

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2134 of 2022.

In the Matter of:

Petition under Section 63 read with 86(1)(b) of the Electricity Act 2003 for seeking adoption of tariff discovered under Competitive Bidding Process conducted vide RFS No. GUVNL/500 MW/Solar (Phase XIV) dated 16.04.2022 issued by GUVNL for procurement of power from 500 MW Grid connected Solar Photovoltaic Power Projects with Greenshoe option of additional 500 MW in the State of Gujarat.

Petitioner : Gujarat Urja Vikas Nigam Limited

Represented By : Ld. Adv. Ms. Harini S. alongwith Mr. Parthik Joshi

CORAM:

Anil Mukim, Chairman

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 12/08/2022.

ORDER

1. This Petition has been filed by the Petitioner Gujarat Urja Vikas Nigam Limited (GUVNL), under Section 63 read with 86(1)(b) of the Electricity Act 2003 *interalia* seeking following prayers:
 - (a) *To admit the present petition.*
 - (b) *To adopt the tariff discovered by the Petitioner, in the procurement process conducted by the petitioner through RFS No. GUVNL / 500 MW / Solar (Phase XIV) dated 16.04.2022 within the time duration stipulated by Hon'ble MoP under the amended guidelines.*

(c) The Petitioner craves relief of the Hon'ble Commission to allow further submissions, prayers, additions and alterations to this Petition as may be necessary from time to time.

(d) Pass any other Order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case, to avoid further delay and in the interest of justice.

2. Facts mentioned in the Petition are detailed below:

2.1. Government of Gujarat notified 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 has been notified under the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003, whereby, 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. Distribution companies are mandated to procure power from Renewable Energy Sources as per the provision of Section 86(1)(e) of the Electricity Act, 2003 and in terms of the GERC (Procurement of Energy from Renewable Energy Sources) Regulations, 2010 as amended from time to time.

2.4. The Petitioner on behalf of its four Distribution companies has been entering into Power Purchase Agreement(s) amongst others with various Renewable Energy

Generators for procurement of power from time to time.

- 2.5. Section 63 of the Electricity Act, 2003 provides that 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. Also, as per Section 86 (1) of the Electricity Act, 2003, the Commission to 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.
- 2.6. Ministry of Power (MoP), 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. Section 3.1.1 of the said Guidelines provide following conditions to be met by procurer:
- a) *Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below.*
 - b) *Inform the Appropriate Commission about the initiation of the bidding process.*
 - c) *Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 18 of these Guidelines.*
 - (i). *"However, till the time the SBDs are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.*
 - (ii). *Further, in case of an ongoing bidding process, if the bids have already been submitted by bidders prior to the notification of these Guidelines*

and/or SBDs, then if there are any deviations between these Guidelines and/or the SBDs and the proposed RfS, PPA, PSA (if applicable), the RfS, PPA and the PSA shall prevail.

- 2.7. The above referred Guidelines dated 03.08.2017 issued by MoP have been amended from time to time on 14.06.2018, 03.01.2019, 09.07.2019, 22.10.2019 and lastly on 25.09.2020.
- 2.8. It is submitted that pending the issuance of Standard Bidding Documents by Central Government, the Petitioner is conducting the competitive bidding process for procurement of solar power from time to time based on the bid documents containing detailed provisions that are consistent with the Guidelines as amended from time to time read with the deviations approved by the Commission vide Order dated 15.03.2018 in Petition No. 1706 of 2018, Order dated 13.01.2020 in Petition No. 1848 of 2019 and Order dated 19.05.2022 in Petition No. 2069 of 2022.
- 2.9. As per the amendment vide Resolution dated 22.10.2019 (notified on 23.10.2019) in the Guidelines, various provisions relating to adoption of tariff by Appropriate Commission have been modified and relevant provisions of the same are as under.

“Clause 10.4 – “Subject to provisions of the Act, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act. In case, the Appropriate Commission does not decide upon the same within sixty days of such submission, the tariffs shall be deemed to be have been adopted by the Appropriate Commission”.

Clause 12 (c) – “It is presumed that in terms of Clause 10.4 of these Guidelines, the tariff will be adopted by the Appropriate Commission within 60 days of such submission. However, notwithstanding anything contained in these Guidelines, any delay in adoption of tariff by the Appropriate Commission, beyond 60 (sixty) days, shall entail a corresponding extension in financial closure.”

Clause 14 (iii) - “It is presumed that in terms of Clause 10.4 of these Guidelines, the tariff will be adopted by the Appropriate Commission within 60 days of such submission. However, notwithstanding anything contained in these Guidelines, any delay in adoption of tariff by the Appropriate Commission, beyond 60 (sixty) days, shall entail a corresponding extension in scheduled commissioning date.”

- 2.10. The Petitioner on behalf of its four subsidiary Distribution companies initiated the

tendering process for procurement of 500 MW grid connected power from Solar PV projects with Greenshoe option of additional capacity upto 500 MW through Competitive Bidding Process (followed by e-reverse auction) vide RfS No. GUVNL/500 MW/Solar (Phase XIV) dated 16.04.2022 in accordance with approval for initiation of bidding process granted by the Commission vide Order dated 19.05.2022 in Petition No. 2069 of 2022. The Petitioner had also published a public notice dated 05.01.2022 of 'Notice Inviting Tender' in two national newspapers regarding the said tender and the Tender/Bid Documents viz. RfS and PPA were hosted on the website of GUVNL for information as well as on e-bidding portal for downloading the official copy of the Tender Documents for participation in bidding procedure including e-reverse auction. Further, the Petitioner also held a Pre-Bid Meeting through video conference on 30.04.2022, wherein key bid parameters, provisions of bid documents & timelines were discussed. Further, during the meeting, the Petitioner addressed the queries raised by the Prospective Bidders and subsequently made some of the acceptable changes in the tender documents pursuant to the discussions with bidders. The Minutes of Pre-bid meeting were also issued and hosted on websites of GUVNL and on e-bidding portal. The copy of Notice Inviting Tender with relevant extract of newspapers, Bid Documents including addendums are filed with the Petition.

- 2.11. The last date of bid submission in the tendering process initially was 18.05.2022 and the same was extended up to 25.05.2022. The Technical Bid Opening was held on 31.05.2022 in presence of the Bid Evaluation Committee constituted by the Petitioner GUVNL consisting of (i) Shri K. P. Jangid, General Manager, Commerce, (ii) Smt. Sailaja Vachhrajani, General Manager, IPP, (iii) Shri Parthiv Bhatt, Company Secretary, and (iv) Shri Nilay Joshi, COA, (F&A) as members for technical evaluation. The report of the Bid Evaluation Committee is also filed with the Petition. The Petitioner had received online bids from 18 bidders offering aggregate capacity of 3440 MW which were technically qualified.
- 2.12. These 18 bidders who had submitted bids were technically qualified as per the report of the Bid Evaluation Committee and in accordance with the said report, the Financial Bids of all 18 bidders were opened on 10.06.2022 on e-bidding portal in presence of the Bid Evaluation Committee.

2.13. As per terms and conditions of tender, 11 bidders with aggregate capacity of 1810 MW could qualify for e-reverse auction and e-reverse auction was conducted. Accordingly, the Petitioner conducted e-reverse auction for allocating 500 MW capacity from amongst 1810 MW capacity out of 3440 MW for which the bids were received.

2.14. The e-auction report generated at the Bharat-electronic tender's portal is also filed with the Petition. Following prices were discovered at the closure of e-reverse auction held on Bharat-electronic tender's portal:

Rank	Name of the Company	Rs./ Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
1	ABREL SPV 2 Limited	2.30	300	300
2	Hinduja Renewable Energy Pvt. Limited	2.30	120	120
3	M/s SJVN Limited	2.31	200	80
Total			640	500

2.15. It is further submitted that as per terms & conditions of the tender, additional 500 MW capacity through Greenshoe option was offered by GUVNL vide letters dated 14.06.2022 to the above successful bidders at L1 rate to the extent of their respective quoted capacity. In response, M/s ABREL vide letter dated 20.06.2022 accepted only 200 MW capacity out of offered capacity of 300 MW under Greenshoe option whereas the other two bidders i.e., M/s Hinduja and M/s SJVN vide letters dated 20.06.2022 and 15.06.2022 have accepted full capacity of 120 MW and 80 MW respectively under Greenshoe Option. The 100 MW Greenshoe capacity which remained unallocated pursuant to non-acceptance thereof by M/s ABREL was offered by GUVNL based on L1 priority basis to M/s Hinduja vide its letter dated 20.06.2022 to which M/s Hinduja vide its email dated 28.06.2022 conveyed that they are not willing to accept the additional capacity allocation of second round. Therefore, the Petitioner GUVNL vide letter dated 28.06.2022 offered the 100 MW unallocated capacity to M/s SJVN which was accepted by M/s SJVN vide its letter dated 04.07.2022 over and above the allotment of 160 MW (80 MW base capacity + 80 MW Greenshoe capacity of first round) at L1 tariff. In view of above, the total allotment of 1000 MW capacity under the tender is as under:

Rank	Bidder's Name	Base Capacity (MW) (A)	Tariff (Rs / Unit)	Green share Capacity (MW) (B)	Tariff (Rs / Unit)	Total Capacity (MW) (A+B)	Avg. Tariff (Rs / Unit)
L1	ABREL SPV 2 Limited	300	2.30	200	2.30	500	2.3000
L2	Hinduja Renewables Energy Pvt Ltd	120	2.30	120	2.30	240	2.3000
L3	SJVN Limited	80	2.31	180	2.30	260	2.3031
Total		500		500		1000	

2.16. The Petitioner has issued Letter of Award (LoA) to the above successful bidders on 15.07.2022 for total capacity mentioned in the above table at the corresponding rates. As per terms and conditions of tender, the PPAs are to be signed with above successful bidders within 30 days from issuance of LOA.

2.17. In view of the above and in accordance with Section 63 read with Section 86 (1) (b) of the Electricity Act 2003, the Petitioner has filed the present Petition for adoption of tariff discovered by the Petitioner in Competitive Bidding Process conducted through RfS No. GUVNL/500 MW/Solar (Phase-XIV) dated 16.04.2022 for procurement of power from Grid connected Solar PV projects in Gujarat.

3. The matter was kept for hearing on 03.08.2022. During the hearing, Mr. Parthik Joshi, appearing on behalf of the Petitioner GUVNL, reiterated the facts of the Petition as stated at para 2 above. It is further submitted that the Central Government has issued Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 on 03.06.2022 in supersession of the earlier Electricity (Late Payment Surcharge and Related Matters) Rules, 2021, except as respects things done or omitted to be done before such supersession. Therefore, these rules would apply for the outstanding dues of generating companies, Inter-State transmission licensees and electricity trading licensees after the notification of the Rules and accordingly, the said Rules, 2022 is not applicable in the present matter. It is submitted that the draft PPA to be signed by the Petitioner GUVNL with successful bidders is consistent with the provisions of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2021.

4. We have considered the submissions made by the Petitioner. The Petitioner has

filed the present Petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003. The Petitioner has sought the approval of the Commission for adoption of discovered tariff of Rs. 2.30-2.31 per unit quoted by successful bidders under competitive bidding process followed by e-reverse auction of bid No. RfS No. GUVNL/500 MW/Solar (Phase XIV) dated 16.04.2022, as stated in para above.

- 4.1. The Petitioner is purchasing power in bulk for and on behalf of four Distribution Licensees, namely, DGVCL, MGVCL, PGVCL and UGVCL. The Petitioner also procures the renewable power by entering into agreements with the developers for its four Distribution Licensees towards fulfilment of their RPO as specified by the Commission in the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 as amended from time to time including the GERC (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2022. In the said Regulations, the Commission has stipulated the RPO requirement of Distribution Licensees till FY 2024-25 as under:

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)				
	Wind (%)	Solar (%)	Hydro Power Purchase Obligation (HPO) (%)	Others (Biomass, Bagasse & Bio-fuel based cogeneration, MSW and Small/Mini/Micro Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)	(6)
2017-18	7.75	1.75		0.50	10.00
2018-19	7.95	4.25		0.50	12.70
2019-20	8.05	5.50		0.75	14.30
2020-21	8.15	6.75		0.75	15.65
2021-22	8.25	8.00		0.75	17.00
2022-23	8.25	8.00		0.75	17.00
2023-24	8.40	9.50	0.05	0.75	18.70
2024-25	8.55	11.25	0.10	0.80	20.70

From the above table it is apparent that the Petitioner is required to procure substantial quantum of Solar power, since the Commission has increased the Solar RPO in view of the requirement stipulated by the Government of India. Accordingly, in order to meet the Solar RPO target, the Petitioner had initiated the competitive bidding process followed by e-reverse auction for procurement of 500 MW power (alongwith Greenshoe option for 500 MW capacity) from the Solar PV Projects to

be set up in Gujarat through RfS No. GUVNL/500 MW/Solar (Phase XIV) dated 16.04.2022.

- 4.2. The Petitioner has sought the approval of the Commission under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003, which read as under:

“.....

Section 63:

Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government;”

.....”

As per above Section, whenever transparent competitive bidding process is conducted under Section 63 of the Electricity Act, 2003 in accordance with the guidelines issued by the Central Government, the tariff discovered under such bidding has to be adopted by the Commission.

“.....

Section 86(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.”

.....”

As per the aforesaid provision, the Commission has to regulate the power procurement of the Distribution Licensees, including the procurement process, the price at which electricity shall be purchased from the generating company or the Licensees or through other sources through agreement for purchase of power for distribution and supply within the State.

- 4.3. Thus, it is apparent from the aforesaid provisions that the Petition filed by the