

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 2242/2023.**

**In the Matter of:**

**Petition in accordance with the GERC (Conduct of Business) Regulations, 2004 for seeking approval of Short term Power Purchase Arrangement for catering the base demand requirement of GIFT City licensee area by executing a PPA with M/s Shree Renuka Sugars Limited for supply of 2.50 MW RTC power under Medium Term Open Access (MTOA) Transmission Booking Basis as per the provisions of 'Guidelines for Procurement of Power by distribution licensees' issued by the Commission read with Section 86 (1) (b) of the Electricity Act, 2003.**

Petitioner : GIFT Power Company Limited

Represented by : Mr. Arvind Kumar Rajput and Mr. Rakesh Inala

**CORAM:**

**Anil Mukim, Chairman**

**Mehul M. Gandhi, Member**

**S. R. Pandey, Member**

**Date: 01/09/2023.**

**ORDER**

1. This present Petition has been filed by the Petitioner GIFT Power Company Limited (GIFTPCL) under Section 86(1)(b) of the Electricity Act 2003 read with the provisions of the GERC (Conduct of Business) Regulations, 2004 *inter alia* seeking following prayers:

- (a) *To admit the present Petition for further necessary process.*
- (b) *To allow Petitioner for Short Term Power Procurement through MoU route as specified in 'Guidelines for Procurement of Power by Distribution Licensees'.*
- (c) *To approve Short Term Power Purchase Arrangement by executing a PPA of 2.50 MW RTC with M/s Renuka Sugars at a rate of Rs. 4.75/Unit for meeting the base demand requirements of Petitioner's licensee area.*

- (d) *To allow additions/ alterations/changes modifications to the application at a future date.*
- (e) *Allow any other relief, order or direction, which the Hon'ble Commission deems fit to be issued.*
- (f) *Condone any inadvertent omissions/errors/shortcomings and permit the Petitioner to add/change/modify/alter this filing and make further submissions as may be required at a future date.*
- (g) *To afford the reasonable opportunity of personal hearing to the Petitioner before passing any orders in the matter.*
- (h) *To grant any relief/s as it deems fit and appropriate under the circumstances of the case and in the interest of justice.*
- (i) *To allow Petitioner to file any further continuation Petition/Additional Submissions for adhering the directions passed in the Judgement/Final Order regarding the present Petition.*

2. The Petitioner has filed this Petition under Section 86(1)(b) of the Electricity Act 2003 read with the provisions of the GERC (Conduct of Business) Regulations, 2004 seeking approval of the Short-Term Power Purchase Arrangement by the Commission and hence it is necessary to refer aforesaid Sections as under:

*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.

3. This Petition filed by the Petitioner is within the purview of the jurisdiction of this Commission and in terms of the powers vested by the Electricity Act, 2003 and Regulations framed thereunder, the Commission admits the present Petition.
4. The facts mentioned in the Petition, in brief, are as under:
  - 4.1. The Petitioner, GIFT Power Company Limited (GIFT PCL) is a 100% subsidiary company of Gujarat International Finance TEC-City Company Limited incorporated under the provisions of the Companies Act 1956 and also is a distribution licensee for the supply of electricity in the GIFT City area. The Commission has granted the license for distribution of electricity vide its Order dated 06.03.2013 in the License Application No. 1/2012 to GIFT Power Company Limited for catering the power requirement of GIFT City which includes both Special Economic Zone and Domestic Tariff Area (DTA) zone areas.
  - 4.2. The Petitioner had initiated Power Procurement through Open Access as a Distribution Licensee from 10<sup>th</sup> May, 2019 onwards. As, the power procurement process was at nascent stage and demand was yet to be stabilized, the Petitioner started procuring power by having a mix of Short/Medium Term Power Purchase Agreement and Power Exchange Transactions.
  - 4.3. It is stated that as per Section 86 (1) (b) of the Electricity Act, 2003, the State Commission shall regulate electricity purchase and procurement process of distribution licensees and its 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.
  - 4.4. The Commission has notified the 'Guidelines for Procurement of Power by Distribution Licensees in the State of Gujarat' vide Notification No. 2 of 2013 dated 14.08.2013 in terms of the powers conferred under Section 86 (1) (b) of the Electricity Act 2003.
  - 4.5. The Petitioner being a Distribution Licensee in the State of Gujarat, needs to adhere the procedures set-forth in the afore-mentioned Guidelines. The details of previous power procurement arrangement are as follows:

- (i) Petitioner had executed a Power Purchase Agreement with M/s PTC India for supply of 3 MW RTC power on medium term open access booking basis from M/s Philips Carbon Black Limited-Mundra for meeting the base demand requirement of the licensee area through MoU route after attaining interim approval from Hon'ble GERC vide Daily Order dated 28.07.2022 for Petition No. 2124/2022.
- (ii) The Petitioner also procures power from Power Exchanges as and when need arises for meeting the unanticipated and peak load requirement.
- 4.6. It is stated that GIFT City is completely a greenfield area and still in development stage, the demand is increasing in a phased manner and load is yet to be fully stabilized. As per demand trends, it was observed that base demand is ~ 3 MW, average demand is ~ 6 MW and peak demand is ~ 10 MW during FY 2023-24.
- 4.7. During the past one year, the electricity prices discovered in Spot Market (i.e., Power Exchanges) have remained significantly higher than normal due to increase of coal prices. Based on the demand trend, the Petitioner finds it prudent enough to execute Power Purchase Agreement for meeting the base/average demand of licensee area. Accordingly, Petitioner had floated the Medium Term RFP/Tender in 'DEEP Portal' as per Ministry of Power's Competitive Bidding Guidelines. The bid requisition details are furnished below:
- a) Issued RFP on DEEP Portal of MSTC website on 13<sup>th</sup> January, 2023 for Procurement of 5 MW RTC Power vide Tender No. GIFT Power Company Limited/Medium/22-23/ET/228 and Procurement of 5 MW RTC Non-Solar Power vide Tender No. GIFT Power Company Limited/Medium/22-23/ET/229 for a period of 3 years starting from 1<sup>st</sup> July, 2023 to 30<sup>th</sup> June, 2026 on 'Lumpsum Tariff' mode as per Ministry of Power's Medium-Term Competitive Bidding Guidelines.
- b) Published the Tender Notice on 17<sup>th</sup> January, 2023 in Two National Newspapers namely 'Business Standard' and 'Financial Express' (All India Editions) for Tender No. GIFT Power Company Limited/Medium/22-23/ET/228 and GIFT Power Company Limited/Medium/22-23/ET/229.

- c) The last date for Submission of RFP was 13<sup>th</sup> February 2023 for both the tenders. During opening of non-financial technical bids, it was observed that no Bidder has shown interest in supplying the requisitioned quantum.
- d) The Petitioner has constituted a Standing Committee for 'Evaluation of Medium-Term Power Procurement Bids' invited in DEEP Portal wherein on 24<sup>th</sup> February 2023 the Standing Committee has recommended to initiate the process of releasing Short Term Power Purchase Tender for a period of 1 year starting from 1<sup>st</sup> July, 2023 to 30<sup>th</sup> June, 2024 in DEEP Portal as per Ministry of Power Guidelines considering the power market scenario. The Standing Committee Certificate of Medium-Term Power Procurement Tender is filed with the present Petition.

4.8. Based on the recommendations of Standing Committee, the Petitioner has floated Short Term Power Purchase Tender in 'DEEP Portal' as per Ministry of Power's Short-Term Competitive Bidding Guidelines. The bid requisition details are furnished below:

- (a) Issued RFP on DEEP Portal of MSTC website on 3<sup>rd</sup> March 2023 for Procurement of 5 MW RTC Power vide Tender No. GIFT Power Company Limited/Short/23-24/ET/02 for a period of 1 year starting from 1<sup>st</sup> July, 2023 to 30<sup>th</sup> June, 2024 as per Ministry of Power's Short-Term Competitive Bidding Guidelines.
- (b) Published the Tender Notice on 7<sup>th</sup> March-2023 in two national newspapers namely 'Mint' and 'Financial Express' (All India Editions) for Tender No. GIFT Power Company Limited/Short/23- 24/ET/02.
- (c) The last date for submission of RFP was 21<sup>st</sup> March 2023. During opening of non-financial technical bids on 24<sup>th</sup> March 2023, it was observed that no bidder has shown interest in supplying the requisitioned quantum.
- (d) The Petitioner has constituted a Standing Committee for 'Evaluation of Power Procurement Bids Invited in DEEP Portal as per Ministry of Power's Short-Term Bidding Guidelines'. The Standing Committee Meeting was held on 31<sup>st</sup>

March 2023, wherein it was stated about the current power market situation and tender results of large power quantum. Also, it was informed that ONGC and PCBL had approached the Petitioner for executing long term agreement for a period of 12 years. Accordingly, the Standing Committee has recommended to explore the options of long-term power purchase from ONGC and PCBL at a competitive rate for meeting the base demand requirements of licensee area. The Standing Committee Certificate of Short-Term Power Procurement Tender is also filed with this Petition.

- 4.9. As, no bids were received in both medium-term and short-term power purchase tenders, market information was sought from power traders/bidder's and it was noted that power generators were benefitting from higher price discovery on Spot Markets/Power Exchanges, they are resisting to enter into new PPA with Utilities. The Average MCP during past few months in DAM segment of IEX is furnished below:

<b>Months</b>	<b>Average MCP (in Rs. / Unit)</b>
January, 2023	6.18
February, 2023	6.68
March, 2023	5.43
April, 2023	5.42
May, 2023	4.74
June, 2023	5.37
July, 2023	4.55

- 4.10. It is stated that Captive Power Generators in Gujarat viz, ONGC-Hazira and PCBL-Mundra had approached the Petitioner for supplying power on LTOA basis for 12 years. Based on the recommendations of the Standing Committee, the Petitioner has explored and discussed with ONGC-Hazira and PCBL-Mundra for supply of 5 MW RTC Power for a period of 12 years at a cost-effective rate. Accordingly, the Petitioner has initiated discussions with PCBL-Mundra by holding a Virtual Meeting on 17<sup>th</sup> March, 2023 and with ONGC-Hazira by visiting their plant on 23<sup>rd</sup> March, 2023.
- 4.11. During preliminary discussions, PCBL had quoted a tariff of Rs. 5.25/Unit but after virtual meeting discussions, PCBL had quoted a revised tariff of Rs. 4.95/Unit. However, the Petitioner had shown willingness to execute LTOA if the tariff is further optimized and based on commercial prudence exercise.

4.12. Based on the discussions in meeting with ONGC, it was noted that due to increase in gas prices they were ready to supply the power at a tariff of Rs. 6.30/Unit. After detailed deliberations, the final tariff quoted verbally by ONGC was Rs. 6/Unit. As, there was a significant difference between the tariff quoted by ONGC, the Petitioner has decided to explore the base with PCBL for executing LTOA. After series of discussions, PCBL had agreed to supply 5 MW power on RTC basis to the Petitioner as per the following terms and conditions:

- a) Period of Supply: 12 years
- b) Base Tariff: Rs. 4.70/Unit (Lock-in for 3 years)
- c) Tariff Escalation (After Lock-in period i.e., 3 years): Annual Revision as per the Wholesale Price Index (WPI) of 'Electricity' determined by 'Office of the Economic Advisor'. However, such tariff revision shall reflect 20% of the variation in WPI based on the differences of indices of January month. The tariff escalation shall be for a period of 5 years post lock-in period (i.e., from 4<sup>th</sup> year to 8<sup>th</sup> year) and thereafter for remaining 4 years (i.e., 9<sup>th</sup> year to 12<sup>th</sup> year) the tariff shall be fixed (i.e., tariff of 8<sup>th</sup> year will continue without any further escalation till 12<sup>th</sup> year.)
- d) Minimum Tariff Escalation: A minimum tariff escalation of 5% (i.e., post lock-in period) if the tariff escalation determined by WPI method is less than 5%. Such, minimum tariff escalation shall be for a period of 5 years (i.e., from 4<sup>th</sup> year to 8<sup>th</sup> year) and thereafter for remaining 4 years (i.e., 9<sup>th</sup> year to 12<sup>th</sup> year) the tariff shall be fixed (i.e., tariff of 8<sup>th</sup> year will continue without any further escalation till 12<sup>th</sup> year).
- e) Minimum Offtake/Supply and its Compensation: The minimum offtake/supply shall be 85% and compensation for deviation beyond 15% shall be Rs. 0.50/Unit.

4.13. Accordingly, the Petitioner had filed Application for grant of Long Term Open Access (LTOA) before GETCO on 23rd May, 2023 and was waiting for PCBL's Board approval to file a Petition before the Commission (GERC) for approval of Long Term Power Purchase Arrangement. However, on 14<sup>th</sup> July, 2023, PCBL team

communicated that Board Directors have not approved the proposal of Long Term Power Purchase Arrangement considering various aspects.

- 4.14. Foreseeing the delay in filing of Petition and submission of necessary documents in GETCO and anticipating that LTOA power procurement will not start from 1st July-2023, the Petitioner had initiated power procurement through Power Exchanges during the month of July, 2023 and whereas for August, 2023, Long Duration Contract (LDC) Segment of Power Exchange (IEX) was explored and the tender for procurement of 3 MW RTC power (Non-Solar and Conventional) was released on 12<sup>th</sup> July, 2023.
- 4.15. The E-reverse auction for Non-Solar Power quantum was held on 17<sup>th</sup> July, 2023 and it was noted that 'No Bidders' have shown interest for the requisition whereas the E-reverse auction for conventional power quantum was held on 18<sup>th</sup> July, 2023 and it was noted that '2 Generators' have participated in the tender. The L1 price Rs. 4.91/Unit was quoted by M/s PCBL whereas the L2 price was Rs. 6.00/Unit.
- 4.16. Based on the outcome of conventional tender in LDC Segment, the Petitioner has accepted the L1 price of Rs. 4.91/Unit and informed Power Exchange (IEX) to proceed with the filing of Short Term Open Access Application on 20<sup>th</sup> July, 2023. Accordingly, the power supply of 3 MW for the month of August, 2023 has begun through LDC Segment of Power Exchange (IEX).
- 4.17. Due to derailment of power procurement plan, Petitioner once again explored the market for executing Power Purchase Agreement for 1 year and the expression of interest for Procurement of Power was e-mailed to M/s Shree Renuka Sugars Limited on 13<sup>th</sup> July, 2023 and to M/s PCBL on 20<sup>th</sup> July, 2023
- 4.18. M/s Shree Renuka Sugars Limited vide e-mail dated 13<sup>th</sup> July 2023 communicated that they ready to supply 2.50 MW RTC power from their coal based cogenerated plant from their Kandla Unit for a period of 1 year starting from 1<sup>st</sup> September, 2023 at expected tariff of Rs. 4.80/Unit. However, after mutual discussions and negotiation on 24<sup>th</sup> July, 2023, M/s Renuka Sugars has agreed to supply 2.50 MW RTC power for a period of 1 year at Rs. 4.75/Unit.



- 4.19. M/s PCBL vide e-mail dated 24<sup>th</sup> July, 2023 communicated that they are ready to supply 3.50 MW RTC power from their Mundra Unit for a period of 1 year starting from 1<sup>st</sup> September, 2023 at expected tariff of Rs. 5.50/Unit. After exercising commercial prudence, the Petitioner is in a view to enter into a Short Term Power Purchase Agreement of 2.50 MW RTC with M/s Shree Renuka Sugars Limited for a period of 1 year at the tariff of Rs. 4.75/Unit under Medium Term Open Access (MTOA) transmission booking for securing the best possible terms as per the prevailing power market scenario.
- 4.20. The Petitioner being a Distribution Licensee, it is a Universal Obligation to provide uninterrupted power to the consumers, which also makes it quite imperative for executing a Power Purchase Agreement to cater the demand of licensee area. As a prudent practice, executing Power Purchase Agreement for meeting base demand is the most viable and cost-effective solution for any distribution licensee.
- 4.21. The Power Purchase Agreement will safeguard the Petitioner from continuous price fluctuations in Short Term Open Access Market (Power Exchanges) and will provide a cushion from the volatile power market conditions, which in forward will help the Petitioner in reducing the overall power purchase cost. Accordingly, the Petitioner is planning to execute a Short Term Power Purchase Agreement for a period of One (1) year with M/s Shree Renuka Sugars for supply of 2.50 MW RTC Power at a Tariff of Rs. 4.75/Unit. The copy of Draft PPA to be executed is also filed with the present Petition.
- 4.22. The salient features of the existing PPA filed with the Petition are as under:
- (i) The Contracted Quantum was 2.50 MW Round the Clock (RTC 00:00 Hours to 24:00 Hours) Power from 01.09.2023 to 31.08.2024 under Medium Term Open Access (MTOA) Booking.
  - (ii) The Delivery Point for the contracted quantum is GETCO Periphery.
  - (iii) The base PPA rate (tariff) at Delivery Point shall be Rs. 4.75 per Kwh for the entire period.
  - (iv) For the supply of power during a month, Renuka Sugar shall raise monthly energy bill for the power supplied in previous month based on

the daily schedules indicated in Gujarat SLDC portal and State Energy Account Report issued by the Gujarat SLDC.

4.23. In view of the prevailing uncertainties in short term power markets and also considering significant increase in International Coal prices, the Petitioner feels imperative to execute a PPA for base demand at a tariff of Rs 4.75/Unit.

4.24. The recent price of RTC bids discovered on DEEP Portal for power procurement by various utilities submitted by the Petitioner are as under:

Sr. No.	Distribution Licensee	Delivery Point	Period of Supply	Total Quantum (MW)	Discovered Price (Rs./Unit)
1	Torrent Power Limited	GETCO Periphery	01.03.2023 to 29.02.2024	70 to 550	7.37
2	EON Kharadi Infrastructure Pvt Ltd, Maharashtra	Delivered	01.03.2023 to 29.02.2024	4	10.47
3	Noida Power Company Limited (NPCL)	Regional Periphery	01.06.2023 to 10.11.2023	100	6.68
4	GUVNL	GETCO Periphery	06.02.2023 to 30.06.2023	500 to 750	7.90
5	Nidar Utilities Private Limited (NUPLLP)	Maharashtra Periphery	01.07.2023 to 30.06.2024	3	5.40
6	Jawaharlal Nehru Port Trust (JNPT)	Maharashtra Periphery	01.07.2023 to 30.06.2024	2	6.50
7	Noida Power Company Limited (NPCL)	Uttar Pradesh Periphery	01.10.2023 to 31.03.2024	25	5.49
8	EON Kharadi Infrastructure Pvt. Ltd., Maharashtra	Delivered	10.07.2023 to 09.07.2024	6	4.65
9	Jawaharlal Nehru Port Trust (JNPT)	Maharashtra Periphery	01.07.2023 to 30.06.2024	2	6.30
10	GUVNL	GETCO Periphery	16.08.2023 to 31.12.2023	500	5.29

4.25. It is submitted that from the above table, it is observed that the power purchase prices discovered in recent tenders on DEEP portal are in the range of Rs. 4.65/ Unit to Rs. 10.47 per unit on RTC basis.

4.26. It is also stated the discovered price of recent RTC bids for Short Term Power Procurement by various utilities in LDC segment of Power Exchanges:

<b>Sr. No.</b>	<b>Distribution Licensee</b>	<b>Delivery Point</b>	<b>Period of Supply</b>	<b>Total Quantum (MW)</b>	<b>L1 Price Discovered (Rs/Unit)</b>
1	Torrent Power – Ahmedabad	State/Regional Periphery	1 <sup>st</sup> August-23 to 31 <sup>st</sup> August-23	200	5.03
2	Torrent Power – Dahej	State/Regional Periphery	1 <sup>st</sup> August-23 to 31 <sup>st</sup> August-23	70	5.04
3	DNH Power Distribution	State/Regional Periphery	1 <sup>st</sup> August-23 to 31 <sup>st</sup> August-23	100	5.49
4	DVC	State/Regional Periphery	1 <sup>st</sup> August-23 to 31 <sup>st</sup> August-23	70	5.19
5	GIFT Power Company Ltd.	State/Regional Periphery	1 <sup>st</sup> August-23 to 31 <sup>st</sup> August-23	3	4.91

4.27. From the above table, it is observed that the power purchase prices discovered in the recent LDC segment on Power Exchanges are in the range of Rs. 4.91/Unit to Rs. 5.49/Unit on RTC basis.

4.28. It is also stated that the electricity prices discovered on the Power Exchange platform are significantly high and are extremely volatile these days. Also, sometimes the market prices are being discovered at ceiling limits which further turns into a limited clearance of power in power exchange resulting into lower clearing ratio.

4.29. Based on the aforesaid facts and after evaluating various parameters such as Bids received in DEEP Tenders, consideration of reliability and commercial prudence, the Petitioner finds it prudent to execute a Short-Term Power Purchase Agreement of 2.50 MW RTC power starting from 1<sup>st</sup> September 2023 to 31<sup>st</sup> August 2024 at a rate of Rs. 4.75/Unit from M/s Shree Renuka Sugars Limited - Kandla Unit for meeting the base demand requirement of licensee area and in a view to balance price volatility in Short Term Markets (i.e., Power Exchanges). The proposed PPA rate of Rs. 4.75/Unit at GETCO Periphery is comparatively lower to the prices discovered during the recent bids auctioned at DEEP portal for power procurement by various similar size distribution licensees and significantly lower compared to Power Exchange.

4.30. It is further submitted the Clauses 6 and 17 of 'Guidelines for Procurement of Power by Distribution Licensees' notified by the Commission vide Notification No. 2 of 2013 dated 14.08.2013 are as under:

“.....

*6. The Distribution Licensee shall normally endeavor to procure power through competitive bidding. In case of any proposal for procurement of power through MoU route, the Distribution Licensee shall obtain prior approval of the GERC.*

.....

*17. The GERC may permit any Distribution Licensee to make purchase of power without requiring that such purchase be subject to Competitive/Open Process in the event of an unforeseen and an exceptional situation. However, the Distribution Licensee shall not, thereby, be exempted from demonstrating the need and the reason for departure from a competitive process together with the economic justification for the purchase, the means, whereby, in the absence of competition, the Distribution Licensee proposes to secure the best possible terms and such other information as the GERC may require.”*

4.31. It is stated that as per above Clauses of the Guidelines, the distribution licensee shall obtain prior approval of the Commission for procurement of power through MoU route. It also states that the Commission may permit the distribution licensee to undertake purchase of power without competitive bidding by specifying economic justification to secure the best possible terms.

4.32. It is further stated that as no bids were received in Medium Term and Short Term Tenders released by the Petitioner in DEEP Portal, high power exchange prices and Generators reluctant to execute PPA's, considering all these aspects the detailed economic justification required for executing the Short Term PPA have been inscribed in this Petition by comparison showed with respect to recent DEEP tenders and Power Exchange Prices (DAM and LDC).

4.33. Accordingly, the Petitioner requested the Commission to approve the Short-Term Power Purchase Arrangement for purchase of power through MoU route by executing a Power Purchase Agreement with M/s Shree Renuka Sugars Limited for supply of 2.50 MW RTC power under Medium Term Open Access Transmission Booking basis starting from 1<sup>st</sup> September, 2023 to 31<sup>st</sup> August, 2024 at a PPA

base rate of Rs. 4.75/Unit in accordance with the provisions of Clauses 6 and 17 of the 'Guidelines for Procurement of Power by Distribution Licensees' issued by the Commission and Section 86 (1) (b) of the Electricity Act, 2003.

5. The present matter was listed for hearing on 28.08.2023.
6. Mr. Arvind Kumar Rajput and Mr. Rakesh Inala appearing on behalf of the Petitioner GIFT Power Company Limited reiterated the above aspects of the Petition.
7. We have considered the submissions made by the Petitioner. The Petitioner has filed the present Petition seeking approval for procurement of 2.50 MW power for a period of one year through MoU route in terms of Section 86(1)(b) and provisions of 'Guidelines for Procurement of Power by Distribution Licensees' notified by the Commission vide Notification No. 2 of 2013.
- 7.1. We note that the Petitioner, being a distribution licensee, has the Universal Service Obligation to ensure uninterrupted electricity supply to the consumers within the licensee area as provided under Section 43 of the Electricity Act, 2003.
- 7.2. The Petitioner is seeking approval for procurement of power for distribution and supply within its license area and therefore, it is necessary to refer the relevant provisions of Section 86 (1) (b) of the Electricity Act, 2003 and provisions of the 'Guidelines for Power Procurement by the Distribution Licensee' issued by the Commission vide Notification No. 02 of 2013 dated 14.08.2013. Section 86 (1) (b) of the Electricity Act, 2003 reads as under:

“ .....

*86. Functions of State Commission, --*

*(1): - The State Commission shall discharge the following function:*

.....

*(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.

7.3. Clauses 6 and 17 of the 'Guidelines for Power Procurement by the Distribution Licensee' dated 14.08.2013 issued by the Commission are reproduced below:

“ .....

*6. The Distribution Licensee shall normally endeavor to procure power through competitive bidding. In case of any proposal for procurement of power through MoU route, the Distribution Licensee shall obtain prior approval of the GERC.*

.....

*17. The GERC may permit any Distribution Licensee to make purchase of power without requiring that such purchase be subject to Competitive/Open Process in the event of an unforeseen and an exceptional situation. However, the Distribution Licensee shall not, thereby, be exempted from demonstrating the need and the reason for departure from a competitive process together with the economic justification for the purchase, the means, whereby, in the absence of competition, the Distribution Licensee proposes to secure the best possible terms and such other information as the GERC may require.*

.....”

As per aforesaid Clause 6 of the guidelines, in case, if the distribution licensee desires to procure the power through MoU route other than competitive bidding, then the Distribution Licensee needs to obtain prior approval of the Commission for such power procurement.

Clause 17 of the aforesaid Guidelines provides that the Commission may grant permission to the Distribution Licensee to procure power without following Competitive/Open Process in the event of an unforeseen and an exceptional situation, subject to the Distribution Licensee demonstrating the need and reason for such departure from the competitive process together with the economic justification for the purchase. It also states that in the absence of competition, the

Distribution Licensee proposes to secure the best possible terms and such other information as the Commission may require.

- 7.4. We note that the Petitioner GIFT Power Company Limited as distribution licensee has started to procure the power through Open Access from 10.05.2019 for distribution and supply within its SEZ and DTA license area. The Petitioner had executed a Power Purchase Agreement dated 10.05.2019 with M/s PTC India through MoU route for supply of power on medium term open access booking basis from M/s Philips Carbon Black Limited-Mundra for meeting the base demand requirement of the licensee area. The Petitioner also procures power from DAM/G-DAM/G-TAM/RTM segments in Power Exchanges on 'As and when' required basis for meeting its unanticipated and peak load requirement.
- 7.5. We also note that since the licensee area of the Petitioner is greenfield area and still in development stage, its demand is increasing in a phased manner and accordingly as per Petitioner's submission its base demand is ~ 3 MW, average demand is ~ 6 MW and peak demand is ~ 10 MW during FY 2023-24 and during last year, the electricity prices discovered in Spot Market (i.e., Power Exchanges) have remained significantly higher than normal due to increase of coal prices and based on the demand trend, the Petitioner finds prudent enough to execute Power Purchase Agreement for meeting the base/average demand of licensee area.
- 7.6. According to the submissions made by the Petitioner, the Petitioner had floated the Medium Term RFP/Tender on 'DEEP Portal' of MSTC website as per Ministry of Power's Competitive Bidding Guidelines, on 13<sup>th</sup> January-2023 for procurement of 5 MW RTC power vide Tender No. GIFT Power Company Limited/Medium/22-23/ET/228 and Procurement of 5 MW RTC Non-Solar Power vide Tender No. GIFT Power Company Limited/Medium/22-23/ET/229 for a period of 3 years starting from 1<sup>st</sup> July, 2023 to 30<sup>th</sup> June, 2026 on 'Lumpsum Tariff' mode as per Ministry of Power's Medium-Term Competitive Bidding Guidelines. However, no bidder has shown interest in supplying the requisitioned quantum.
- 7.7. Thereafter, based on the recommendations of Standing Committee, the Petitioner has floated Short Term Power Purchase Tender in 'DEEP Portal' of MSTC website on 3<sup>rd</sup> March, 2023 for Procurement of 5 MW RTC Power vide Tender No. GIFT Power Company Limited/Short/23-24/ET/02 for a period of 1 year starting from

1<sup>st</sup> July 2023 to 30<sup>th</sup> June 2024 as per Ministry of Power's Short-Term Competitive Bidding Guidelines. The Petitioner has also constituted a Standing Committee for 'Evaluation of Power Procurement Bids Invited in DEEP Portal and the Standing Committee Meeting was held on 31<sup>st</sup> March 2023, wherein it was stated about the current power market situation and tender results of large power quantum. It was also informed that ONGC and PCBL had approached the Petitioner GFTPCL for executing long term agreement for a period of 12 years. Accordingly, the Standing Committee has recommended to explore the options of long-term power purchase from ONGC and PCBL at a competitive rate for meeting the base demand requirements of licensee area. It is also to note that no bids were received in both medium-term and short-term power purchase tenders, market information was sought from power traders/bidder's and power generators were benefitting from higher price discovery on Spot Markets/Power Exchanges, they are resisting to enter into new PPA with Utilities and the Average MCP during past few months in DAM segment of IEX is furnished below:

<b>Months</b>	<b>Average MCP (in Rs. / Unit)</b>
January, 2023	6.18
February, 2023	6.68
March, 2023	5.43
April, 2023	5.42
May, 2023	4.74
June, 2023	5.37
July, 2023	4.55

- 7.8. We note the submissions of the Petitioner that ONGC-Hazira and PCBL-Mundra had approached the Petitioner for supplying power on LTOA basis for 12 years and based on the recommendations of the Standing Committee, the Petitioner has explored and discussed with ONGC-Hazira and PCBL-Mundra for supply of 5 MW RTC Power for a period of 12 years at a cost-effective rate. Accordingly, the Petitioner has initiated discussions with PCBL-Mundra and ONGC-Hazira. In response to the same, the PCBL had quoted a tariff of Rs. 5.25/Unit but thereafter PCBL had quoted a revised tariff of Rs. 4.95/Unit. It is also note that due to increase in gas prices ONGC were ready to supply the power at a tariff of Rs. 6.30/Unit and the final tariff quoted by ONGC was Rs. 6/Unit. As, there was a significant difference between the tariff quoted by ONGC than PCBL, the Petitioner



had shown willingness to execute LTOA if the tariff is further optimized. The Petitioner also decided to explore the base with PCBL for executing LTOA and after series of discussions, PCBL had agreed to supply 5 MW power on RTC basis to the Petitioner at rate of Rs. 4.70 per unit. Accordingly, the Petitioner had filed Application for grant of Long Term Open Access (LTOA) before GETCO on 23.05.2023 and was waiting for PCBL's Board approval to file a Petition before the Commission (GERC) for approval of Long Term Power Purchase Arrangement. However, on 14.07.2023, it was informed the Petitioner that Board Directors of PCBL have not approved the proposal of Long Term Power Purchase Arrangement considering various aspects.

7.9. We note that considering the foreseeing delay in filing of Petition and submission of necessary documents in GETCO and anticipating that LTOA power procurement will not start from 01.07.2023, the Petitioner had initiated power procurement through Power Exchanges during the month of July, 2023 and whereas for August, 2023, Long Duration Contract (LDC) Segment of Power Exchange (IEX) was explored and the tender for procurement of 3 MW RTC power (Non-Solar and Conventional) was released on 12.07.2023. The E-reverse auction for Non-Solar power quantum was held on 17.07.2023 and it was noted that no have shown interest for the requisition whereas the E-reverse auction for conventional power quantum was held on 18.07.2023 and it was noted that '2 Generators' have participated in the tender. The L1 price Rs. 4.91/Unit was quoted by M/s PCBL whereas the L2 price was Rs. 6.00/Unit. Based on the outcome of conventional tender in LDC Segment, the Petitioner has accepted the L1 price of Rs. 4.91/Unit and informed Power Exchange (IEX) to proceed with the filing of Short Term Open Access Application on 20.07.2023. Accordingly, the power supply of 3 MW for the month of August, 2023 has begun through LDC Segment of Power Exchange (IEX). Due to derailment of power procurement plan, Petitioner once again explored the market for executing Power Purchase Agreement for 1 year and the expression of interest for Procurement of Power was e-mailed to M/s Shree Renuka Sugars Limited on 13.07.2023 and to M/s PCBL on 20.07.2023.

7.10. We further note that the Petitioner has received an e-mail dated 13.07.2023 from M/s Shree Renuka Sugars Limited that they ready to supply 2.50 MW RTC power from their coal based cogenerated plant from their Kandla Unit for a period of 1 year

starting from 01.09.2023 at the rate of Rs. 4.80/Unit. However, after mutual discussions and negotiation on 24.07.2023 between them, M/s Renuka Sugars has agreed to supply 2.50 MW RTC power for a period of 1 year at the rate of Rs. 4.75/Unit. Whereas the Petitioner also received 24.07.2023 from the M/s PCBL that PCBL are ready to supply 3.50 MW RTC power from their Mundra Unit for a period of one year starting from 01.09.2023 at the tariff of Rs. 5.50/Unit. After exercising commercial prudence, the Petitioner has chosen to enter into a Short Term Power Purchase Agreement of 2.50 MW RTC with M/s Shree Renuka Sugars Limited for a period of 1 year at the tariff of Rs. 4.75/Unit under Medium Term Open Access (MTOA) transmission booking for securing the best possible terms as per the prevailing power market scenario.

- 7.11. Also, the Petitioner being a Distribution Licensee, is having a Universal Obligation to provide uninterrupted power to the consumers, which also makes it quite imperative for executing a Power Purchase Agreement to cater the demand of licensee area and as a prudent practice, executing Power Purchase Agreement for meeting base demand is the most viable and cost-effective solution for any distribution licensee. We note that the Power Purchase Agreement will safeguard the Petitioner from continuous price fluctuations in Short Term Open Access Market (Power Exchanges) and will provide a cushion from the volatile power market conditions, which in forward will help the Petitioner in reducing the overall power purchase cost. Accordingly, the Petitioner is planning to execute a Short Term Power Purchase Agreement for a period of One (1) year with M/s Shree Renuka Sugars for supply of 2.50 MW RTC Power at a tariff of Rs. 4.75/Unit.
- 7.12. We note the submissions of the Petitioner that after evaluating various parameters and consideration of reliability and commercial prudence, the Petitioner finds it prudent to execute a Short-Term Power Purchase Agreement of 2.50 MW RTC power starting from 01.09.2023 to 31.08.2024 at the rate of Rs. 4.75/Unit from M/s Shree Renuka Sugars Limited - Kandla Unit for meeting its base demand requirement of licensee area. The proposed PPA rate of Rs. 4.75/Unit at GETCO Periphery is comparatively lower to the prices discovered during the recent bids auctioned at DEEP portal for power procurement by various similar size distribution licensees and significantly lower compared to Power Exchange.

- 7.13. According to the Petitioner, it is economical to execute a PPA with M/s Renuka Sugar Limited for a period of 1 year at the rate of Rs. 4.75 per unit. Therefore, the Petitioner exercising commercial prudence of the offer received from M/s Renuka Sugar Limited has prayed for allowing the Petitioner to execute Power Purchase Agreement with them for a period of 1 year on medium term basis at the rate of Rs. 4.75 per unit for supply of 2.50 MW RTC from Kandla Unit of M/s Renuka Sugar Limited and has also filed the Draft Power Sale Agreement to be executed between the parties.
- 7.14. We note that, earlier the Petitioner after taking prior approval of the Commission for procurement of power through MoU route as per the Clause 6 of the Notification No. 2 of 2013 dated 14.08.2013 had executed PPA with M/s Renuka Sugar Limited for supply of 2.5 MW RTC power on medium term basis. Therefore, the present Petition was filed by the Petitioner GIFT PCL seeking approval for procurement of 2.5 MW RTC power at the rate of Rs. 4.75 per unit for a period of one year through MoU route with M/s Renuka Sugar Limited.
- 7.15. We also note that, even the tariff discovered on DEEP portal is in the range of Rs. 4.65 – Rs. 10.47 per unit while the tariff of Rs. 4.75 per unit for which approval is sought by the Petitioner is less. Even, in the bids invited by various utilities for short term power procurement, the tariff discovered is also in range of Rs. 4.91-5.49 per unit.
- 7.16. Thus, from the above it emerges that the tariff of Rs. 4.75 per unit for procurement of power by the Petitioner by executing Power Purchase Agreement with M/s Renuka Sugar Limited for a period of 1 year on medium term basis for supply of 2.5 MW RTC prayed by the Petitioner is less when compared with recent price of RTC bids discovered on DEEP Portal for power procurement by various utilities at regional periphery of Power Exchanges during the different period of 2023 and 2024. Therefore, the prayer of the Petitioner for allowing the Petitioner to execute Power Purchase Agreement with M/s Renuka Sugars Limited for a period of 1 year on medium term basis at the rate of Rs. 4.75 per unit for supply of 2.5 MW RTC after evaluating the situation and based on commercial prudence appears to be reasonable. Hence, we decide to approve the same and allow the Petitioner to

execute Power Purchase Agreement with M/s Renuka Sugars Limited for a period of 1 year on medium term basis at the rate of Rs. 4.75 per unit for supply of 2.5 MW RTC from Kandla Unit of M/s Renuka Sugars Limited.

7.17. We note that Clause 19 titled 'Arbitration and Governing Law' of the Draft Power Purchase Agreement filed by the Petitioner reads as under:

“.....

**19. ARBITRATION AND GOVERNING LAW**

*Any dispute, difference or disagreement between the parties arising under or in relation to this agreement, including (but not limited to) any dispute, difference or disagreement as to the meaning of the terms of this contract or failure to agree on any matter required to be agreed upon under this agreement shall, if possible, be resolved by negotiation and mutual agreement by the parties within 30 days.*

*Any matter to be determined by the Arbitration shall be determined by such person or persons as Hon'ble GERC may nominate in that behalf on the application of either party, but in all other aspects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time.*

*During the period of submission to mediation and thereafter until the dispute is settled the parties shall, continue to perform all their obligations under this agreement without prejudice to final adjustment in accordance with such award.*

*This Agreement and the rights, privileges, duties and obligations of the parties herein under shall be construed to be in accordance with the rules and regulations of the Hon'ble Gujarat Electricity Regulatory Commission (GERC).*

.....”

7.18. Above Clause provides regarding Arbitration and Conciliation proceedings whereas it states that in case any dispute or difference between the Parties are not settled through mutual discussions, then dispute shall be adjudicated by GERC upon the written request of either party in accordance with the Electricity Act,

2003 but in all other aspects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time.

7.19. In this regard, it is necessary to refer Section 86 of the Electricity Act which confers the power and jurisdiction of the Commission, is reproduced as under:

“.....

*86. Functions of State Commission, --*

*(1): - The State Commission shall discharge the following function:*

*(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

*Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*

*(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;*

.....

*(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;*

*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;*

.....”

As per the aforesaid provisions, 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. As per Section 86(1)(f) of the Electricity Act 2003, State Electricity Regulatory Commission is empowered to adjudicate upon disputes between licensees and generating companies, and inter-se between the licensees and generating companies.

7.20. We note that the Commission vide Order dated 06.03.2013 in License Application No. 1 of 2012 has granted distribution license to the Petitioner. Accordingly, in the present case, the Petitioner is distribution licensee and M/s Renuka Sugars Limited is a generating company. On perusal of above Clause 19 of the draft Draft Power Purchase Agreement, it transpires that any dispute, difference or disagreement between the parties arising under the PPA, including but not limited to any dispute, difference or disagreement as to the meaning of the terms of PPA or failure to agree on any matter required to be agreed upon under the agreement shall, if possible, be resolved by negotiation and mutual agreement by the parties within 30 days. However, if such dispute or difference between the Parties are not settled through mutual discussions, then as per Para 2 of aforesaid Clause, the matter to be determined by the Arbitration shall be determined by the person or persons as GERC may nominate in that behalf on the application of party whereas the said para also provides that in all other aspects the arbitration shall be settled by Arbitration as per provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time.

7.21. We therefore decide that the said para of Clause 19 of the Draft Power Purchase Agreement cannot be approved. We direct the Petitioner that the aforesaid para of the Draft Power Purchase Agreement need to be removed and the said Clause should be aligned with the provision of Section 86(1)(f) of the Electricity Act, 2003. The Petitioner will ensure that the same is suitably changed/amended in the Power Purchase Agreement to be executed between the Petitioner and M/s Renuka Sugars Limited by removing the above para of the Clause 19 of the Draft Power Purchase Agreement and stating that any dispute pertaining to Power Purchase Agreement shall be referred to the Commission (GERC) for adjudication of disputes under Section 86 (1) (f) of the Electricity Act, 2003.

7.22. We note that the Ministry of Power had notified the Electricity (Late Payment Surcharge and Related Matters) Rules, 2021 on 22.02.2021. The said Rules are superseded by the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 on 03.06.2022. The aforesaid Rules, 2022 provide that these Rules are 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. The said Rules would apply for the outstanding dues of

generating companies, Inter-State transmission licensees and electricity trading licensees after the notification of the Rules on 03.06.2022. It is stated in the said Rules, 2022 that the Central Government in exercise of powers conferred by Section 176 (1) of the Electricity Act, 2003 and in supersession of the Electricity (Late Payment Surcharge) Rules, 2021 except as respects things done or omitted to be done before the supersession has notified Electricity (Late Payment Surcharge) Rules, 2022 which has to come in force on the date of its publication in the Official Gazette. i.e., from 03.06.2022 onwards. Hence, we are of view that the Electricity (Late Payment Surcharge) Rules needs to be incorporated appropriately by the Petitioner GIFT PCL in the PPA to be signed with M/s Renuka Sugars Limited. We also note that as the Petitioner is yet to sign the PPA with the M/s Renuka Sugars Limited, we direct that the Electricity (Late Payment Surcharge) Rules notified by the Ministry of Power to be incorporated correctly by the Petitioner in the PPA to be signed with M/s Renuka Sugars Limited.

8. We direct the Petitioner that the copy of the duly executed PPA in conformity with our above decisions shall be submitted to the Commission within period of 30 days, on Affidavit stating that the PPA is signed and executed by the Petitioner as approved by the Commission in this Order.
9. With this Order, the present Petition stands disposed of.
10. Order accordingly.

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

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

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

Place: Gandhinagar.  
Date: 01/09/2023.