2. **Amendment in definition pertaining to “Delivery Point” as Gujarat/GETCO periphery and other clauses of the bid documents.**
- 14.2.1. The Objectors have contended that the delivery point defined in the PPA needs to be revisited and needs to be kept in line with the Standard Bidding Documents specified under MoP Guidelines.
- 14.2.2. The Objectors have submitted that the delivery point shall be generator bus bar and not Gujarat/GETCO periphery. The Objector submitted that the generators which are connected with Inter-state network at CTU point, it is difficult for the generator to estimate the losses applicable at GETCO/Gujarat periphery because the CTU losses applicable to the quantum injected into the grid on long term open access basis are varying on weekly basis as per POSOCO notification.
- 14.2.3. The generator cannot estimate the exact quantum for which the LTOA is required to be obtained to deliver the contracted capacity at Gujarat/GETCO periphery by the generator. Hence, it is premature to estimate the losses leviable on the Petitioner. The availability on contracted capacity shall increase/decrease with decrease/increase of the CTU losses which is beyond the control of the generator.
- 14.2.4. The Objector had also submitted that so far as bid evaluation is concerned the Petitioner may consider applicable CTU charges and losses for arriving at the landed cost of power while evaluating the bids. The same shall be pre-specified by the Petitioner.
- 14.2.5. Per contra, the Petitioner has contended submitting that the aforesaid modifications are proposed in the Bid documents 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 have parity for evaluation of bids for projects in Gujarat and outside Gujarat.
- 14.2.6. We have considered the submissions made by the parties. We note that the Objectors have requested to keep the delivery point of the generators which are not connected with GETCO periphery should be at CTU interconnection point at generator end on the ground that the transmission losses are evaluated on weekly

basis by POSOCO and the same may vary. Hence, it is difficult to ascertain the quantum required to be scheduled and for declaring availability by the generator with consideration of availability of the quantum at Gujarat/GETCO periphery because once the long-term open access is obtained for the licensee (Procurer), the same cannot be changed. Further, the variance in the loss affect the generators to vary the quantum of the power provided as availability to the Procurer i.e. distribution licensee, GUVNL so that net quantum of power for which bid invited by the Petitioner available. It may affect the quantum of availability of power to the Petitioner with consideration of the CTU losses variance on weekly basis. Thus, there may be variance in the availability of the power quantum to the Petitioner on weekly basis. The Petitioner has not commented on it. However, it is stated that the delivery point proposed by the Petitioner at GETCO periphery with consideration of bid evaluation purpose whereby bids of all the bidders, i.e. generators outside the State of Gujarat as well as generators within the State of Gujarat State are evaluated with consideration of landed cost at equal interconnection point for comparison. We are of the view that the deviation proposed by the Petitioner for evaluation of bids at par for the generators having different interconnection point i.e. inter-state level as well as intra-state level seems valid because the Petitioner evaluates the bids with consideration of the landed cost of the power to the Petitioner irrespective of losses as well as charges payable by the bidders. Hence, we decide to approve the same.

- 14.2.7. So far as Objections raised by the Objector that the transmission charges needs to be paid by the Procurer only and not the generator as per the CERC (Sharing of Inter-State Transmission Charges & Losses) Regulations, 2020 is concerned, we note that the Petitioner has proposed the aforesaid deviation in the Model Bid Documents (MBD) for consideration of bid evaluation at same point of supply by all generators i.e. Intra-state and Inter-State generator to evaluate competitive landed tariff rate discovered under the bidding process carried out by the Petitioner. The Petitioner has submitted that the transmission charges and losses be reimbursed to the generator/bidder as part of tariff against supply of energy to the successful bidder. The generator/successful bidder is not going to suffer in any manner seems valid. Therefore, we decide to approve the same.

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

- 14.3.1. The Petitioner has proposed deviation in aforesaid provisions of Model Bid Documents (MBD) stating that the aforesaid documents provides that the bidder shall not submit the bid less than 25% of Capacity required (in MW) under the tender. The tender proposed to be invited by the Petitioner is for total 3000 MW for which 25% of capacity works out to 750 MW.
- 14.3.2. The Petitioner has submitted that it has received various requests for reducing the capacity on the ground of considerable capacities lying idle and unutilised out of the operational plant which can offer competitive rates. Moreover, such projects are sub-critical technology based and are not able to participate in the bidding process. The Petitioner has therefore, proposed to deviate from the aforesaid provisions and proposed the minimum MW requirement under the tender as 10%, i.e. 300 MW to make bidders eligible to participate in the bids particularly for operational project.
- 14.3.3. The Petitioner has accordingly in the draft bid documents categorised the project and defined as under:
- Type 1: Projects / Units that are already commercially operationalised on or after 1st January 2013
- Type 2: New Projects that are yet to be commercially operationalized.
- 14.3.4. There is no objection received on the aforesaid deviations sought by the Petitioner.
- 14.3.5. We are of the view that the aforesaid deviation sought by the Petitioner seems valid as the Petitioner intended that the competition amongst the bidders may happen by reducing the eligible capacity to bid by the bidders. By allowing 10% of total bid capacity as minimum bidding capacity, it may be beneficial to the Petitioner as the number of bidders participation may increase consisting of the operational projects whose capacity are idle and the new projects which are yet to be commercially operationalised. The competition amongst the generators/bidders enable achieving competitive tariff and thereby able to discover attractive tariff to the Petitioner. Hence, we decide to allow the aforesaid deviation sought by the Petitioner.

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

- 14.4.1. The Petitioner has proposed deviation in the aforesaid clause of the RFQ stating that the Petitioner 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. Hence, the Petitioner has proposed the deviations and revised the aforesaid clause:
- 14.4.2. 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.
- 14.4.3. The Objectors have contended that the Petitioner seeks arbitrary rights to reject the bids on the ground of on-going litigation. It is also stated that all contracts are distinct from each other and any pending litigation in one contract cannot be a ground for denial of participation in award of another contract. The Petitioner cannot by way of contract stop any one from invoking its statutory remedy.
- 14.4.4. We have considered the submissions of the parties. We note that the Petitioner has sought deviations in aforesaid provisions stating that the bidder has right to accept or reject the bid/application in case of the bidder with whom pending litigation pertaining to non-fulfilment of contractual obligations are pending before various forums. The aforesaid provision is providing discriminatory power with regards to acceptance of bid by the Procurer (Petitioner). We are of the view that merely pending litigation with bidder on any issue may not be reason for non-acceptance of bid and/or rejection of bid because there may be different type of disputes/issues that arose between the Supplier and Procurer of power like billing dispute, dispute for non-performance of contract, non-execution of project, non-supply of energy on different reasons etc. The aforesaid issues are different and distinct and are not be at par for consideration of the genuineness of bidder. Moreover, each and every

dispute or litigation are needed to be verified prior to allowing or disallowing the bidder. Further, the agreement/contract executed between the buyer and seller of power in this case are having different contractual rights and obligations and different remedies available for it. Further, merely the pending litigation with the bidder if considered as non-qualification of bidder not only genuine and valid but also lead to an act of restriction of the competition. The litigations, if any, of the Petitioner which are pending with the bidders affecting the subject matter of the dispute therein between the Petitioner and the Bidder, the Right to Accept or Reject the bid in present tendering process may be availed by the Petitioner with recording the reasons for it. Accordingly, we decide to approve the deviation sought by the Petitioner.

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

- 14.5.1. The Petitioner has proposed deviation in aforesaid clause of MBD and clarification is 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.
- 14.5.2. There is no objection on the aforesaid deviation sought by the Petitioner by the Objectors.
- 14.5.3. We note the aforesaid deviation proposed by the Petitioner with consideration of Government of Gujarat G.R. No. EMD/10/2021/7729/DMO dated 28.06.2021 and amendments in its from time to time. Hence, we decides to approve the same.

14.6. Appendix I – Letter comprising of Bid (RFP)

- 14.6.1. The Petitioner has sought deviation in Appendix - I of RFP of MBD which provides for the format / parameters for the Bid to be submitted by the Bidder as on Bid Due Date. The rationale given by the Petitioner is that the same is done with

consideration that certain conditions regarding bid component of transmission charges & losses is to ensure uniformity in evaluation of bids. 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.

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

Bid parameters	Unit	Rs. and paise (in two decimals)
Fixed Charge for the base year ----- (1)	per kWh	
Fuel Charge = Sum of (a)+(b) +(c) ----- (2)		
(a) Cost of Fuel	Per kWh	
(b) Cost of transportation	Per kWh	
(c) Cost of Washing	Per kWh	
Transmission Cost = Sum of (a) + (b)---- (3)		
(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	
Total Tariff = Sum of (1) + (2) + (3)	per kWh	

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

- 14.6.3. The Petitioner has provided following Additional clarifications regarding submission of bid:

- 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.
- 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 this 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*

- 14.6.4. The Objectors have submitted that the Petitioner may consider applicable CTU charges and losses (for non-Gujarat STU connected plants) for arriving the landed cost of power while evaluating the bid with consideration of the CERC (Sharing of Inter-State Transmission and Losses) Regulations, 2020.

14.6.5. We note that the above deviations sought by the Petitioner is to ascertain and bring parity amongst the bidders, while evaluating the bids of the bidders who proposed to supply the energy from the generating plant connected with CTU and/or STU at par so that in the bid evaluation no ambiguity will remain. The Petitioner has also proposed to add clarification regarding submission of bid by the bidder to provide the clarity about the transmission charges in Rs. per unit and transmission losses in percentage to be considered for quote to be submitted by the bidders and any deviations thereafter shall be adjusted in the tariff as per the provisions of bid document. The additional clarification also provides that the transmission loss and charges for the generator outside the Gujarat connected to the respective State grid (STU network) outside the Gujarat shall be on account of generator/bidder all times during the contracted tenure of the respective bidder. Moreover, all applicable charges i.e. SLDC, RLDC, Open Access charges for delivery of contracted capacity at delivery point shall be on account of Supplier during the contract tenure so that bidder can factor the same in its tariff quote. It also clarifies that no separate reimbursement or adjustment shall be allowed under the contract. The said provisions are kept in the bidding documents by the Petitioner for considering quoted tariff of all bidders at par with reference to point of supply of energy by the bidders at same point of supply i.e. at GETCO/STU inter-connection point.

14.6.6. The bidders shall in the field of Cost of Fuel in Rs. per kWh require to give single figure after summing of cost of fuel and cost of washing. Moreover, above cost of washing and cost of fuel have to be quoted separately as per Appendix-I. Thus, the aforesaid provisions provide clarity to the discovered tariff under competitive bidding process carried out by the Petitioner having common point of supply and tariff payable by the Petitioner to the generator/Supplier at same point of supply.

14.6.7. Considering the above, we decide to approve the aforesaid deviations sought by the Petitioner.

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

14.7.1. The Petitioner has proposed deviation in aforesaid provision of MBD pertaining to Transmission charges & losses. It is stated that as per present 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.

- 14.7.2. The Petitioner has submitted that 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.
- 14.7.3. The ISTS losses are applicable on drawl 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. The Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre-specified by Utility.
- 14.7.4. The 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.
- 14.7.5. The Petitioner has appropriately modified the provision under the RFP for Bid Parameters and same are also incorporated in PSA. The 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.
- 14.7.6. The transmission charge burden being sunk cost, in order to ensure that Supplier adopts Prudent Utility Practice and ensures availability of power from project, the 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: