

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 2263 of 2023**

**In the Matters of:**

**Petition under Section 86 read with Section 63 of the Electricity Act, 2003 seeking adoption of tariff discovered under competitive bidding process for procurement of 3000 MW power under long term based on design, build, finance, own and operate (DBFOO) basis using concessional fuel allocated by Coal India Limited (CIL) as per Ministry of Power Guidelines dated 06.03.2019.**

Petitioner : Gujarat Urja Vikas Nigam Limited

Represented By : Mr. Pratik Joshi

V/s.

Respondent : D B Power Limited

Represented By : Nobody was present.

**CORAM:**

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

**Date: 09/02/2024.**

**ORDER**

1. The present Petition has been filed by the Petitioner Gujarat Urja Vikas Nigam Limited (GUVNL), under Section 86 read with Section 63 of the Electricity Act, 2003 seeking adoption of tariff discovered under competitive bidding process for procurement of 3000 MW power under long term based on Design, Build, Finance, Own and Operate (DBFOO) basis using concessional fuel allocated by Coal India Limited (CIL) as per Ministry of Power Guidelines dated 06.03.2019 *interalia* seeking following prayers:

(a) *To admit this Petition.*

- (b) *To adopt the tariff discovered under the tender invited by the Petitioner as mentioned in the Petition, pursuant to tariff based competitive bidding process through GUVNL/Long/Coal from CIL/22-23/ET/RFQ/209, GUVNL/Long/Coal from CIL/22-23/ET/RFP/210 and addendum/clarification thereto.*
- (c) *To approve the methodology and modality issued by the Petitioner with regard to Ex-mine cost of coal and adjustment of fuel charge in accordance with specified methodology based on the certificate of sampling carried out by the Petitioner in the bidding documents during the bidding process pursuant to directive by the Commission vide Order dated 01.08.2022.*
- (d) *To approve the revision of minimum threshold capacity for participation under the tender from 300 MW to 150 MW in view of limited available merchant capacity in the country and to encourage better participation under the tender.*
- (e) *To approve the Power Supply Agreement dated 09.10.2023 signed between the Petitioner and the L1 selected bidder (M/s D B Power Limited) pursuant to selection of the bidder through tariff based competitive bidding.*
- (f) *To allow the Petition to commence off-take of power under the PSA immediately upon availability of domestic coal to the project to ensure availability of power at competitive rates and reduce the dependency on marginal generating stations including spot market.*
- (g) *To condone any inadvertent omissions/errors/shortcoming and permit the Petitioner to make minor addition/change/modification/alter this filing and make further submissions as may be required at a future date.*
- (h) *To craves relief for filing any further submissions.*

(i) *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. The Petitioner has filed this Petition under Section 63 read with Section 86 of the Electricity Act, 2003 seeking adoption of tariff by the Commission and hence it is necessary to refer aforesaid Sections 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.

3. Thus, it is apparent from the aforesaid provisions that the Petition filed by the Petitioner is within the purview of the Commission's jurisdiction and in terms of the powers vested by the Electricity Act, 2003 and Regulations framed thereunder, the Commission decides to admit the present Petition.
4. Facts mentioned in the Petition in brief are as under:
  - 4.1. The Petitioner, Gujarat Urja Vikas Nigam Limited (GUVNL) is a Company incorporated under the provisions of the Companies Act, 1956 and engaged in the activities of bulk purchase and bulk supply of electricity on behalf of its 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) and is a licensee for the said activities under the provisions of the Electricity Act, 2003.
  - 4.2. In order to ensure availability of adequate power as per the requirement at competitive rates, the Petitioner has been tying up power on long term, medium term as well as short term basis from time to time.
  - 4.3. It is submitted that Ministry of Power vide its letter dated 05.03.2019 has issued Model Bidding documents and vide resolution dated 06.03.2019 has issued Guidelines for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B (III) and B (IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy.
  - 4.4. In order to meet the power requirement of its subsidiary DISCOMs and with an objective of optimization of power purchase cost, the Petitioner had invited tender and conducted bid process for procurement of upto 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using concessional fuel allocated by Coal India Limited (CIL).

- 4.5. It is stated that the aforesaid Guidelines provides that 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, 2003.
- 4.6. As per the Ministry of Power Guidelines, 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.
- 4.7. The Petitioner had filed a Petition No. 2050 of 2021 before the Commission for approval of bid documents (RFQ, RFP & PSA) including deviations and modifications from Model Bidding Documents. Subsequently, in accordance with directives of the Commission, the Petitioner had released public notice seeking objections/views of stakeholders and public hearing(s) were conducted. The Commission vide Order dated 01.08.2022 has approved the draft of Bid Documents i.e. RFQ, RFP and PSA filed by the Petitioner including the deviation and modifications to the Model Bidding Documents of the Ministry of Power, Government of India.
- 4.8. The Commission has directed the Petitioner to incorporate few modifications in the Bid Documents. The relevant para of the Commission's Order dated 01.08.2022 is reproduced as under:

“.....

*9.1. Procurement of 3000 MW for 15 years' period proposed by Petitioner for generation of power from coal allocated under SHAKTI Scheme is approved.*

*9.2. In reference to the coal allocated under SHAKTI Scheme, Petitioner's tender is for seeking bids for upto 3000 MW. Additional quantum of coal if any available after bidding process from the allocated coal quantum*

*capacity by Ministry of Coal, Petitioner shall be required to approach Commission for purchase of power from such allocated surplus coal for approval for purchase of power.*

*9.3. Right to accept or reject any Bid / Application (Clause 2.7.2 - RFQ) - Right to Accept or reject the bid in the tendering process may be availed by Petitioner (for rejection) with reasons recorded for the same.*

*9.4. Conditions Precedent (Clause 4.1 - PSA) - While approving the new clause incorporated by Petitioner for clarity under the tender that Bidder / Supplier shall be required to factor the impact of change in Environmental law affect the power plants and its impact on tariff while bidding in the tender, the Commission has directed to add following clarification under the clause:*

*"..... However, any Change in Environmental norms notified / made by the competent Authority / Government after Bid Due Date that shall be required to be complied by the selected bidder (Supplier) to generate and supply power to the Utility and which qualify as 'Change in Law' in terms of provisions of the PSA shall be permitted as Change in Law and tariff adjustment as per the provisions of PSA"*

The above proviso as directed by the Commission has been duly incorporated by Petitioner in the PSA at Clause 5.10 of the PSA. As per Clause 4.1.3 (J) of PSA, the supplier is required to submit an 'Undertaking' towards compliance to environmental norms notified as on Bid due date and that it shall not claim any amounts towards such capital expenditure pursuant to selection.

*9.5. Substitute Supply (PSA - Clause 18.6) - Petitioner's Bid documents provided that in the event availability of power station is reduced, supplier may with prior consent of the Utility supply electricity from any alternative source including Merchant Capacity and such supply shall for payment of Fixed Charge and Fuel Charge be deemed to be supply in accordance with provision of PSA.*

In above context, the Commission has directed that in the case of Supplier / Bidder not having any pending litigation, Petitioner may allow Supplier to generate electricity from coal received under SHAKTI scheme with a condition that the power supply from such generating plant shall be at discovered tariff under present bidding process in PSA or at tariff lower than said discovered tariff. Further, the Petitioner shall decide about the substitution of supply at the earliest and approach Commission for approval and such substitution shall be subject to approval of the Commission.

The above clause has been appropriately incorporated by Petitioner in the PSA.

In the above context, it is stated that for the purpose of clarity in the implementation of the above provision during the operational tenure of the PSA with regard to substitution of supply from alternative source, the consideration of the power purchase rate (i.e. at discovered tariff) with regard to qualification for substitution shall be considered by the Petitioner as the landed cost "tariff" as prevailing for that contract year under the PSA after taking into account adjustments related to WPI, Fuel cost, transportation cost, SHR etc. as per the terms & conditions of the PSA. The Commission is requested to approve the minor modification for purpose of clarification.

*9.6. Declaration of Ex-mine coal cost by Petitioner prior to Bid submission:*

*The Commission has in its Order dated 01.08.2022 has observed that fuel supply may be available from different coal mines having different GCV of coal, distance of coal mines etc. In such a situation it would be better to consider weighted average cost of the coal with consideration of its quantum received, price, GCV etc. to meet out the intent of the fuel cost pass through adequately. Under the proposed arrangement, the fuel charge is under pass through mechanism and therefore Utility should pre-specify ex-mine cost of coal and GCV to be considered by the bidder while quoting their bid. The same will provide uniformity of consideration of fuel parameters by the bidder and bring clarity about changes, if any, occurred in above parameters.*

Accordingly, the Petitioner was directed to pre-specify the ex-mine coal cost in Rs/ MT prior to bid submission due date.

Based on the above, the Petitioner's Bid Documents based on Ministry of Power Model Bidding Documents, the provision with regard to GCV was as under:

- The average GCV of fuel shall be in accordance with certification and classification of provided by CIL/SECL and mean value of such GCV is to be considered in case the certification provides for band of GCV. (Clause 22.3.2)
- Utility shall be liable to payments towards cost of Fuel only as per the FSA and any additional burden has to borne by Supplier. (Clause 22.3.8).
- Weighted average GCV of fuel received at power station shall be reckoned as the Average GCV for computing the Landed Cost of Fuel (Clause 22.3. 1).
- Price of fuel shall be deemed to be lower of indicative price of fuel as per fuel charge specified in the Bid by Bidder and 101% of price payable by Supplier to Coal India for the linkage coal. (Clause 22.2.3 (a)).

In view of aforesaid provisions, bidders had represented to have clarification with regard to GCV computation on grounds that the certification (third party sampling) provides for GCV at equilibrated basis (without Total Moisture) while the coal as received at the power plant will include Total Moisture due to which the net calorific value useable for generation would be lower and has therefore sought the appropriate modifications/clarifications in the PSA terms.

Under the SHAKTI B (IV) allocation, M/s Coal India having indicated the coal allocation likely from SECL coal mines for indicative Grade G 11 (4000-4300 GCV band), for the purpose of ascertaining and arriving at ex-mine cost of coal, the details were sought from State GENCO by the Petitioner with regard to the

parameters of domestic coal received from SECL mine for Grade 11 (4000-4300 GCV band).

In addition, taking into consideration the sampling activity at Loading end based on Air Dried Basis as well as Equilibrated Moisture basis vis-à-vis as Received Basis (ARB) at unloading end, it is observed that when coal is received at power plant (unloading point) and used for firing for energy generation, the GCV of Coal "As Received Basis" becomes relevant. Further, as per the CERC Tariff Regulations 2019-24, the GCV of fuel is considered on "As Received" i.e. measured at unloading point and GCV of coal as received at station (TM Basis) is considered for energy generation.

It is stated that Central Electricity Authority, Govt. of India vide Notification dated 20.07.2021 has specified the norms for Annual Contracted Quantity (ACQ) to provide coverage for the losses of heat value of coal occurring between loading point and coal firing point for supply of raw coal. CEA has also specified the following formula for adjustment of moisture based on sampling certificate for ascertaining the final coal quantity.

$$\text{GCV (TM)} = \text{GCV (EM)} \times [(1-\text{TM}) / (1-\text{EM})]$$

Taking into consideration the directive for declaration of the Ex-Mine Cost of Coal prior to the bid submission due date, in order to provide the clarity with regard to the pricing of coal & GCV to be considered for the computation of Energy Charge payment for bidding purpose and for payment purpose during the PPA tenure, appropriate clarification with regard to Energy Charge computation had been issued by the petitioner prior to bid submission due date that GCV of Coal would be considered by factoring the TM basis (%) as certified by designated agency in its sampling certificate at loading end.

Further, it has also been clarified that such GCV derived (TM basis) shall be considered as "As Received Basis" under the PPA at all times. Simultaneously, in order to safeguard the interest of petitioner (Utility), it has been clarified that adjustment of GCV towards TM will be subject to ceiling of 300 kcal/kWh during

the tenure of PPA. The detailed methodology for the same have been incorporated in the PSA with modification of Clause 22.3 for purpose of clarity and removal of ambiguity.

The Petitioner vide Corrigendum III has issued the Ex-mine Cost of Coal along with detailed working and clarified all the bidders to submit the Energy Charge in accordance with the computation modality pre-specified so as to have uniformity and comparability for evaluation of the bids. For the purpose of Ex-mine cost of coal, the sub cost component of domestic coal for Gevra mine of SECL including statutory levy, cess etc. has been taken into consideration for the purpose of submission of financial bids on uniformity. Further, the bidders were asked that Forest Cess shall not be quoted at present since the same is applicable for selected mines under SECL and shall be separately payable if applicable as per the invoices received from SECL/CIL based on actual dispatch from the mines. The same was considered by bidders during submission of their bids.

- 4.9. In respect of the Clause 22.9 - Additional Fuel Supply Agreement, it is stated that the Petitioner's Bid documents provided the event of Fuel Shortage, Supplier shall procure fuel under Additional Fuel Supply Agreement (AFSA) with prior approval of Petitioner, which Petitioner may deny in its sole discretion. Supplier shall submit AFSA for review and concurrence of Petitioner and Petitioner shall submit the AFSA for review and approval of Commission.

In this regard, the Commission in the Order dated 01.08.2022 has observed that in case of emergency which is temporary in nature i.e. for period not more than three (3) months in a year, when the availability of fuel for generation is not available or possible from the linkage coal allocated by Petitioner in such exception condition following provision shall apply.

In the instance when project is available but fuel is unavailable, pending approval of the Commission the generator may not be able to generate electricity though it may be ready to arrange for alternative fuel. If the generation cost of electricity is cheaper than the tariff discovered under the competitive bidding or lower than it, in that case it is desirable to optimize

utilization of generating assets as commercial principle. In such conditions, Generator / Supplier may be allowed to generate electricity not exceed the ceiling price as discovered under competitive bidding for the said plant. Further, Generator / Supplier shall get approval for such limited period within 1 month and approach the Commission for approval of alternative mechanism for procurement of fuel and approval of AFSA.

As per the aforesaid directive, the Petitioner has added following sub proviso under clause 22.9.2:

*"In case of emergency situation which is temporary in nature not exceeding 3 months in a contract year when the availability of fuel for generation is not available or possible from the linkage coal allocated by Utility, Supplier may be allowed to procure and generate power under AFSA for supply under this Agreement provided that the landed cost of electricity to Utility is cheaper / lower than the tariff discovered under the competitive bidding in accordance with the PPA subject to ceiling price being the tariff discovered under the competitive bidding in accordance with the PPA. Further, Supplier shall be required to seek approval of Utility for above limited period arrangement within 1 month and also immediately approach Gujarat Electricity Regulatory Commission for procurement of fuel and approval of additional fuel supply agreement. For avoidance of doubt, it is to clarify that Utility may seek additional documents from Suppliers towards cost of fuel."*

In the above clause, the Petitioner has modified "generation cost" as "landed cost" as cost comparison for substitution of supply would be based on landed cost of electricity to Petitioner. Moreover, a clarification has been added stating that the Petitioner may seek additional documents from Supplier towards cost of fuel to ascertain the actual cost. Based on the above, the Petitioner prayed to approve modification carried out for purpose of clarification.

*9.8. Change in Law (Clause 34 - PSA): Petitioner in the petition has proposed to modify the Change in Law provision in line with Ministry of Power Guidelines /Model PPA for 2007-2010.*

The Commission has observed that Ministry of Power has framed Electricity (Timely recovery of cost due to Change in Law) Rules 2021. As per the same, Change in Law impact needs to be passed on immediately with consideration of mutual discussion between the parties. Timely recovery of financial impact due to Change in Law is required to be passed on to concerned beneficiary as per aforesaid rules to compensate affected party so as to restore such affected party to same economic position. The Commission has directed Petitioner to align provision of the bid document with the aforesaid Rules.

Further, it has been directed that either Party claiming Change in Law shall approach Commission for approach within 1 month from the date of claim. Moreover, principle of economic / financial restitution provided under Electricity Rules 2021 shall be retained in bid documents.

In compliance to the above directives of the Commission, the Petitioner has replaced the Change in Law provision in the PSA as per Rule 2021 notified by the Ministry of Power with following appropriate modifications:

*(a) Change in law: Ministry of Power Rules provides that enactment / amendment / repeal of any law after determination of tariff under Section 63 of Act. The same has been appropriately modified that as after "Bid Due Date" i.e. last date of bid submission (18.05.2023 as per the Petitioner timelines under tender) for better clarity in line with existing Change in Law mechanism under long term PSA.*

The Commission at para 14.22.16 has observed that the impact of Change in Law be worked out with consideration of parameters as specified in the PSA/agreement subject to ceiling for such parameters in the Regulations specified by Appropriate Commission. It is stated that for the purpose of clarity with regard to the ceiling of such parameters for the purpose of adjustment under Change in Law, it has been incorporated that the Regulations referred shall be Multi Year Tariff Regulations 2016 of Commission, which has been

prevailing at the time of signing of the PSA. Commission is requested to kindly approve the minor modification incorporated for the purpose of clarification.

*(b) Formula for determination of impact in tariff due to Change in Law:*

Ministry of Power Rules provides a formula for computation of impact in tariff. The same has been adopted by Petitioner with clarification that Normative Availability Factor shall be considered for the purpose of computation of monthly tariff and true up of such amount shall be done on annual basis based on actual availability for the year so as to ensure payment is capped at yearly annuity amount. The same is essential to avoid unfettered cost implication in case of non-availability / non-supply of power by the Generator under the PSA.

**Rate of interest:** With regard to rate of interest for computation of monthly tariff for recovery of change in law, Ministry of Power Rules provides that annual rate of interest as considered by Central Electricity Regulatory Commission (CERC) in its tariff order for conventional or RE for the year in which project is commissioned may be considered. In absence of relevant CERC orders, interest rate shall be average interest rate plus 200 basis points above the average SBI Marginal Cost of Funds based lending rate of 1-year tenor prevalent during the last available six months for such period may be considered.

In the Petitioner's tender, majority of operational projects having multiple units in the project were anticipated to participate. The applicable CERC order may be different for a generating unit of the plant and Project as a whole. Accordingly, to avoid dispute/interpretations issues during PPA implementation stage, for consideration of applicable interest rate for computation of Change in Law payment, interest rate linked to SBI 1 year MCLR as stated above is being adopted in the Petitioner's tender documents. The same has been accordingly incorporated in the Change in Law Clause 34.2.6.

- 4.10. It is stated that modifications as well as clarifications incorporated by the Petitioner in the bidding documents during the bidding process is after taking into consideration the representations received from the prospective bidders

and in order to encourage better participation by ensuring commercial clarity to the modality of power purchase under the agreement and to safeguard the interest of the Petitioner and consumers at large.

- 4.11. It is stated that the Petitioner has carried out following modifications in the Bidding documents by issuing appropriate Corrigendum for information to all stakeholders:

**(A) Minimum Capacity for Participation (in MW) (Clause 1.1.1 & 1.1.4 RFP)**

It is stated that the Commission in its Order dated 01.08.2022 has approved the modification of minimum MW requirement to 300 MW (10% of the Total Capacity) to enable competition amongst the bidders.

It is further stated that after release of bidding documents, various requests have been received requesting the Petitioner to reduce the aforesaid minimum threshold capacity for participation on the grounds that considerable capacities are lying unutilized with the operational projects which can be offered under the bid at competitive rates. Further, representation have been received that if 300 MW minimum capacity criteria is kept, huge sub-critical technology based capacity with operational project would not be able to participate who would be having competitive rate of generation.

It is stated that the Petitioner received various requests to reduce the minimum capacity to 100-150 MW for enabling participation by merchant capacity. In view of limited participation anticipated under the tender and considering the tender total requirement of 3000 MW, in order to encourage participation and to achieve competitive rate of generation, the Petitioner had modified the minimum capacity from 300 MW to 150 MW.

It is stated that the petitioner vide letter no. 1327 dated 25.11.2022 has apprised the aforesaid modification with regard to minimum threshold quantity under the tender to the Commission for encouraging improved participation under the Tender invited by the Petitioner. It is to mention that out of the total 4 bids received under the tender, 3 bids are for the quantum less than 300 MW at delivery point i.e. GETCO periphery. The Petitioner has prayed to the Commission to approve the aforesaid modification.

**(B) GCV Variation Modality (Clause 22.3 PSA):**

It is stated that as per the Commission's directions in the order dated 01.08.2022, Petitioner has modified the GCV used for the computation of fuel charge to "as received basis" and with further adjustment of 85 kCal/kWh for stacking losses and issued appropriate clarification for the same under ex-mine cost of coal working pre-specified by the Petitioner.

It is further stated that upon necessary modification and clarification to allow computation of Energy Charge during the operational tenure based on "as received basis", to provide clarity and to safeguard the Petitioner against the impact of GCV deterioration and loss from loading end to the firing end, Petitioner has defined and pre-specified the process for computation of Energy Charge based on the coal received and characteristics of coal as mentioned under the sampling certificate. Under this mechanism, it has been clarified that maximum GCV moisture difference of up to 300 kcal/kg shall be allowed for the purpose of computation of Energy Charge (i.e., average variation between GCV(TM) and GCV (EM) is subject to a ceiling of 300 kCal/kg shall be considered for the purpose of Fuel Charge), based on the sampling certificate. Any remaining GCV loss, if applicable, must be borne by the Supplier during the tenure of PPA. The Petitioner has clarified the same vide Corrigendum -III.

The Petitioner prayed that the Commission to approve the modification carried out for providing the clarity on commercial settlement and fuel charge computation on "as received basis", risk sharing for the loss of GCV and to align the same in line with Ex-mine cost of coal defined by the petitioner based on which bids have been received.

**(C) Transmission Charges and Transmission Losses (Clause 5.5, 5.6 & 21.13 of PSA):**

As per the bidding documents approved by the Commission vide order dated 01.08.2022, the Petitioner has pre-specified the ISTS Transmission charges and Transmission losses to ensure uniformity in evaluation of bids. Prior to bid submission due date, the Petitioner has released Corrigendum-V as under:

- The transmission charges (ISTS Network) applicable as on Bid Due date, pre-specified by the Petitioner, to be considered while submitting the bid is 54 paise/kWh (worked out after grossing up at 90% normative level - NLDC notification dated 25.04.2023 for Apr-2023 for billing month of May-2023, as per Corrigendum -V).
- The transmission losses (ISTS Network) applicable as on Bid Due date, pre-specified by the Petitioner, to be considered while submitting the bid is 3.67% (Notified by NLDC for 15.05.2023 to 21.05.2023, as per Corrigendum -V).

The Petitioner prayed the Commission to approve the same. Based on the above, bids have been received and any variation in the above charges & losses during the tenure of the PPA will be subject to necessary adjustment as per the terms and conditions of the PSA.

**(D) Conditions Precedent (4.1.3 of PSA) & Financial Closer (20.1.1 of PSA)**

As per draft Bid Documents, after 60 days from signing of PPA, the Petitioner is required to fulfil the Conditions Precedent within the timelines stipulated subsequent to notice of Supplier. Similarly, Supplier is

required to satisfy Conditions Precedent within 180 days from date of PPA. The timelines is as per the Model Bidding Documents of Ministry of Power.

In view of the supply being envisaged under the tender from Scheduled Commencement Date (tentatively by September 2023 indicated at the time of bidding), to ensure compliance to conditions precedent by Supplier on timely basis and avoid delay in supply commencement, the time period provided for fulfilment of Conditions Precedent has been rationalized by the Petitioner from 180 days to 90 days. Further, similar modification has been made for Type 2 project (yet to commission projects) towards time period allowed for achievement of Financial Close from the date of PPA. In view of the commissioning timelines tentatively by September 2023, the same has also been rationalized from 180 days to 90 days as such project/units, ought to be at advanced stage of commissioning.

The Petitioner vide Corrigendum-II has intimated the aforesaid modification to Article 4 (Clause 4.1.3) and Article 20 (Clause 20.1.1) with regard to reduction in timelines from 180 days to 90 days.

**(E) Schedule-E (PSA):**

It is stated that the Petitioner in its tender has allowed generating units/project which are yet to commercially operationalized as well as operational projects/units commissioned on or after 01.01.2013. Article 11 of PPA provides for the obligations and timelines with regard to Project Completion Schedule and consequences in case of delay in achievement of Commercial Operational Date by Scheduled Supply Commencement Date which is to be pre-indicated by GUVNL. At present, GUVNL had indicated the tentative Supply Commencement Date as September, 2023. Accordingly, even generating units which are under construction would have to be in advanced stage of commissioning to participate under the tender for supply commencement as per Petitioner's tender timelines.

In view of above, in order to address the ambiguity with regard to the timelines for commissioning, Schedule-E has been appropriately revised clarifying that Type 1 and Type 2 projects shall ensure completion of all the activities related to plant operationalization so as to ensure supply of power by Scheduled Supply Commencement Date.

The Petitioner prayed that the Commission to approve the project specific modification.

4.12. It is stated that pursuant to aforesaid approval of the Commission on 01.8.2022, the Petitioner had released the final bid documents on DEEP Portal of Ministry of Power and also on Petitioner website for wider circulation. The last date for Bid Submission on DEEP Portal was 22.12.2022 (17:00 Hours). It is stated that the Petitioner had received Bids from 4 Bidders.

4.13. It is further stated that the Petitioner has opened the Bid on 27.12.2022 and the following Bidders has submitted the bid as under:

1. GMR Warora Energy Limited, Chandrapur District, Maharashtra (GMRWEL)
2. Jindal Power Limited, Tamnar District, Chhattisgarh (JPL)
3. MB Power Limited, Anuppur, Madhya Pradesh (MBPL)
4. DB Power Limited, District Janjgir-Champa, Chhattisgarh (DBPL)

4.14. It is stated that as per the Petitioner's Bid Documents, the selection of the bidder is through a two stage bidding process (i) First Stage - Qualification Stage - at the end of this stage Petitioner has to announce list of prequalified applicants who shall be eligible for participation in 2<sup>nd</sup> stage of bid ii) Second Stage - Bid Stage - for submission of financial proposal under the tender.

4.15. The relevant salient provisions of the RFQ tender document for towards eligibility and qualification for a bidder is as under:

<b>Sr. No.</b>	<b>Provision</b>	<b>Particulars</b>
1	Clause 2.2.1	Eligibility of Applicant

2	Clause 2.2.2	<p>Threshold Technical Capacity: For demonstrating technical capacity and experience — Paid or received payment for eligible projects for an amount more than Rs. 5 Cr/ MW during last 5 years</p> <p>Financial Capacity: Minimum Net Worth of Rs. 1.5 Cr / MW of the capacity offered by Applicant at close of preceding financial year</p> <p>Statutory Auditor Certificate to be submitted</p>
3	Clause 2.19	<p>Tests of responsiveness Towards submission of the documents, certificates and details as required under the qualification</p>

4.16. M/s Mercados Energy Markets India, Bid Process Consultant appointed by the Petitioner has carried out the detailed scrutiny/analysis of the documents submitted by the bidders towards pre-qualification stage. After detailed scrutiny and verification, the Technical Evaluation Report was submitted on 27.01.2023 covering details with regard to observation raised, clarification/ details received from bidders and status of compliance with reference to requirement under the Tender documents for pre-qualification. As per the Technical Evaluation Report, in accordance with the details submitted and clarification received, all 4 bidders stood complied with the requirement of the RFQ tender documents towards technical & 19 financial criteria and responsiveness in terms of GUVNL's tender documents.

4.17. It is stated that the Petitioner has carried out detailed evaluation of the eligibility requirement, qualification requirement, proposal responsiveness, Technical and Financial Evaluation of the bid documents as per RFQ document.

4.18. It is stated that following a comprehensive evaluation of bids, it was determined that all four bidders met the technical qualification criteria. The Bidders were officially notified of their technical qualification through a Letter of Invitation on 14.02.2023 in accordance with the tender documents.

- 4.19. It is stated that pursuant to technical qualification, the Petitioner had requested the bidders to submit RFP bids by 18.05.2023 (Bid Due Date) with a submission time of 17:00 Hours.
- 4.20. It is stated that as per the Bid Documents, Bidders were required to submit the physical copy of the bids to Petitioner/Utility. Taking into consideration the due date for submission of bids online on DEEP e-bidding portal of Govt. of India, Petitioner vide Corrigendum IV & V has allowed the bidders to ensure the submission of physical bids to the Petitioner in a sealed cover within 2 days from the Bid Submission Due Date i.e. 20.05.2023 and also release the draft of Model Fuel Supply Agreement received from Coal India. As per the timelines, all four bidders had submitted the physical bids by 20.05.2023.
- 4.21. Clause 2.11 of RFP with regard to submission of bids provides as under:
- (a) Bid Security in the format at Appendix-II
  - (b) Power of Attorney for signing of Bid in the format at Appendix-III
  - (c) If applicable, Power of Attorney for Lead Member of Consortium in the format at Appendix-IV and
  - (d) A copy of the draft PSA-DBFOO with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (b) hereinabove.

Further, as per Clause 3 - Evaluation of Bids as per RFP, under the tests of responsiveness following aspects are to be considered:

- a) It is received as per the format at Appendix-I
- b) It is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;
- c) It is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11;
- d) It is accompanied by the Bid Security as specified in Clause 2.1.7;
- e) It is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;

- f) It contains all the information (complete in all respects) as requested in this RFP-DBFOO and/or Bidding Documents (in formats same as those specified);
- g) It does not contain any condition or qualification; and
- h) It is not non-responsive in terms hereof.

4.22. It is stated that before opening the financial bids, the responsiveness check for all the bidders were carried out and verified.

4.23. It is stated that all 4 bidders having complied with the requirement as per tender terms under RFP stage, the Petitioner considered the compliance towards tests of responsiveness for proceeding to price opening stage. Following responsiveness check, the price bids were opened on 15.06.2023 on DEEP e-bidding portal & sealed cover received. The initial submission of the bids are as follows:

<b>Statement of Price discovered in Long Term tender for SHAKTI Para B (iv)</b>				
	<b>D B Power</b>	<b>M B Power</b>	<b>GMR Warora</b>	<b>Jindal Power</b>
	<b>L1</b>	<b>L2</b>	<b>L3</b>	<b>L4</b>
Capacity offered quantum	293	155	150	350
Fixed Charge .....(A)	3.06	2.87	2.46	3.14
Total Ener Charge .....(B)	1.50	1.69	2.31	1.82
Cost of Fuel	1.22	1.22	1.23	1.22
Cost of Transportation	0.28	0.47	1.08	0.57
Cost of Washing	0.00	0.00	0.00	0.03
ISTS transmission Charge.....(C)	0.54	0.54	0.54	0.54
ISTS transmission losses..... (D)	0.17	0.18	0.20	0.19
<b>Total Landed Tariff at GETCO Periphery A+B+C+D</b>	<b>5.27</b>	<b>5.28</b>	<b>5.51</b>	<b>5.69</b>

4.24. It is stated that Clause 3.3.1 of the PSA provides that in the event Petitioner rejects or annuls all the bids, it may, in its discretion invite all eligible bidders to submit fresh bids hereunder. In the instant tender, the Bid Security and Documents have already been submitted by all 4 bidders and DEEP e-bidding portal does not provide the specific feature for re-submission of revised tariff under the same tender while re-tendering may consume considerable time.

- 4.25. It is also stated that PFC Consulting while acting as an aggregator under the tender invited for 4500 MW bids for 5 years period for utilization of SHAKTI Coal under Para B (v) had invited all qualified bidders to re-submit their bids for negotiation as the price bids submitted were on higher side.
- 4.26. On the similar lines, since the long term arrangement is for 15 years (5 years extendable) and domestic coal is being arranged by the Petitioner through SHAKTI allocation under B (iv) while considering the limited participation under the tender, in the interest of consumers of the State, the Petitioner issued letter dated 07.07.2023 to all Bidders requesting them to resubmit their proposals with the most competitive and lower rates possible in reference to their quoted rates.
- 4.27. Following this request, L1 bidder and L2 bidder took action and revised their tariff offers accordingly vide separate letters dated 13.07.2023. While L3 bidder and L4 bidder vide letter dated 12.07.2023 and 13.07.2023 respectively, declined to reduce their tariff and validated their original offer. The Petitioner vide email dated 15.07.2023 had intimated all the bidders that revised price offer submitted through physical bids is scheduled to be opened on 17.07.2023 at GUVNL's Office at Vadodara. Thereafter, the revised price covers were opened in presence of nominated representative of qualified bidders. The details of revised tariff submitted by the bidders is as under:

<b>Particulars</b>	<b>Bidders - Revised submission</b>			
	<b>DBPL (L1)</b>	<b>MBPL (L2)</b>	<b>GMR (L3)</b>	<b>JPL (L4)</b>
Capacity Offered (MW)	293	155	150	350
Fixed Charge (Rs./kWh)	2.97	2.84	2.46	3.14
Variable Charge (Rs./kWh)	1.50	1.69	2.31	1.82
Cost of Fuel	1.22	1.22	1.23	1.22
Cost of Transportation	0.28	0.47	1.08	0.57
Cost of Washing	0.00	0.00	0.00	0.03
ISTS Transmission Charge (Rs./kWh)	0.54	0.54	0.54	0.54
ISTS Transmission Losses (Rs./kWh)	0.17	0.18	0.20	0.19
Total Charge (Rs./kWh) - Landed Cost at GETCO Periphery	5.18	5.25	5.51	5.69

4.28. It is stated that the relevant provision of Bid Documents with regard to lowest bids/L1 matching is as under:

- (a) **Clause 1.1.4** - RFP: Provides that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid.
- (b) **Clause 3.3.3** - Second round of bidding - If capacity required is not met through Lowest bidder, the petitioner may invited the remaining bidders to match the bid of lowest bidder. If only one bidder matches the lowest bidder, it shall be selected bidder.
- (c) **Clause 3.3.4** - Third round of bidding - If no bidder offers to match the lowest bidder in 2nd round of bidding, the petitioner may invite fresh bids from all bidders except lowest bidder of first round or annul the bidding process.
- (d) **Clause 3.3.4** - Third round of bidding - In the 3<sup>rd</sup> round of bidding, only such bids shall be eligible for consideration which are lower than the Bid of second lowest bidder in the first round of bidding.

4.29. In order to evaluate the proposal received, a Bid Evaluation Committee was constituted under the Chairmanship of Chairperson, GUVNL with 2 sector experts. The meetings of the Bid Evaluation Committee were held on 22.08.2023, 28.08.2023 and 11.09.2023 at Gandhinagar, Gujarat. After detailed deliberation, the Bid Evaluation Committee had invited the L1 bidder for discussion and negotiation.

4.30. Pursuant to meeting before the Bid Evaluation Committee, the L1 bidder has submitted the revised offer vide letter dated 31.08.2023 and confirmed vide subsequent letter dated 05.09.2023 reducing its tariff from Rs. 5.18/kWh to Rs. 5.05/kWh i.e. reduction of around Rs. 0.13/kWh in fixed cost. The detailed break up of component wise final offer received from the L1 bidder after negotiation is as under:

<b>Final Revised Offer from L2 bidder</b>	<b>Rs/kWh</b>
Fixed Charge (Rs./kWh)	2.84
Variable Charge (Rs./kWh)	1.50
- Cost of Fuel	1.22
- Cost of Transportation	0.28
- Cost of Washing	0.00
ISTS Transmission Charge (Rs./kWh)	0.54
ISTS Transmission Losses (Rs./kWh) (at 3.67%)	0.17
<b>Total Charge (Rs./kWh) - Landed Cost of GETCO Periphery</b>	<b>5.05</b>

- 4.31. It is further stated that as per the terms of Bid documents, Petitioner vide letter dated 06.09.2023 had requested the remaining Bidders to match the L1 rates in accordance with the terms of the tender and submit the same by 08.09.2023.
- 4.32. It is stated that as per the tender, the validity of the Bid is 120 days from the Bid due date i.e., 15.09.2023. M/s M B Power Limited and M/s GMR Warora Limited vide letter dated 07.09.2023 and 08.09.2023 respectively had requested for extension in time limit for submission their response to Petitioner's request for L1 matching.
- 4.33. It is stated that the Petitioner vide letter dated 08.09.2023 had sought the extension in bid validity by 15 days i.e. upto 30.09.2023.
- 4.34. The Petitioner is required to have approval of the Commission for payment of tariff to supplier in accordance with provisions of agreement within 30 days after issuing of notice by Supplier subsequent to signing of PSA.
- 4.35. It is stated that the rate discovered under the above bidding process pursuant to L1 matching is Rs. 5.05/unit at Gujarat periphery which includes the transmission cost of around Rs. 0.71/unit as on bid due date and the bid submitted is at considering ceiling Station Heat Rate of 2450 kcal/kWh specified under the bid documents by the Petitioner. Further, as per the tender terms and clarifications issued, the quoted tariff includes the cost towards compliance to revised environmental norms.
- 4.36. With regard to discovered rate, it is stated the following market scenario under medium term / long term basis:

**(A) MADHYA PRADESH - M. P. POWER MANAGEMENT COMPANY LTD. TENDER FOR TIE UP BASED ON SHAKTI B (IV) LINKAGE COAL**

M. P. Power Management Company Limited the holding company of State Owned Distribution Companies of Madhya Pradesh had invited tender for tie up of 1230 MW capacity from the project to be set up on Design, Build, Finance, Own &

Operate basis in accordance with Ministry of Power Guidelines dated 05.03.2019.

MPPMCL conducted a bidding process to procure 1230 MW of electricity on a long-term basis from a 1320 MW Thermal Power Station to be established in Madhya Pradesh. The power station will operate under the Design-Build-Finance-Own-Operate (DBFOO) framework, with fuel sourced from the Allocated Coal Linkage arranged by MPPMCL in accordance with the SHAKTI BIV) Policy. The power supply from the project is envisaged from 2025-26 for 25 years period.

The bids were received in February 2020 and financial bids offered Bidders is as under:

Name of the Bidder	Fixed Charge (Rs./kWh)	Fuel Charge (Rs./kWh)	Total Tariff (Rs./kWh)	Ranking	Indicative Tariff for FY 2023-24 (Rs./kWh)
Adani Power Limited	2.898	1.892	4.790	L1	5.00
MB Power (MP) Limited	3.077	2.330	5.407	L2	NA
JSW Energy Limited	3.350	2.146	5.496	L3	NA

As per MPPCL tender documents, Base Fixed Charges is to be adjusted with variation in WPI on annual basis to reflect 30% of variation - indicative Fixed Charge works out to Rs. 3.09/unit for FY 2023-24 while Fuel Charge escalation will be as per the increase in notified price of coal by Coal India / Subsidiaries from time to time in reference to the quoted energy charge. The above working excludes the escalation in coal price and transportation cost, which would be in addition to the above indicative tariff.

In view of the above, the rate at which power is proposed to be tied up with L1 bidder is competitive under the Petitioner tender as supply commencement is envisaged within short period.

**(B) PFC Consulting Limited Nodal Agency, Govt. of India tender for tie up of power on medium term basis offering Linkage coal from Coal India Limited to bidders under Para B (v) of SHAKTI Scheme**

PFC Consulting invited tender for procurement of Aggregate Power of 4500 MW requirement of Group of States for undertaking tariff based competitive bidding for medium term procurement of Power under para B (v) of Shakti Policy, 2017. The Tender was issued on May 15, 2023. Technical and Financial bid were opened on June 30, 2023 and July 07, 2023 respectively.

**a. Capacity Required - 2611.0 MW; Coal Source - Talcher**

Name of the Bidder	Quantity (MW)	Base Fixed Charge (Rs./kWh)	Cost of Fuel (A) (Rs./kWh)	Cost of Transportation (B) (Rs./kWh)	Base Variable Charge (A+B) (Rs./kWh)	Total Tariff (Rs./kWh)
Jindal India TPL	200	2.56	2.10	0.48	2.58	5.14
RKM Powergen Pvt Ltd	300	2.745	1.508	1.237	2.745	5.49

*\*Tariff offered is at generating station bus bar level; ISTS charges and losses for the delivery of power at the State periphery to be added separately - usually around 60-70 paise/kWh.*

**b. Capacity Required - 1567.0 MW; Coal Source - IB Valley**

Name of the Bidder	Quantity (MW)	Base Fixed Charge (Rs./kWh)	Cost of Fuel (A) (Rs./kWh)	Cost of Transportation (B) (Rs./kWh)	Base Variable Charge (A+B) (Rs./kWh)	Total Tariff (Rs./kWh)
DB Power Ltd.	100	2.6	1.92	0.68	2.60	5.20
SKS Power Generation	100	2.24	2.27	0.69	2.96	5.20
TRN Energy Private Limited	100	2.16	1.845	1.197	3.042	5.202
Jindal Power Limited	300	2.6	1.74	0.88	2.62	5.22

MB Power Limited	160.25	2.64	1.71	0.93	2.64	5.28
RKM Powergen Pvt. Limited	300	2.7	1.508	1.192	2.70	5.40

*\*Tariff offered is at generating station bus bar level; ISTS charges and losses for the delivery of power at the State periphery to be added separately - usually around 60-70 paise/kWh.*

4.37. In the medium term bid invited by PFCCL for 4500 MW, bids for 1560 MW i.e. 34% capacity has been received at weighted average Total Tariff of Rs. 5.30/kWh at Generator level which works out to around Rs. 5.99/unit at GETCO periphery for first year. Supply under the same was envisaged from September 2023 for period of 5 years.

4.38. It is submitted that the scenario of power availability and its rates in the Spot Market i.e. Power Exchanges during last 3 years:

Calendar Year	Market Clearing Prices (Rs. kWh)	Landed Cost of power from Power Exchanges (after losses & margin) (Rs./kWh)
2021	4.33	4.51
2022	5.82	6.06
2023	5.74	5.97
Average	5.30	5.51

*\*Source: Website of Indian Energy Exchange*

4.39. The spot power market viz. Power Exchanges, Short Term Market and Medium Term market are witnessing the increase in power purchase rates during last few years due to limited new thermal capacity in the State, high growth in energy demand across the country and increase in prices of fuel.

4.40. The tariff of the L1 selected bidder of Rs. 5.05/kWh being after the applicability of ISTS transmission charges & losses, including cost towards compliance to environmental norms, with pre-specified Station Heat Rate criteria and normatively availability of 90% during the contract year is competitive in nature and will help State in meeting its power demand through economic sources on long term basis.

4.41. It is stated that considering the prevailing power scenario, high discovered market prices for short term and medium term tenders, tariff of recently commission CPSU thermal projects, limited upcoming thermal power projects in the country and in view

of increasing power demand of the State, the L1 discovered tariff of Rs. 5.05/kWh for first year at Gujarat periphery being reasonable, the Petitioner has proceeded to tie up power from the same. It is respectfully submitted that the project of L1 bidder is in proximity to the coal source SECL (Coal India) and located in Chhattisgarh and may enable savings in coal transportation cost as compared to projects located in the State of Gujarat or outside Chhattisgarh in the event coal remains to be available from SECL coal mines under the PSA.

- 4.42. In the above background and in accordance with Section 63 of the Electricity Act, the present Petition is hereby filed by the Petitioner for adoption of tariff discovered pursuant to the Competitive Bidding Process conducted for procurement of 3000 MW of electricity under long term on DBFOO basis using concessional fuel allocated by Coal India Limited (CIL) as per Ministry of Power Guidelines dated 06.03.2019.
- 4.43. The power supply under the aforesaid arrangement is envisaged to commence from 1<sup>st</sup> December 2023 which would be subject to availability of domestic coal from Coal India under SHAKTI B (IV). It is requested that the Commission may adopt the tariff discovered as per competitive bidding process for purchase of power. It is also stated that the Bid Process followed by the Petitioner under the tender in accordance with the Ministry of Power Guidelines dated 06.03.2019 and Tender Documents released by the Petitioner along with the clarifications & Corrigendum.
- 4.44. It is stated that tie up of power from domestic coal based capacity located near the coal source may support the Petitioner in diversifying the power purchase portfolio and minimize the fuel related risk in view of anticipated coal availability by Coal India under the FSA to the bidder selected through competitive bidding process.
- 4.45. It is to further submitted that upon receiving appropriate approval from the Commission the Petitioner is also required to initiate process for payment security mechanism, procure consent from CIL for execution of FSA etc. for off-take of power.
- 4.46. In view of above, it is submitted that the Commission may adopt the tariff under Section 63 and approve the power tie up arrangement including the signed PSA so as to enable the Petitioner to submit the requisite approval as per the tender documents to M/s Coal India Limited and Ministry of Coal, Govt. of India for fulfilment of contractual

obligations of the Petitioner to arrange for Fuel Supply Agreement with Coal India/Subsidiaries for adequate coal availability under the PSA and for commencing off-take of power under the arrangement at the earliest in view of prevailing power scenario.

5. The matter was heard on 22.12.2023. Nobody was present on behalf of the Respondent D.B. Power Limited. The representative appearing on behalf of the Petitioner GUVNL, reiterating the facts of the Petition as stated in above para.

5.1. During the course of hearing, the Petitioner was directed to submit the details with regard to the modifications carried out in the tender documents and the observations & recommendations of the Bid Committee constituted for selection of the successful bidder.

6. In response to the above, the Petitioner has filed submissions dated 29.12.2023 and stated that the Petitioner has carried out the following modifications which are towards the incidental aspects to the Commission directives vide Order dated 01.08.2022 while approving the bid documents as specified in detail in the Petition filed by the Petitioner vide affidavit dated 26.10.2023. In addition, the Petitioner has carried out certain modification in the bid documents for the purpose enabling the participation in the tender process.

**6.1. Minimum Capacity for participation (in MW) (Clause 1.1.1 & 1.1.4 RfP).**

The Commission had approved the modification of minimum MW requirement to 300 MW (10% of the Total Capacity) to enable competition amongst the bidders.

6.2. It is stated that various requests have been received from prospective bidders for reduction in threshold capacity to 100 MW. In view of limited envisaged participation anticipated under the tender and considering the tender total requirement of 3000 MW in order to encourage participation and to achieve competitive rate of generation, the Petitioner had modified the minimum capacity from 300 MW to 150 MW which was duly informed in advance vide Corrigendum-I. It is stated that Power Finance Corporation, nodal agency of Govt. of India in its tender invited in 2023 for seeking bids

of generators from 4500 MW aggregated capacity under Medium Term period of 5 years based on lumpsum tariff offering domestic coal under SHAKTI B (V) scheme has kept minimum capacity of 100 MW for the participation. In this tender also, the participation has been very limited from only 8 bidders with total 1560 MW capacity.

6.3. It is stated that the Petitioner vide letter No. 1327 dated 25.11.2022 has apprised the aforesaid modification with regard to minimum threshold quantity under the tender to the Commission for encouraging improved participation under the Tender invited by the Petitioner. It is stated that out of the total 4 bids received under the tender, 3 bids are for the quantum less than 300 MW at delivery point i.e. GETCO periphery. The Petitioner prayed that the the Commission to approve the aforesaid modification for encouraging participation.

**6.4. Modification in Clause 4.1 of PSA with regard to Change in Law applicability:**

In accordance with the Commission directive vide Order dated 01.08.2022, the Petitioner has added following para at Clause 4.1 of PSA regarding change in law applicability for the Norms /Rules notified after the Bid Due Date.

*".....However, any Change in Environmental norms notified/made by the competent Authority/Government after Bid Due Date that shall be required to be complied by the selected bidder (Supplier) to generate and supply power to the Utility and which qualify as 'Change in Law' in terms of provisions of the PSA shall be permitted as Change in Law and tariff adjustment as per the provisions of PSA"*

**6.5. Compliance of Environmental Norms:**

Further, the Petitioner has uploaded an Undertaking to be submitted by the supplier towards compliance to environmental norms and that it shall not claim any amounts towards such capital expenditure pursuant to selection. The Petitioner prayed the Commission to approve the aforesaid modification for clarity purpose.

**6.6. Clairty with landed cost of electricity 'tariff' prevailing for that contract year under the PSA after taking into account adjustments related to WPI, fuel cost, transportation cost, SHR etc.**

It is stated that as directed by the Commission the clause has been appropriately incorporated by Petitioner in the PSA (at Clause 18.6) with minor modification that the consideration of the power purchase rate (i.e. at discovered tariff) with regard to qualification for substitution shall be considered by the Petitioner as the landed cost "tariff" as prevailing for that contract year under the PSA after taking into account adjustments related to WPI, Fuel cost, transportation cost, SHR etc. as per the terms & conditions of the PSA. The same is essential for having clarity in terms of cost comparison during the operational tenure of the PPA for substitution of supply. The Petitioner prays the Commission to approve the aforesaid modification for commercial clarity.

**6.7. Modality of ex-mine coal cost and GCV calculation for fuel charge working based on sampling certificate.**

It is stated that as directed by Commission to declare the Ex-mine coal cost for uniformity of bid evaluation, prior to the bid submission due date, in order to provide the clarity with regard to the pricing of coal & GCV to be considered for the computation of Energy Charge payment for bidding purpose and for payment purpose during the PPA tenure, appropriate clarification with regard to Energy Charge computation had been issued by the Petitioner prior to bid submission due date that GCV of Coal would be considered by factoring the TM basis (%) as certified by designated agency in its sampling certificate at loading end. Further, it has also been clarified that such GCV derived (TM basis) shall be considered as "As Received Basis" under the PPA at all times. Simultaneously, in order to safeguard the interest of Petitioner (Utility), it has been clarified that adjustment of GCV towards TM will be subject to ceiling of 300 kcal/kWh during the tenure of PPA. The detailed methodology for the same have been incorporated in the PSA with modification of Clause 22.3 for purpose of clarity and removal of ambiguity.

6.8. Moreover, to provide clarity and to safeguard the Petitioner against the impact of GCV deterioration and loss from loading end to the firing end, Petitioner has defined and pre-specified the process for computation of Energy Charge based on the coal received and characteristics of coal as mentioned under the sampling certificate. Under this mechanism, it has been clarified that maximum GCV moisture difference of up to 300 kcal/kg shall be allowed for the purpose of computation of Energy Charge

(i.e., average variation between GCV(TM) and GCV (EM) is subject to a ceiling of 300 kCal/kg shall be considered for the purpose of Fuel Charge), based on the sampling certificate. Any remaining GCV loss, if applicable, must be borne by the Supplier during the tenure of PPA. The Petitioner has clarified the same vide Corrigendum – III prior to the bid submission stage for information to all the bidders.

6.9. The Petitioner vide Corrigendum III has issued the Ex-mine Cost of Coal along with detailed working and clarified all the bidders to submit the Energy Charge in accordance with the computation modality pre-specified so as to have uniformity and comparability for evaluation of the bids.

6.10. It is requested to approve the modality of Ex-mine cost of coal and incidental modification carried out for providing the clarity on commercial settlement and fuel charge computation on "as received basis", risk sharing for the loss of GCV and to align the same in line with Ex-mine cost of coal defined by the Petitioner based on which bids have been received.

#### **6.11. Additional Fuel Supply Agreement**

It is stated that as per the directive of Commission, the Petitioner has added following sub proviso under clause 22.9.2 of PSA:

*"In case of emergency situation which is temporary in nature not exceeding 3 months in a contract year when the availability of fuel for generation is not available or possible from the linkage coal allocated by Utility, Supplier may be allowed to procure and generate power under AFSA for supply under this Agreement provided that the landed cost of electricity to Utility is cheaper / lower than the tariff discovered under the competitive bidding in accordance with the PPA subject to ceiling price being the tariff discovered under the competitive bidding in accordance with the PPA. Further, Supplier shall be required to seek approval of Utility for above limited period arrangement within 1 month and also immediately approach Gujarat Electricity Regulatory Commission for procurement of fuel and approval of additional fuel supply agreement. For avoidance of doubt, it is to clarify that Utility may seek additional documents from Suppliers towards cost of fuel."*

6.12. In the above clause, Petitioner has modified "generation cost" as "landed cost" as cost comparison for substitution of supply would be based on landed cost of electricity to Petitioner. Moreover, a clarification has been added that Petitioner may seek additional documents from Supplier towards cost of fuel to ascertain the actual cost. It is humbly submitted to kindly approve the minor modification carried out for purpose of clarification during the operational tenure of the agreement.

### 6.13. Change in Law:-

It is stated that in reference to Commission' directive to the Petitioner to align provisions of the bid document with the Ministry of Power Rules, the Petitioner has replaced the Change in Law provision in PSA as per MoP Rules 2021 with following appropriate modifications:

- (a) Ministry of Power Rules provides that enactment /amendment/repeal of any law after determination of tariff under Section 63 of Electricity Act, 2003. The same has been appropriately modified that as after "Bid Due Date" i.e. last date of bid submission (18.05.2023 as per the Petitioner timelines under tender) for better clarity in line with existing Change in Law mechanism under long term PSA. The Commission is requested to approve the minor modification for purpose of clarification.
- (b) The Commission at para 14.22.16 has observed that the impact of Change in Law be worked out with consideration of parameters as specified in the PSA/agreement subject to ceiling for such parameters in the Regulations specified by Appropriate Commission. It is stated that for the purpose of clarity with regard to the ceiling of such parameters for the purpose of adjustment under Change in Law, it has been incorporated that the Regulations referred shall be GERC's (Multi Year Tariff) Regulations 2016, which has been prevailing at the time of signing of the PSA. The Commission is requested to approve the minor modification incorporated for the purpose of clarification.
- (c) Ministry of Power Rules provides a formula for computation of impact in tariff. The same has been adopted by Petitioner with clarification that Normative Availability Factor shall be considered for the purpose of computation of monthly

tariff and true up of such amount shall be done on annual basis based on actual availability for the year so as to ensure payment is capped at yearly annuity amount. The same is essential to avoid unfettered cost implication in case of non-availability/non-supply of power by the Generator under the PSA.

(d) With regard to rate of interest for computation of monthly tariff for recovery of change in law, majority of operational projects having multiple units in the project were anticipated to participate. The applicable CERC order may be different for a generating unit of the plant and Project as a whole. Accordingly, to avoid dispute/interpretations issues during PPA implementation stage, for consideration of applicable interest rate for computation of Change in Law payment, interest rate linked to SBI 1 year MCLR as stated above is being adopted in the Petitioner's tender documents. The same has been accordingly incorporated in the Change in Law Clause 34.2.6 of PSA.

(e) As per the bidding documents approved by the Commission vide order dated 1.08.2022, the Petitioner has pre-specified the ISTS Transmission charges and Transmission losses to ensure uniformity in evaluation of bids. Prior to bid submission due date, the Petitioner has released Corrigendum-V specifying the ISTS transmission charges of 54 Paise/kWh (as per NLDC notification 25.4.2023) and ISTS losses of 3.67% (NLDC notification for 15.05.2023 to 21.05.2023) prior to bid due date. It is prayed the Commission to approve the same. Based on the above, bids have been received and any variation in the above charges & losses during the tenure of the PPA will be subject to necessary adjustment as per the terms and conditions of the PSA.

6.14. In view of the supply being envisaged under the tender from Scheduled Commencement Date (tentatively by September 2023 indicated at the time of bidding), to ensure compliance to conditions precedent by the supplier on timely basis and to avoid delay in supply commencement, the time period provided for fulfilment of Conditions Precedent has been rationalized by the Petitioner from 180 days to 90 days including for Type 2 project. The Petitioner vide Corrigendum-II has intimated the aforesaid modification to Article 4 (Clause 4.1.3) and Article 20 (Clause 20.1.1). The Petitioner prays the Commission to approve the minor project specific modification.

6.15. In Schedule-E (PSA), in order to address the ambiguity with regard to the timelines for commissioning, Schedule-E has been appropriate revised clarifying that Type 1 and Type 2 projects shall ensure completion of all the activities related to plant operationalization so as to ensure supply of power by Scheduled Supply Commencement Date. The Petitioner prayed the Commission to approve the project specific modification.

6.16. It is stated that modifications as well as clarifications incorporated by the Petitioner in the bidding documents is after taking into consideration the representations received from the prospective bidders and in order to encourage better participation by ensuring commercial clarity to the modality of power purchase under the agreement and to safeguard the interest of the Petitioner and consumers at large.

**6.17. Bid Evaluation Committee:-**

The Petitioner has submitted the Technical Bid Evaluation Report. With regard to evaluation of the bids received for purpose of tie up, the Petitioner submitted that a Bid Evaluation Committee was constituted under the Chairmanship of Chairperson, GUVNL with 2 sector experts. The meetings of the Bid Evaluation Committee were held on 22.08.2023, 28.08.2023 and 11.09.2023 at Gandhinagar, Gujarat. After detailed deliberation, the Bid Evaluation Committee had invited L1 bidder for discussion and negotiation. L1 bidder has submitted the revised offer vide letter dated 31.08.2023 and confirmed vide subsequent letter dated 05.09.2023 reducing its tariff from Rs. 5.18/kWh to Rs. 5.05/kWh at GETCO periphery i.e. reduction of around Rs. 0.13/kwh in fixed cost.

6.18. It is stated that the Bid Committee Report consists of the salient observations of the Bid Committee with regard to selection of the L1 bidder are reproduced as under:

*6.1 L1 tariff received after negotiation i.e. Rs. 5.05/kwh being at Gujarat periphery includes the transmission cost of Rs. 0.71/unit as on bid due date and the bid is at ceiling Station Heat Rate of 2450 kcal//kwh.*

*6.2 The quoted tariff includes the cost towards compliance to revised environmental norms.*

6.3 Considering the prevailing power scenario, high discovered market prices for short term and medium term recent tenders, tariff of recently commissioned projects of CPSUs, limited upcoming thermal power projects and in view of increasing power demand of the State, the L1 negotiated tariff of Rs. 5.05/kwh at GETCO periphery for 15 years further extendable by 5 years as project is in proximity with coal source SECL and located in Chhattisgarh.

6.4 GUVNL may issue the Letter of Award (LOA) to L1 bidder for tie up of 293 MW at GETCO periphery for 15 years extendable by 5 years at Rs. 5.05/kwh landed tariff for first year which would be subject to adjustment in accordance with the terms of the Bid Documents and PPA.

6.5 If any other bidder matches the L1 negotiated tariff, the same may also be considered for purpose of issuance of LOA for tie up under the tender.

6.6 Based upon the information provided, it is certified that Bid Process followed by GUVNL is in accordance with Ministry of Power Guidelines and Tender documents floated by GUVNL.

- 6.19. Subsequent to above Bid Committee recommendations and after due approval of the Board of GUVNL, the Power Supply Agreement (PSA) has been signed on 09.10.2023 between GUVNL & D B Power.
- 6.20. It is submitted that tie up of power from domestic coal based capacity located near the coal source may support the Petitioner in diversifying the power purchase portfolio and minimize the fuel related risk in view of anticipated coal availability by Coal India under the FSA to the bidder selected through competitive bidding process.
- 6.21. It is stated that upon receiving appropriate approval from Commission; the Petitioner is also required to initiate process for payment security mechanism, execution of Fuel Supply Agreement by the selected Developer with CIL/SECL for off-take of power. It is stated that Standing Linkage Committee of Ministry of Coal has allowed limited time period for execution of FSA with CIL/SECL and in case of non-signing of the FSA immediately, the same poses the risk of domestic coal allocation earmarked getting

lapsed. It is stated that CIL/SECL has conveyed that FSA can be signed only upon the adoption of tariff and approval of PSA by the Regulatory Commission.

6.22. Based on the above, it is submitted that the Commission may adopt the tariff under Section 63 and approve the power tie up arrangement including the signed PSA so as to enable the Petitioner to submit the requisite approval as per the tender documents to M/s Coal India and Ministry of Coal, Govt. of India for fulfilment of contractual obligations of the Petitioner to arrange for Fuel Supply Agreement with Coal India Limited/Subsidiaries for adequate coal availability under the PSA and for commencing off-take of power under the arrangement at the earliest in view of prevailing power scenario.

7. We have considered the submissions made by the Petitioner. The Petitioner has filed the present Petition under Section 63 read with Section 86 of the Electricity Act, 2003. The Petitioner has sought the approval of the Commission for adoption of the tariff discovered under the tender invited by the Petitioner as mentioned above, pursuant to the Tariff Based Competitive Bidding Process through GUVNL/ Long/Coal from CIL/22-23/ET/RFQ/209, GUVNL/Long/Coal from CIL/22-23 /ET/RFP/210 and addendum/clarification thereto, as stated in para above.

7.1. The Petitioner also sought the approval of (i) the methodology and modality issued by the Petitioner with regard to Ex-mine Cost of Coal and adjustment of Fuel Charge in accordance with specified methodology based on the certificate of sampling carried out by the Petitioner in the Bidding documents during the bidding process pursuant to directive by the Commission in its Order dated 01.08.2022, (ii) the revision of minimum threshold capacity for participation under the tender from 300 MW to 150 MW in view of limited available merchant capacity in the country and to encourage better participation under the tender, (iii) the Petitioner sought the approval of the Power Supply Agreement dated 09.10.2023 signed between the Petitioner and the L1 selected bidder (M/s D B Power Limited) pursuant to selection of the bidder through tariff based competitive bidding process carried out on DEEP e-bidding portal of Govt. of India incorporating various modifications, clarifications etc. and (iv) allow the Petitioner to commence off-take of power under the PSA immediately upon availability of domestic coal to the project to ensure availability of power at

competitive rates and reduce the dependency on marginal generating stations including spot market.

- 7.2. The Petitioner has initiated the competitive bidding process and sought deviations in the bid documents from the Commission and also sought approval of the Commission for adoption of the tariff discovered under the tender invited by the Petitioner pursuant to the Tariff Based Competitive Bidding Process through GUVNL/Long/Coal from CIL/22-23/ET/RFQ/209, GUVNL/Long/Coal from CIL/22-23/ET/RFP/210 and addendum/clarification thereto.
- 7.3. As the Petitioner has proposed to procure power on Long-Term basis, it is necessary to refer the relevant provisions in the Act and Regulations/guidelines notified under it.
- 7.4. Section 42 and 43 of the Electricity Act, 2003 which are relevant in this case are reproduced below:

*“Section 42. (Duties of distribution licensee and open access):*

*(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.

***“Section 43: Duty to supply on request:***

*(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 provides 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 of providing supply needs establishment of extension of distribution mains, commissioning of the sub-station line etc. 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 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.

7.5. 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 functions of State Commission regulating to 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.

7.6. From the combined reading of the aforesaid provisions, it is clear that the distribution licensees are mandated to create necessary infrastructure of distribution network in the licence area and also supply the electricity within specified period of one month from the date of application by the consumer or in case where the necessary distribution system requires to be created and/or enhanced, the same may be done in specified time as decided by the State Commission. Failure to do so attracts penalty on the licensee. Further, we note that the power procurement by the Petitioner distribution licensee is also required to meet demand/needs of the consumers in its license area and also 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 license area is required to be approved.

7.7. 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 dated 13.08.2013.

7.8. 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”.*

.....

*“Deviation from process defined in the guidelines.*

*5.16 In case there is any deviation from these guidelines, the same shall be with the prior approval of the Appropriate Commission. The Appropriate Commission shall decide on the modifications to the bid documents within a reasonable time not exceeding 90 days.”*

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

In the present case, the Appropriate Commission is this Commission. Further, the Commission is supposed to approve the modification to the bid documents within a

reasonable time but not exceeding 90 days. Hence, it is necessary to decide the modification(s), if any, sought from the Model Bidding Documents the same shall be within 90 days by the Commission.

7.9. It is observed that Ministry of Power had issued Model Bidding documents vide letter dated 05.03.2019 and vide resolution dated 06.03.2019 has issued Guidelines for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy. Pursuant to this, the Petitioner had invited tender and conducted bid process for procurement of upto 3000 MW of electricity under long term on Design, Build, Finance, Own and Operate (DBFOO) basis using concessional fuel allocated by Coal India Limited (CIL) so as to meet the power requirement of its subsidiary DISCOMs and with an objective of optimization of power purchase cost.

7.10. 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.

- 7.11. It also provides that an approval of draft PPA 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.

- 7.12. 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 bid documents from the Commission.
- 7.13. 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.
- 7.14. We note that the aforesaid Guidelines provides that the Appropriate Commission shall adopt the Model Bidding Documents if the tariff determined through the bidding process based on these Guidelines in terms of the provisions of Section 63 of the Electricity Act, 2003. It also provides that any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission subject to any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.
- 7.15. We note that in accordance with the aforesaid guidelines, the Petitioner had filed a Petition No. 2050/2021 before this Commission for approval of bid documents (RFQ,RFP & PSA) including deviations and modifications from Model Bidding Documents. The Commission vide Order dated 01.08.2022 has approved the draft of Bid Documents i.e. RFQ, RFP and PSA filed by the Petitioner including the deviation and modifications to the Ministry of Power Model Bidding Documents and also directed the Petitioner to incorporate few modifications in the Bid Documents Subsequently and in accordance with the directives of the Commission, the Petitioner had issued public notice seeking objections/views of stakeholders and public hearing(s) were conducted.
- 7.16. We note that the Commission has noted in its Order dated 01.08.2022 that with regard to the coal allocated under SHAKTI Scheme, Petitioner's tender is for seeking bids for upto 3000 MW and additional quantum of coal if any available after bidding process from the allocated coal quantum capacity by Ministry of Coal, the Petitioner shall be required to approach the Commission for purchase of power from such allocated surplus coal for approval for purchase of power. Further, in term of

directives in para 9.4 of Order dated 01.08.2022, the Petitioner has incorporated the proviso as directed by the Commission in the PSA at Clause 5.10 of the PSA and as per the Petitioner's tender documents (Clause 4.1.3 (J) of PSA), the supplier is required to submit an Undertaking towards compliance to environmental norms notified as on Bid Due Date and that it shall not claim any amounts towards such capital expenditure pursuant to selection. The Petitioner has also filed the draft of the Undertaking under the bid documents as required to be submitted by the Bidder in the present Petition.

7.17. We note that the Commission in the Order dated 01.08.2022 has directed that in the case of Supplier/Bidder not having any pending litigation, the Petitioner may allow Supplier to generate electricity from coal received under SHAKTI scheme with a condition that the power supply from such generating plant shall be at discovered tariff under present bidding process in PSA or at tariff lower than said discovered tariff. Further, the Petitioner shall decide about the substitution of supply at the earliest and approach the Commission for approval and such substitution shall be subject to approval of the Commission. In view of this, the above clause has been appropriately incorporated by Petitioner in the PSA. We also note that the Petitioner has clarified that for purpose of implementation of the aforesaid provision during the operational tenure of the PSA with regard to substitution of supply from alternative source, the consideration of the power purchase rate (i.e. at discovered tariff) with regard to qualification for substitution shall be considered by the Petitioner as the landed cost "tariff" as prevailing for that contract year under the PSA after taking into account adjustments related to WPI, Fuel cost, transportation cost, SHR etc. as per the terms & conditions of the PSA. Hence, the said modification is valid and approved accordingly.

7.18. We also note that in terms of the directive stated in the Order dated 01.08.2022, the Petitioner submitted that the Petitioner's Bid Documents based on Ministry of Power Model Bidding Documents and therefore the Petitioner has incorporated in Clause 22.3.2 that the average GCV of fuel shall be in accordance with certification and classification of provided by CIL/SECL and mean value of such GCV is to be considered in case the certification provides for band of GCV. It was also incorporated in Clause 22.3.8 that the Utility shall be liable to payments towards cost of fuel only as per the FSA and any additional burden has to borne by the supplier. Further, in Clause 22.3.1,

it is stated that weighted average GCV of fuel received at power station shall be reckoned as the Average GCV for computing the Landed Cost of Fuel. The Petitioner also stated in Clause 22.2.3 (a) that price of fuel shall be deemed to be lower of indicative price of fuel as per fuel charge specified in the Bid by Bidder and 101% of price payable by supplier to CIL for the linkage coal. In response to the above, the Petitioner has received representatives from the bidders to clarify the aspect with regard to GCV computation on grounds that the certification (third part sampling) provides for GCV at equilibrated basis (without Total Moisture) while the coal as received at the power plant will include Total Moisture due to which the net calorific value useable for generation would be lower and has therefore sought the appropriate modifications/clarifications in the PSA terms. Under the SHAKTI B (IV) allocation, M/s Coal India Limited having indicated the coal allocation likely from SECL coal mines for indicative Grade G 11 (4000-4300 GCV band), for the purpose of ascertaining and arriving at ex-mine cost of coal, the details were sought from State GENCO by the Petitioner with regard to the parameters of domestic coal received from SECL mine for Grade 11 (4000-4300 GCV band). In addition, taking into consideration the sampling activity at Loading end based on Air Dried Basis as well as Equilibrated Moisture basis vis-à-vis As Received Basis (ARB) at unloading end, it is observed that when coal is received at power plant ( unloading point ) and used for firing for energy generation, the GCV of Coal “As Received Basis” becomes relevant. Further, as per CERC Tariff Regulations 2019-24, the GCV of fuel is considered on “As Received” i.e. measured at unloading point and GCV of coal as received at station (TM Basis) is considered for energy generation. Moreover, Central Electricity Authority, Govt. of India vide Notification dated 20.07.2021 has specified the norms for Annual Contracted Quantity (ACQ) to provide coverage for the losses of heat value of coal occurring between loading point and coal firing point for supply of raw coal. CEA has also specified the following formula for adjustment of moisture based on sampling certificate for ascertaining the final coal quantity.

$$\text{GCV ( TM )} = \text{GCV ( EM )} \times [(1-\text{TM}) / (1-\text{EM})]$$

- 7.19. Therefore, taking into consideration the directive for declaration of the Ex-Mine Cost of Coal prior to the bid submission due date and in order to provide the clarity with regard to the pricing of coal & GCV to be considered for the computation of Energy Charge payment for bidding purpose and for payment purpose during the PPA tenure,

the Petitioner has issued appropriate clarification with regard to Energy Charge computation prior to bid submission due date that GCV of Coal would be considered by factoring the TM basis (%) as certified by designated agency in its sampling certificate at loading end. Further, it is also clarified that such GCV derived (TM basis) shall be considered as "As Received Basis" under the PPA at all times. In order to safeguard the interest of Petitioner (Utility), it was clarified that adjustment of GCV towards TM will be subject to ceiling of 300 kcal/kWh during the tenure of PPA. The detailed methodology for the same have been incorporated in the PSA with modification of Clause 22.3 for purpose of clarity and removal of ambiguity.

7.20. Thereafter, the Petitioner has issued Corrigendum III wherein the Ex-mine Cost of Coal along with detailed working is specified and also clarified that all the bidders to submit the Energy Charge in accordance with the computation modality pre-specified so as to have uniformity and comparability for evaluation of the bids. For the purpose of Ex-mine cost of coal, the sub cost component of domestic coal for Gevra mine of SECL including statutory levy, cess etc. has been taken into consideration for the purpose of submission of financial bids on uniformity. Further, the bidders were asked that Forest Cess shall not be quoted at present since the same is applicable for selected mines under SEC and shall be separately payable if applicable as per the invoice received from SECL/CIL based on actual dispatch from the mine. The same was considered by bidders during submission of their bids and the Petitioner has file the detailed methodology of Ex-mine cost and GCV of coal as pre released under Corrigendum - III alongwith the present Petition.

7.21. We also note that the Commission in the Order dated 01.08.2022 has observed that in case of emergency which is temporary in nature i.e. for period not more than 3 months in a year, when the availability of fuel for generation is not available or possible from the linkage coal allocated by Petitioner in such exception condition following provision shall apply:

*".....In the instance when project is available but fuel is unavailable, pending approval of the Commission the generator may not be able to generate electricity though it may be ready to arrange for alternative fuel. If the generation cost of electricity is cheaper than the tariff discovered under the competitive bidding or*

*lower than it, in that case it is desirable to optimize utilization of generating assets as commercial principle. In such conditions, Generator/Supplier may be allowed to generate electricity not exceed the ceiling price as discovered under competitive bidding for the said plant. Further, Generator/Supplier shall get approval for such limited period within 1 month and approach the Commission for approval of alternative mechanism for procurement of fuel and approval of AFSA....”*

7.22. We note that as per the aforesaid directives, the Petitioner has added following sub proviso under clause 22.9.2 wherein the Petitioner has modified "generation cost" as "landed cost" as cost comparison for substitution of supply would be based on landed cost of electricity to Petitioner. Moreover, further clarification has been added that Petitioner may seek additional documents from supplier towards cost of fuel to ascertain the actual cost:

*"In case of emergency situation which is temporary in nature not exceeding 3 months in a contract year when the availability of fuel for generation is not available or possible from the linkage coal allocated by Utility, Supplier may be allowed to procure and generate power under AFSA for supply under this Agreement provided that the landed cost of electricity to Utility is cheaper/ lower than the tariff discovered under the competitive bidding in accordance with the PPA subject to ceiling price being the tariff discovered under the competitive bidding in accordance with the PPA. Further, Supplier shall be required to seek approval of Utility for above limited period arrangement within 1 month and also immediately approach Gujarat Electricity Regulatory Commission for procurement of fuel and approval of additional fuel supply agreement. For avoidance of doubt, it is to clarify that Utility may seek additional documents from Suppliers towards cost of fuel."*

In view of the same, we decide to approve the above modifications as proposed by the Petitioner.

7.23. We note that the Petitioner has proposed to modify the Change in Law provision in line with Ministry of Power Guidelines/Model PPA for 2007-2010. The Commission has observed that Ministry of Power, Government of India has framed Electricity (Timely recovery of cost due to Change in Law) Rules 2021. As per the same, Change

in Law impact needs to be passed on immediately with consideration of mutual discussion between the parties. Timely recovery of financial impact due to Change in Law is required to be passed on to concerned beneficiary as per aforesaid rules to compensate affected party so as to restore such affected party to same economic position. It was directed to the Petitioner to align provision of the bid document with the aforesaid Rules. Further, it has been directed that either Party claiming Change in Law shall approach the Commission within one (1) month from date of claim. Moreover, principle of economic/financial restitution provided under Electricity Rules 2021 shall be retained in bid documents. In view of aforesaid directives, the Petitioner has replaced the Change in Law provision in PSA as per Ministry of Power Rules 2021 with following appropriate modifications:

**(a) Change in law:** Ministry of Power Rules provides that enactment/ amendment / repeal of any law after determination of tariff under Section 63 of Act. The same has been appropriately modified that as after "Bid Due Date" i.e. last date of bid submission (18.05.2023 as per the Petitioner timelines under tender) for better clarity in line with existing Change in Law mechanism under long term PSA. It was also observed in para 14.22.16 that the impact of Change in Law is to be worked out with consideration of parameters as specified in the PSA/agreement subject to ceiling for such parameters in the Regulations specified by Appropriate Commission. With regard to the ceiling of such parameters for the purpose of adjustment under Change in Law, the Petitioner has incorporated that the Regulations referred shall be Multi Year Tariff Regulations 2016 of the Commission, which has been prevailing at the time of signing of the PSA.

**(b) Formula for determination of impact in tariff due to Change in Law:** Ministry of Power Rules provides a formula for computation of impact in tariff. The same has been adopted by Petitioner with clarification that Normative Availability Factor shall be considered for the purpose of computation of monthly tariff and true up of such amount shall be done on annual basis based on actual availability for the year so as to ensure payment is capped at yearly annuity amount. The same is essential to avoid unfettered

cost implication in case of non-availability/non-supply of power by the Generator under the PSA.

**(c) Rate of interest:** With regard to rate of interest for computation of monthly tariff for recovery of change in law, Ministry of Power Rules provides that annual rate of interest as considered by CERC in its Tariff Order for conventional or RE for the year in which project is commissioned may be considered. In the absence of relevant CERC' Orders, interest rate shall be average interest rate plus 200 basis points above the average SBI Marginal Cost of Funds based lending rate of 1-year tenure prevalent during the last available six months for such period may be considered.

7.24. We note that the Petitioner in its tender stated that majority of operational projects having multiple units in the project were anticipated to participate. The applicable CERC order may be different for a generating unit of the plant and Project as a whole. Accordingly, to avoid dispute/interpretations issues during PPA implementation stage, for consideration of applicable interest rate for computation of Change in Law payment, interest rate linked to SBI 1 year MCLR as stated above is being adopted in the Petitioner's tender documents and the same is accordingly incorporated in the Change in Law Clause 34.2.6 by the Petitioner. In view of the above, we approve the said modification as proposed by the Petitioner.

7.25. We also note that the Commission in its Order dated 01.08.2022 has approved the modification of minimum MW requirement to 300 MW (10% of the Total Capacity) to enable competition amongst the bidders. It is further submitted that after release of bidding documents, the Petitioner has received various requests for reducing the aforesaid minimum threshold capacity for participation on the grounds that considerable capacities are lying unutilized with the operational projects which can be offered under the bid at competitive rates. Further, representation have been received that if 300 MW minimum capacity criteria is kept, huge sub-critical technology based capacity with operational project would not be able to participate who would be having competitive rate of generation. The Petitioner further received various requests to reduce the minimum capacity to 100-150 MW for enabling

participation by merchant capacity. In view of limited participation anticipated under the tender and considering the tender total requirement of 3000 MW and in order to encourage participation and to achieve competitive rate of generation, the Petitioner had modified the minimum capacity from 300 MW to 150 MW and also issued Corrigendum-I and informed the same to all the stakeholders. The Petitioner has apprised the aforesaid modification with regard to minimum threshold quantity under the tender to the Commission for encouraging improved participation under the Tender invited by the Petitioner. It is stated that out of the total 4 bids received under the tender, 3 bids are for the quantum less than 300 MW at delivery point ie. GETCO periphery. In view of the above, the said modification is approved as proposed by the Petitioner.

- 7.26. We further note that as per the directives of the Order dated 01.08.2022, the Petitioner has vide Corrigendum -III clarified and modified that the GCV used for the computation of fuel charge to "as received basis" and with further adjustment of 85 kcal/kWh for stacking losses and issued appropriate clarification for the same under ex-mine cost of coal working pre-specified by the Petitioner. Further, upon necessary modification and clarification to allow computation of Energy Charge during the operational tenure based on "as received basis" in order to provide clarity and to safeguard the Petitioner against the impact of GCV deterioration and loss from loading end to the firing end, the Petitioner has defined and pre-specified the process for computation of Energy Charge based on the coal received and characteristics of coal as mentioned under the sampling certificate. Under this mechanism, it has been clarified that maximum GCV moisture difference of up to 300 kcal/kg shall be allowed for the purpose of computation of Energy Charge (i.e., average variation between GCV(TM) and GCV (EM) is subject to a ceiling of 300 kcal/kg shall be considered for the purpose of Fuel Charge), based on the sampling certificate. Any remaining GCV loss, if applicable, must be borne by the supplier during the tenure of PPA. Based on the above, the modification carried out for providing the clarity on commercial settlement and fuel charge computation on "As received basis", risk sharing for the loss of GCV is approved and to align the same in line with Ex-mine cost of coal defined by the Petitioner based on which bids have been received.

7.27. We note that the Petitioner has released Corrigendum-V and stated pre- specified the ISTS Transmission charges and Transmission losses to ensure uniformity in evaluation of bids in terms of the directives of the Commission. Prior to bid submission due date, the Petitioner has modify that the transmission charges (ISTS Network) applicable as on Bid Due date, pre-specified by the Petitioner, to be considered while submitting the bid is 54 paise/kWh, i.e., worked out after grossing up at 90% normative level as per NLDC's Notification dated 25.04.2023 for April 2023 for billing month of May 2023. Further, the transmission losses (ISTS Network) applicable as on Bid Due date, pre-specified by the Petitioner, to be considered while submitting the bid is 3.67% as notified by NLDC for 15.05.2023 to 21.05.2023. In view of this, we accept this modification and approved the same.

7.28. We further note that as per provisions of draft Bid Documents, after 60 days from signing of PPA, the Petitioner is required to fulfil the conditions precedent within the timelines stipulated subsequent to notice of the supplier. Similarly, the supplier is required to satisfy conditions precedent within 180 days from date of PPA. The timelines is as per the Model Bidding Documents of Ministry of Power, Govt. of India. In view of the supply being envisaged under the tender from Scheduled Commencement Date, to ensure compliance to conditions precedent by supplier on timely basis and to avoid delay in supply commencement, the time period provided for fulfilment of conditions precedent has been rationalized by the Petitioner from 180 days to 90 days. Further, the Petitioner has made similar modification for Type 2 project (yet to commission projects) towards time period allowed for achievement of Financial Closer from the date of PPA. In view of the commissioning timelines tentatively by September 2023, the same has also been rationalized from 180 days to 90 days as such project/units, ought to be at advanced stage of commissioning. We also note that the Petitioner vide Corrigendum-II has intimated the aforesaid modification to Article 4 (Clause 4.1.3) and Article 20 (Clause 20.1.1) with regard to reduction in timelines from 180 days to 90 days and the same is approved accordingly.

7.29. We also note that the Petitioner in its tender has allowed generating units/project which are yet to commercially operationalized as well as operational projects/units commissioned on or after 01.01.2013. Article 11 of the PPA provides for the

obligations and timelines with regard to Project Completion Schedule and consequences in case of delay in achievement of Commercial Operational Date by Scheduled Supply Commencement Date which is to be pre-indicated by the Petitioner GUVNL. At present, the Petitioner GUVNL had indicated the tentative Supply Commencement date as September 2023 and accordingly, even the generating units which are under construction would have to be in advanced stage of commissioning to participate under the tender for supply commencement as per Petitioner's tender timelines. We further note in order to address the ambiguity with regard to the timelines for commissioning, the Petitioner has revised Schedule-E and clarified that Type 1 and Type 2 projects shall ensure completion of all the activities related to plant operationalization so as to ensure supply of power by Scheduled Supply Commencement Date. Hence, we approve the aforesaid modification in respect of the project specific modification.

- 7.30. We also note that in terms of the Commission's approval vide Order dated 01.8.2022, the Petitioner had released the final bid documents on DEEP Portal of Ministry of Power, Government of India and also placed the same on its website for wider circulation. The last date for Bid Submission on DEEP Portal was 22.12.2022 at 17:00 Hours and the Petitioner had received Bids from 4 Bidders. Thus, the Petitioner has followed transparency and wider circulation given also given to tender.
- 7.31. We note that the Petitioner has opened the Bid on 27.12.2022 wherein the four bidders has submitted the bid, viz., (i) GMR Warora Energy Limited, Chandrapur District, Maharashtra, Jindal Power Limited, Tamnar District, Chhattisgarh, (iii) MB Power Limited, Anuppur, Madhya Pradesh (MBPL), and (iv) DB Power Limited, District Janjgir-Champa, Chhattisgarh (DBPL).
- 7.32. We note that as per the Bid Documents, the selection of the bidder is through a two-stage bidding process, i.e., (i) First Stage is Qualifications Stage and at the end of this stage Petitioner has to announce list of Pre-Qualified applications who shall be eligible for participation in 2<sup>nd</sup> Stage of Bid and (ii) Second Stage is Bid Stage where there is a submission of financial proposal under the tender.

7.33. Further, the Petitioner has appointed Bid Process Consultant- M/s Mercados Energy Markets India for carried out the detailed scrutiny/analysis of the documents submitted by the bidders towards pre- qualification stage. After detailed scrutiny and verification, the Technical Evaluation Report was submitted on 25.01.2023 covering details with regard to observation raised, clarification/ details received from bidders and status of compliance with reference to requirement under the tender documents for pre-qualification. As per the Technical Evaluation Report, in accordance with the details submitted and clarification received, all 4 bidders stood complied with the requirement of the RfQ tender documents towards technical & financial criteria and responsiveness in terms of GUVNL's tender documents. As per technical evaluation report, it is observed that all the 4 bids received were technically qualified and technical evaluation report is filed by the Petitioner, which is reproduced below:

**“TECHNICAL EVALUATION REPORT**

**Power Supply Agreement for Procurement of 3000 MW of electricity under long term on DBFOO basis using concessional fuel allocated by Coal India Limited (CIL)**

**Prepared for:**  
**Gujarat Urja Vikas Nigam Limited**

**Prepared by:**  
**Mercados Energy Markets India Pvt. Limited**

**January 2023**

<i>Description</i>	<i>GMERWEL</i>	<i>JPL</i>	<i>MBPL</i>	<i>DBPL</i>
<i>Name of the Bidding Company</i>	<b>GMR Warora Energy Limited</b> (Formerly Known as EMCO Limited) (2*300MW, GMR Warora Energy Limited, Chandrapur District, Maharashtra)	<b>Jindal Power Limited,</b> Chhattisgarh 4*600MW, Thermal Power Plant at Tamnar District, Chhattisgarh	<b>M B Power Limited,</b> Madhya Pradesh (2*600 MW, Anuppur Thermal Power Plant, Anuppur, Madhya Pradesh)	<b>DB Power Limited,</b> Chhattisgarh (2*600MW, Thermal Power Plant, District Janjgir-Champa, Chhattisgarh)
<i>Type 1: Projects / Units that are already</i>	<i>Type 1: Operational on</i>	<i>Type 1: Operational on</i>	<i>Type 1: Operational on</i>	<i>Type 1: Operational on</i>

commercially operationalized on or after 1 <sup>st</sup> January 2013 Type 2: New Projects that are yet to be commercially operationalized	or after Jan 2013.	or after Jan 2013.	or after Jan 2013.	or after Jan 2013.
Maximum Capacity willing to Bid in MW	<b>150 MW</b>	<b>500 MW</b>	<b>370.25 MW</b>	<b>340 MW</b>
<b>Technical and Financial Capacity</b>				
Technical Capacity	Payment for Development Rs.121.511 Cr + Revenue from eligible projects in Category 1 & 2 is Rs.7997.07 Cr Total Rs.8118.58Cr for 150MW of offered capacity. <b>i.e. Rs. 54.13 Cr per MW against the requirement of Rs.5 Cr per MW.</b> The Statutory Auditor Certificate is not in the prescribed format.	Payment for Development Rs.166.70 Cr+ Revenue from eligible projects in Category 1 & 2 in Rs.22,315.78 Cr Total Rs.22481.78 Cr for 500 MW of offered capacity. <b>i.e. Rs.44.96 Cr per MW against the requirement of Rs.5 Cr per MW.</b>	Payment for Development Rs.316.16 Cr+ Revenue from eligible projects in Category 1 & 2 in Rs.13979.12 Cr Total Rs.14295.28 Cr for 370.25 MW of offered capacity. <b>i.e. Rs.38.61 Cr per MW against the requirement of Rs.5 Cr per MW.</b>	Payment for Development Rs.286.63 Cr+ Revenue from eligible projects in Category 1 & 2 in Rs.14282.67 Cr Total Rs.14569.3 Cr for 340 MW of offered capacity. <b>i.e. Rs.42.85 Cr per MW against the requirement of Rs.5 Cr per MW.</b>
Financial Capacity	GMR has shown Net worth of Rs.286.939 Cr for offered capacity of 150 MW. <b>i.e. Rs. 1.91Cr per MW against the requirement of Rs.1.5Cr per MW.</b>	JPL has shown Net worth of Rs.4980.25 Cr for offered capacity of 500 MW. <b>i.e. Rs. 9.96 Cr per MW against the requirement of Rs.1.5Cr per MW.</b>	MB Power has shown Net worth of Rs.1947.81 Cr for offered capacity of 370.25 MW. <b>i.e. Rs. 5.2 Cr per MW against the requirement</b>	D B Power Ltd. has shown Net worth of Rs.3352.44 Cr for offered capacity of 340 MW. <b>i.e. Rs. 9.86 Cr per MW against the requirement</b>

	<i>The Statutory Auditor Certificate is not in the prescribed format.</i>		<i>of Rs.1.5Cr per MW.</i>	<i>of Rs.1.5Cr per MW.</i>
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**Documents to be submitted as per RFQ**

<i>Description</i>	<i>GMRWEL</i>	<i>JPL</i>	<i>MBPL</i>	<i>DBPL</i>
<i>1. Appendix – I (Application for Pre-Qualification)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>a. Annex- I (Applicant details)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>b. Annex- II (Technical Capacity)</i>	<i>Submitted (Statutory Auditor Certificate is not in the prescribed format)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>c. Annex-III (Financial Capacity)</i>	<i>Submitted (Statutory Auditor Certificate is not in the prescribed format)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>d. Annex-IV (Details of Eligible Projects)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>e. Annex-V (Statement of Legal Capacity)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>f. Annex-VI (Particulars of Power Station)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>2. Appendix –II (Format for Power of Attorney for signing of Application and Bid)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>3. Appendix –III (Power of Attorney for Lead Member of Consortium)</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<i>4. Appendix – IV (Joint Bidding Agreement for Consortium)</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<i>5. Appendix – V (Guidelines of the Department of Disinvestment)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Not Submitted</i>

6. Memorandum and Articles of Association / Partnership Deed	Submitted	Submitted	Submitted	Submitted
7. Audited Balance Sheet and Profit & Loss Account – preceding 5 years	Submitted	Submitted	Submitted	Submitted
8. 2 soft copies of Application in CD/Pen Drive	Submitted	Submitted	Submitted	Submitted
9. Power Plant -Data (2.13.22 viii)				
Commissioning Date	Submitted	Submitted	Submitted	Submitted
Generation details – last 3 years	Submitted	Submitted	Submitted	Submitted
Fuel Availability	Not Submitted	Not Submitted	Not Submitted	Submitted
Tied up Capacity	Submitted	Submitted	Submitted	Submitted
Merchant Capacity	Not Submitted	Not Submitted	Not Submitted	Submitted

After the detailed analysis of individual Applications, queries regarding the same were raised. The Applicants have submitted clarifications along with supporting documents. The details are summarized in the tables below:

### 1. GMR Warora Energy Limited

S. No.	Queries raised	Clarifications submitted by the Applicant
1	Statutory Auditor Certificate (regarding payments made/received) should be submitted in the format provided in Annex-IV, Appendix-I of the RFQ FY 2019-20 to FY 2021-22)	The clause no.2.2.4 of the RFQ explicitly states that in case the audited financial statements are submitted, a separate certification from the Statutory Auditors is not necessary.
2	Statutory Auditor Certificate (Net Worth) not submitted in Audited Company's Letter Head	The Auditor has issued the Certificate on their letter head by referring to the Statement annexed with the Certificate. This annexed statement has been verified and stamped by the Statutory Auditor. However, upon further request, GMR has submitted the Auditor Certificate dated January 24,2023. Incorporating the Net Worth of Rs. 2.19 Cr. Per MW

		against the requirement of Rs. 1.5 Cr Per MW).
3	It is requested to submit details regarding Power Purchase Agreements of quantum tied up, contract period, details with regard to Fuel Availability to the Plant (Fuel tie up linkage available, if any, date of FSA/source) and merchant capacity.	Details are provided as Annexures (II & III)
4	Details/Documents with regard to Environmental and Forest Clearance for the Power Station be submitted for reference.	Environment Clearance provided in the Annexure and Forest Clearance not applicable.

## 2. Jindal Power Limited

S. No.	Queries raised	Clarifications submitted by the Applicant
1	Annexure-IV mentions the details regarding payments made for last 5 Cr. While Auditor's Certificate provides for Total Revenue of the Company. Kindly clarify	The details regarding payments made in last 5 years are also provided in the Auditor's Certificate for Eligible Projects. Page 63. A copy of same is attached as Encl-1.
2	It is requested to submit details regarding Power Purchase Agreements of quantum tied up, contract period, details with regard to Fuel Availability to the Plant (fuel/tie up, linkage available, if any, date of FSA/source) and merchant capacity	There is no fuel tied up w.r.t the Unit 3&4 of JPL stage - II Power station at Tamnar. A copy of PPA is attached as Encl-2
3	To confirm and clarify that there are no non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past.	We hereby confirm that there are no non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past
4	Equity shares held by Jindal Steel and Power limited was transferred to Worldone Private Limited Company on June 1, 2022. Kindly clarify regarding the same.	It is clarified that Equity shares held by Jindal Steel and Power Limited was transferred to Worldone Private Limited Company on June 1, 2022. The same was provided in Appendix-I Annexure-IV, copy enclosed as Encl-3
5	Authorized Signatory's sign is not on the first and third page of the document.	Already complied with

## 3. MB Power Limited

<i>S. No.</i>	<i>Queries raised</i>	<i>Clarifications submitted by the Applicant</i>
1	<i>To confirm and clarify that there are no non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past</i>	<i>It is confirmed that there is no material non-performance or contractual non-compliance by us in any of the past projects. Further, we also confirm that there are no contractual disputes and litigation/arbitration in the recent past which may affect our ability to perform under this tender.</i>
2	<i>Board Resolution is pre dated (date mentioned in BR and date mentioned below the Company Secretary is different). Board Resolution is not Project Specific (i.e., for GUVNL). Kindly clarify regarding the same</i>	<i>Board Resolution contains the date on which the same is passed by the Board of Directors. Clarified copy of Board Resolution contains the date on which the Board Resolution is certified by the Company Secretary for issuance under the RFQ. The given Board Resolution covers all bidding for PPAs and therefore the same is adequate to cover the present project, i.e., for GUVNL.</i>
3	<i>It is requested to submit details regarding Power Purchase Agreements of quantum tied up, contract period, details with regard to Fuel Availability to the plant (fuel tie up, linkage available, if any, date of FSA/source) and merchant capacity</i>	<i>PPA signed so far is for 805.07 MW ( Gross Capacity) – Relevant extracts of PPA are submitted with the bid as Enclosure 6. Fuel Supply Agreement is also attached herewith for reference.</i>

#### **4. D B Power Limited**

<i>S. No.</i>	<i>Queries raised</i>	<i>Clarifications submitted by the Appellant</i>
1	<i>To confirm and clarify the commissioning date of both the units, as there are two different Commissioning dates mentioned in the application (COD Certificates, Annex-IV)</i>	<i>Copy of certificates mentioned in Annexure A &amp; B Commissioning date: Unit – 1 (600 MW): 23.02.2014 Unit – 2 (600 MW): 24.03.2015 COD Date: Unit – 1 (600 MW): 01.11.2014 Unit – 2 (600 MW): 26.03.2016</i>

2	To confirm and clarify that there are no non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past	We hereby confirm and clarify that there are no non-performance or contractual non-compliance in past projects. No contractual disputes and litigation/arbitration in the recent past except in the normal course of business, before Regulatory Forum.
3	Signed copy of Appendix-V not submitted	Signed cope of Appendix-V enclosed
4	It is requested to submit details regarding Power Purchase Agreements of quantum tied up, contract period, details with regard to Fuel Availability to the Plant (fuel tie up, linkage available, if any, date of FSA/source) and merchant capacity	Details of tied up capacity and Fuel tie-up is enclosed in Annexure D & E

**The received summary of evaluation after the verification of clarifications submitted the applicants are stipulated in the below table:**

<i>Description</i>	<i>GMRWEL</i>	<i>JPL</i>	<i>MBPL</i>	<i>DBPL</i>
Name of the Bidding Company	<b>GMR Warora Energy Limited</b> (Formerly Known as EMCO Limited) (2*300MW, GMR Warora Energy Limited, Chandrapur District, Maharashtra)	<b>Jindal Power Limited,</b> Chhattisgarh 4*600MW, Thermal Power Plant at Tamnar District, Chhattisgarh	<b>M B Power Limited,</b> Madhya Pradesh (2*600 MW, Anuppur Thermal Power Plant, Anuppur, Madhya Pradesh)	<b>DB Power Limited,</b> Chhattisgarh (2*600MW, Thermal Power Plant, District Janjgir- Champa, Chhattisgarh)
Type 1: Projects / Units that are already commercially operationalized on or after 1 <sup>st</sup> January 2013 Type 2: New Projects that are yet to be commercially operationalized	Type 1: Operational on or after Jan 2013.	Type 1: Operational on or after Jan 2013.	Type 1: Operational on or after Jan 2013.	Type 1: Operational on or after Jan 2013.

Maximum Capacity willing to Bid in MW	<b>150 MW</b>	<b>500 MW</b>	<b>370.25 MW</b>	<b>340 MW</b>
<b>Technical and Financial Capacity</b>				
Technical Capacity	<p>Payment for Development Rs.121.511 Cr + Revenue from eligible projects in Category 1 &amp; 2 is Rs.7997.07 Cr Total Rs.8118.58Cr for 150MW of offered capacity. <b>i.e. Rs. 54.13 Cr per MW against the requirement of Rs.5 Cr per MW.</b></p> <p><b>As per clause no.2.2.4 of RFQ the data are verified with the balance sheet and are found satisfactory. *</b></p>	<p>Payment for Development Rs.166.70 Cr+ Revenue from eligible projects in Category 1 &amp; 2 in Rs.22,315.78 Cr Total Rs.22481.78 Cr for 500 MW of offered capacity. <b>i.e. Rs.44.96 Cr per MW against the requirement of Rs.5 Cr per MW.</b></p>	<p>Payment for Development Rs.316.16 Cr+ Revenue from eligible projects in Category 1 &amp; 2 in Rs.13979.12 Cr Total Rs.14295.28 Cr for 370.25 MW of offered capacity. <b>i.e. Rs.38.61 Cr per MW against the requirement of Rs.5 Cr per MW.</b></p>	<p>Payment for Development Rs.286.63 Cr+ Revenue from eligible projects in Category 1 &amp; 2 in Rs.14282.67 Cr Total Rs.14569.3 Cr for 340 MW of offered capacity. <b>i.e. Rs.42.85 Cr per MW against the requirement of Rs.5 Cr per MW.</b></p>
Financial Capacity	<p>GMR has shown Net worth of Rs.286.939 Cr for offered capacity of 150 MW. <b>i.e. Rs. 1.91Cr per MW against the requirement of Rs.1.5Cr per MW.</b></p> <p>The Statutory Auditor Certificate is not in the prescribed format.</p>	<p>JPL has shown Net worth of Rs.4980.25 Cr for offered capacity of 500 MW. <b>i.e. Rs. 9.96 Cr per MW against the requirement of Rs.1.5Cr per MW.</b></p>	<p>MB Power has shown Net worth of Rs.1947.81 Cr for offered capacity of 370.25 MW. <b>i.e. Rs. 5.2 Cr per MW against the requirement of Rs.1.5Cr per MW.</b></p>	<p>D B Power Ltd. has shown Net worth of Rs.3352.44 Cr for offered capacity of 340 MW. <b>i.e. Rs. 9.86 Cr per MW against the requirement of Rs.1.5Cr per MW.</b></p>

**\* As per Application specific provision for Clause No. 2.2.4-** In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i).

**Documents need to be submitted by the applicants**

<i>Description</i>	<i>GMRWEL</i>	<i>JPL</i>	<i>MBPL</i>	<i>DBPL</i>
<i>1.Appendix – I (Application for Pre-Qualification)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>a. Annex-I (Applicant details)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>b. Annex-II (Technical Capacity)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>c. Annex-III (Financial Capacity)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>d. Annex-IV (Details of Eligible Projects)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>e. Annex-V (Statement of Legal Capacity)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>f. Annex-VI (Particulars of Power Station)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>Description</i>	<i>GMRWEL</i>	<i>JPL</i>	<i>MBPL</i>	<i>DBPL</i>
<i>2.Appendix –II (Format for Power of Attorney for signing of Application and Bid)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>3.Appendix –III (Power of Attorney for Lead Member of Consortium)</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<i>4.Appendix – IV (Joint Bidding Agreement for Consortium)</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<i>5.Appendix – V (Guidelines of the Department of Disinvestment)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>6.Memorandum and Articles of Association / Partnership Deed</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>7.Audited Balance Sheet and Profit &amp; Loss Account – preceding 5 years</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>8.2 soft copies of Application in CD/Pen Drive</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>9.Power Plant -Data (2.13.22 viii)</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>Commissioning Date</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>Generation details – last 3 years</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>Fuel Availability</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>
<i>Tied up Capacity</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>

**Suggestions / Remarks:**

*Based on the Application submitted by the Bidders and the clarifications provided, recommendations for each bidder are provided below:*

<i>Bidder</i>	<i>Suggestions / Remark</i>
<i>GMR Warora Energy Limited</i>	<i>GWEL is technically qualified and the Application can be considered for further process.</i>
<i>Jindal Power Limited</i>	<i>Jindal Power Limited is technically qualified and the Application can be considered for further process.</i>
<i>MB Power Limited</i>	<i>MB Power Limited is technically qualified and the Application can be considered for further process.</i>
<i>DB Power Limited</i>	<i>DB Power Limited is technically qualified and the Application can be considered for further process.</i>

.....”

From the Technical Evaluation Report, it is apparent that the Petitioner has carried out detailed evaluation of the eligibility requirement, qualification requirement, proposal responsiveness, Technical and Financial Evaluation of the bid documents as per RFQ document. Moreover, all the 4 bidders offering their respective capacity were found to be responsive and hence were deemed qualified for opening of their financial bids. Accordingly, the financial bids of all 4 bidders were opened on 15.06.2023 on the DEEP Portal e-bidding portal. It is also noted that while following a comprehensive evaluation of bids, it was determined that all four bidders met the technical qualification criteria. The Bidders were officially notified of their technical qualification through a Letter of Invitation on 14.02.2023 in accordance with the tender documents. Pursuant to technical qualification, the Petitioner had requested the bidders to submit the RfP bids by 18.05.2023 (Bid Due Date) with a submission time of 17:00 Hours. We also note that as per the Bid Documents, the bidders were required to submit the physical copy of the bids to Petitioner and after taking into consideration the due date for submission of bids online on DEEP e- bidding portal of Govt. of India, the Petitioner vide Corrigendum IV & V has allowed the bidders to ensure the submission of physical bids to the Petitioner in a sealed cover within two (2) days from the Bid submission Due Date i.e, on 20.05.2023 and also release the

draft of Model Fuel Supply Agreement received from Coal India. Accordingly, all four bidders had submitted the physical bids on 20.05.2023.

7.34. We note that before opening the financial bids, the Petitioner has carried out and verified the responsiveness check of all the bidders and copy of Bid evaluation details for RFP is also filed with the present Petition. All the four (4) bidders having complied with the requirement as per tender terms under RFP stage, the Petitioner has considered the compliance towards tests of responsiveness for proceeding to price opening stage. Following responsiveness check, the price bids were opened on 15.06.2023 on DEEP e-bidding portal & sealed cover received from the bidders. The Consultant Mercados Energy Markets India Pvt. Limited vide its letter informed the Petitioner regarding the financial evaluation of the Bids. The said letter is reproduced as under:

“ .....

To,

Gujarat Urja Vikas Nigam Limited (GUVNL)

2<sup>nd</sup> Floor, Sardar Patel Vidyut Bhavan,

Race Course,

Vadodara – 390007, Gujarat.

Sub: Evaluation of Financial Bids.

Ref: Work Order No. : Work Order No. GUVNL: GM (Comm.):89 dated 22-01-2021

With the above reference and the opening of the price bids againstst the tender ‘Purchase of power through Tariff based Competitive Bidding Process for utilisaing coal allocated to Gujarat Discoms under Shakti Scheme’ on June 15, 2023, we have carried out the Financial Evaluation of the Bids and the summary of the Financial Bids is tabulated below:

Sr. No.	Name of Bidder	Offer d Qty. (MW)	Price bid (Rs./kWh)				
			Tarif f*	Fixe d Cost	Remarks	Varibale Cost	Remar ks
1	DB Power Limited	293	4.5 6	3.06	FC is lesser	1.5	VC is lesser than

					than 70% of Tariff		50% of Tariff
2	MB Power Limited	155	4.56	2.87	FC is lesser than 70% of Tariff	1.69	VC is lesser than 50% of Tariff
3	GMR Warora Energy Limited	150	4.77	2.46	FC is lesser than 70% of Tariff	2.31	VC is lesser than 50% of Tariff
4	Jindal Power Limited	350	4.96	3.14	FC is lesser than 70% of Tariff	1.82	VC is lesser than 50% of Tariff

\* Sum of Fixed and Variable Cost;

Bids are in conformance with Clause 3.5.2 (RFP) even if Total Landed Tariff (Tariff + Trans. Charges & Losses) is considered

The prices submitted by the bidders are in line with the RFP Clause 3.5.2. The Price Bids are responsive and may be considered for further process.

Yours Sincerely,

For Mercados Energy Markets India Pvt. Limited

Sd/-

Ramandeep Singh,  
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Mercados Energy Markets India Pvt. Limited

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.....”

7.35. We note that the initial submission of the bids submitted by the Petitioner is stated as under:

<b>Statement of Price discovered in Long Term tender for SHAKTI Para B (iv)</b>				
	<b>D B Power</b>	<b>M B Power</b>	<b>GMR Warora</b>	<b>Jindal Power</b>
	L1	L2	L3	L4
Capacity offered quantum	293	155	150	350
Fixed Charge ----- (A)	<b>3.06</b>	2.87	2.46	3.14

Total Energy Charge----- (B)	1.50	1.69	2.31	1.82
Cost of fuel	1.22	1.22	1.23	1.22
Cost of Transportation	0.28	0.47	1.08	0.57
Cost of Washing	0.00	0.00	0.00	0.00
ISTS Transmission Charge ----- (C)	0.54	0.54	0.54	0.54
ISTS Transmission losses ----- (D)	0.17	0.18	0.20	0.19
<b>Total Landed Tariff at GETCO Periphery (A+B+C+D)</b>	<b>5.27</b>	<b>5.28</b>	<b>5.51</b>	<b>5.69</b>

- 7.36. We note that as per the Clause 3.3.1 of the PSA, in the event Petitioner rejects or annuls all the bids, it may do so in its discretion and invite all eligible bidders to submit fresh bids. In the instant tender, the Bid Security and Documents have already been submitted by all four bidders and DEEP e-bidding portal does not provide the specific feature for re-submission of revised tariff under the same tender while re-tendering may consume considerable time. Further, PFC Consulting while acting as an aggregator under the tender invited for 4500 MW bids for 5 years period for utilization of SHAKTI Coal under Para B (V) had invited all qualified bidders to re-submit their bids for negotiation as the price bids submitted were on higher side.
- 7.37. We note that since the long term arrangement is for 15 years (5 years extendable) and domestic coal is being arranged by the Petitioner through SHAKTI allocation under B (IV) while considering the limited participation under the tender, in the interest of consumers of the State, the Petitioner has issued letter dated 07.07.2023 to all Bidders requesting them to resubmit their proposals with the most competitive and lower rates possible in reference to their quoted rates. In response to the aforesaid request, L1 bidder and L2 bidder took action and revised their tariff offers accordingly. While, L3 bidder and L4 bidder have declined to reduce their tariff and validated their original offer. The Petitioner vide email dated 15.07.2023 had intimated all the bidders that revised price offer submitted through physical bids is scheduled to be opened on 17.07.2023 at GUVNL, Vadodara. Thereafter, the revised price covers were opened in the presence of nominated representative of qualified bidders. The details of revised tariff submitted by the bidders is as under:

Particulars	Bidders - Revised submission			
	DBPL (L1)	MBPL (L2)	GMR (L3)	JPL (L4)
Capacity Offered (MW)	293	155	150	350
Fixed Charge (Rs./kWh)	2.97	2.84	2.46	3.14
Variable Charge (Rs./kWh)	1.50	1.69	2.31	1.82
Cost of Fuel	1.22	1.22	1.23	1.22
Cost of Transportation	0.28	0.47	1.08	0.57
Cost of Washing	0.00	0.00	0.00	0.03
ISTS Transmission Charge (Rs./kWh)	0.54	0.54	0.54	0.54
ISTS Transmission Losses (Rs./kWh)	0.17	0.18	0.20	0.19
Total Charge (Rs./kWh) - Landed Cost at GETCO Periphery	5.18	5.25	5.51	5.69

7.38. We note that the Clause 1.1.4 of RFP provides that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid whereas Clause 3.3.3 states that if capacity required is not met through Lowest bidder, the GUVNL may invited the remaining bidders to match the bid of lowest bidder. If only one bidder matches the lowest bidder, it shall be selected bidder. Moreover, if no bidder offers to match the lowest bidder in 2<sup>nd</sup> round of bidding, GUVNL may invite fresh bids from all bidders except lowest bidder of first round or annul the bidding process and after 3<sup>rd</sup> round of bidding, only such bids shall be eligible for consideration which are lower than the Bid of second lowest bidder in the first round of bidding.

7.39. We note that in order to evaluate the proposal received, the Petitioner has constituted a Bid Evaluation Committee and the meetings of the Bid Evaluation Committee were held on 22.08.2023, 28.08.2023 and 11.09.2023 and after detailed deliberation, the Bid Evaluation Committee had invited the L1 bidder for discussion and negotiation.

7.40. Pursuant to meeting before the Bid Evaluation Committee, the L1 bidder has submitted the revised offer vide letter dated 31.08.2023 and confirmed vide its letter dated 05.09.2023 regarding to reduce its tariff from Rs. 5.18/kWh to Rs. 5.05/kWh i.e. reduction of around Rs. 0.13/kWh in fixed cost. The detailed break up of component wise final offer received from the L1 bidder after negotiation is as under:

Final Revised Offer from L2 bidder	Rs/kWh
Fixed Charge (Rs./kWh)	2.84
Variable Charge (Rs./kWh)	1.50
- Cost of Fuel	1.22

- Cost of Transportation	0.28
- Cost of Washing	0.00
ISTS Transmission Charge (Rs./kWh)	0.54
ISTS Transmission Losses (Rs./kWh) (at 3.67%)	0.17
<b>Total Charge (Rs./kWh) – Landed Cost of GETCO Periphery</b>	<b>5.05</b>

7.41. The Petitioner has constituted Bid Evaluation Committee comprising of following senior officials:

- i. Shri Jai Prakash Shivahare, IAS, Managing Director, GUVNL;
- ii. Shri K.M. Bhimjiyani, IAS, Nominee Director from Finance Dept., Govt. of Gujarat;
- iii. Shri N.N. Mishra, Ex-Independent Director, GUVNL;
- iv. Prof. Sobhesh Kumar Agarwalla, IIM, Ex-Independent Director, GUVNL;
- v. Shri K. P. Jangid, Director (Finance), GUVNL.

7.42. It is submitted by the Petitioner vide letter dated 07.07.2023 had requested all four bidders to resubmit their proposals with the most competitive and lower rates possible in reference to their quoted rates in the interest of the consumers of the State. The revised price covers were opened in presence of nominated representative of qualified bidders on 17.07.2023 at the Petitioner's Office.

7.43. Pursuant to Petitioner's request, L1 bidder has revised their quoted tariff by Rs. 0.09/kWh and L2 bidder had revised their quoted tariff by Rs. 0.03/kWh while L3 & L4 bidder did not offer reduction in quoted tariff.

7.44. It is also submitted that the Bid Evaluation Committee had invited the L1 bidder for discussion and negotiation. L1 Bidder after discussion with the Bid Evaluation Committee has submitted the revised offer vide Letter dated 31.08.2023 and 05.09.2023 reducing its tariff from Rs. 5.18/kWh to Rs. 5.05/kWh. i.e. reduction by Rs. 0.13/kWh. Thus, on overall basis, the petitioner has succeeded the reduction of L1 tariff by around 4.2%.

7.45. It is also submitted that the tariff of recently commissioned coal-based projects of State Sector & Central Sector is having tariff of around Rs. 4.69-6.49/unit excluding the implication of transmission charges & losses which would be around Rs. 0.65-

0.70/unit. The tariff of recently commissioned coal based projects of GSECL of Ukai & Wanakbori is around Rs. 4.67-5.02/unit.

- 7.46. The Petitioner has also submitted that above coal based projects of State PSUs & Central PSUs are in the process of awarding bids/compliance towards revised environmental norms (i.e. FGD, NOX etc.) and accordingly the same will have additional cost implication in fixed charges due to capital cost and energy charge due to change in operational parameters. While in the tender invited by the Petitioner, the CAPEX & OPEX towards compliance of environmental norms prevailing as on bid due date is included in the tariff quoted by the selected bidder and not to be separately borne by the petitioner.
- 7.47. The Petitioner also highlighted that MPPMCL conducted a bidding process to procure 1230 MW of electricity on a long-term basis from a 1320 MW Thermal Power Station to be established in Madhya Pradesh based on Design-Build-Finance-Own-Operate (DBFOO) framework, with fuel sourced from the Allocated Coal Linkage arranged by MPPMCL in accordance with the SHAKTI B (IV) Policy. The power supply had been envisaged from 2025-26 onwards. The present tariff as per PPA without considering coal price escalation would be around Rs. 5.00/unit.
- 7.48. PFC Consulting invited tender for procurement of Aggregate Power of 4500 MW requirement of Group of States for undertaking tariff based competitive bidding for medium term procurement of Power under Para B (V) of Shakti Policy, 2017. In the medium-term bid invited by PFCCL for 4500 MW, bids for 1560 MW i.e. 34% capacity has been received at weighted average total tariff of Rs. 5.30/kwh at Generator level which would be higher by around Rs. 0.60-0.70/unit after considering transmission cost.
- 7.49. The Bid Evaluation Committee after taking into consideration the high discovered market prices for short term and medium-term recent tenders, tariff of recently commissioned projects of CPSUs, limited upcoming thermal power projects and in view of increasing power demand of the State, recommended to tie up at L1 negotiated tariff of Rs. 5.05/kWh at Gujarat periphery considering the same as reasonable for long term tie up as project is in proximity with the Coal source of SECL

(Coal India) and located in Chhattisgarh. Bid Committee decided that if any of the other bidders matches the L1 tariff, the same may also be considered for the purpose of issuance of Letter of Award under the tender for tie up of capacity on long term basis.

7.50. The Bid Evaluation Committee has recommended as under:

*“RECOMMENDATIONS:*

- 1. The Committee observed that the L1 Tariff received after negotiation i.e. Rs. 5.05/kwh being at Gujarat Periphery includes the transmission cost of around Rs. 0.71/unit as on bid due date and the bid is at ceiling Station Heat Rate of 2450 kcal/kwh. Further, the quoted tariff includes the cost towards compliance to revised environmental norms.*
- 2. The Committee after detailed deliberation has been of the view that considering the prevailing power scenario, high discovered market prices for short term and medium term recent tenders, tariff of recently commissioned projects of CPSUs, limited upcoming thermal power projects and in view of increasing power demand of the State, the L1 negotiated tariff of Rs. 5.05/kwh at Gujarat periphery seems to be reasonable for long term tie up as project is in proximity with the Coal source of SECL (Coal India) and located in Chhattisgarh.*
- 3. The Committee after detailed discussion and considering the reasonability of the revised L1 rate decided that GUVNL may issue Letter of Award to L1 Bidder i.e. M/s D. B. Power Ltd. for 293 MW at Gujarat GETCO Periphery for 15 years PPA (extendable by 5 years) considering their revised offer submitted vide letter dated 31.08.2023 & 05.09.2023 for Rs. 5.05/kwh landed tariff for first year which would be subject to adjustment in accordance with the terms of the Bid Documents & PPA.*
- 4. Bid Committee decided that if any of the other bidders matches the L1 tariff, the same may also be considered for the purpose of issuance of Letter of Award under the tender for tie up of capacity on long term basis.”*

In the aforesaid recommendation the bid evaluation committee has recorded that L1 tariff received after negotiation at the rate of Rs. 5.05 per unit at Gujarat periphery including transmission cost approximately Rs. 0.71 per unit on bid due date and the bid is at Station Heat Rate of 2450 kCal/kWh. The tariff includes cost towards compliance revised environmental norms. The bid evaluation committee has recorded that they have carried out detail deliberation on prevailing power sector scenario in the country and consist of high discovered market prices for short-term

and medium-term in recent tenders, tariff of recently commissioned CPSUs upcoming thermal power projects and also considered increased power demand in the State. The L1 negotiated tariff of Rs. 5.05 per kWh at Gujarat periphery seems reasonable for long term tie up for project in proximity with coal source of SECL (Coal India) located in Chhattisgarh. Further, the bid evaluation committee has recommended that to procure power from M/s DB Power Limited for 293 MW at Gujarat GETCO periphery for 15 years PPA (extendable by 5 years) considering their revised offer submitted vide letter dated 31.08.2023 and 05.09.2023 for Rs. 5.05 per kWh landed tariff for first year which would be subject to adjustment in accordance with the terms of the bid documents and PPA.

- 7.51. We note that Petitioner GUVNL vide letter dated 06.09.2023 had requested the remaining bidders to match the L1 rates in accordance with the terms of the tender and submit the same by 08.09.2023. Further, as per tender the validity of the Bid is 120 days from the bid due date i.e., 15.09.2023. We also note that M/s M B Power Limited and M/s GMR Warora Limited vide respective letters dated 07.09.2023 & 08.09.2023 had requested for extension in time limit for submission their response to the Petitioner's request for L1 matching. The Petitioner vide letter dated 08.09.2023 had sought the extension in bid validity by 15 days i.e. upto 30.09.2023. The Petitioner has received the confirmation of bid validity extension upto 30.09.2023 from M/s M B Power Limited and M/s GMR Warora Limited through letters dated 08.09.2023. The Petitioner has made a series of discussion with both M/s M B Power Limited and M/s GMR Warora Limited but both bidders have declined to match the L-1 price on unconditional basis and hence were not been considered for issuance of Letter of Award under the tender by the Petitioner. Thereby, the tender of the Petitioner stood concluded with L1 bidder being the selected bidder. Therefore, the Petitioner after taking into consideration of the time period for issuance of Letter of Award (LoA) & signing of PSA, vide letter dated 13.09.2023 has issued the LoA to L1 bidder, i.e. M/s D B Power Limited. In response to the Petitioner's letter dated 13.09.2023, the Respondent (bidder) M/s D B Power Limited has issued LoA and unconditionally accepted the LoA for signing the PSA. Accordingly, the Power Supply Agreement (PSA) was signed on 09.10.2023 after incorporating the relevant details as per the Corrigendum(s) and Bid submitted by the selected bidder. The copy of LoA issued by

the Petitioner & acceptance to the same of L1 bidder & copy of signed PSA is also filed with the Petition.

- 7.52. We further note that the rate discovered under the above bidding process pursuant to L1 matching is Rs. 5.05/unit at Gujarat periphery which includes the transmission cost of around Rs. 0.71/unit as on bid due date and the bid submitted is at considering ceiling Station Heat Rate of 2450 kcal/kWh specified under the bid documents by the Petitioner. Further, as per the terms and conditions of the tender and clarifications issued thereof, the quoted tariff includes the cost towards compliance to revised environmental norms.
- 7.53. We also note that the spot power market viz. Power Exchanges, Short Term Market and Medium Term market are witnessing the increase in power purchase rates during last few years due to limited new thermal capacity in the State, high growth in energy demand across the country and increase in prices of fuel. The tariff of the L1 selected bidder of Rs. 5.05/kWh being after the applicability of ISTS transmission charges & losses including cost towards compliance to environmental norms, with pre-specified Station Heat Rate criteria and normatively availability of 90% during the contract year is competitive in nature and will help State in meeting its power demand through economic sources on long term basis. Therefore, considering the prevailing power scenario, high discovered market prices for short term and medium term tenders, tariff of recently commissioned CPSU thermal projects and limited upcoming thermal power projects in the country and in view of increasing power demand of the State, the L1 discovered tariff of Rs. 5.05/kWh for first year at Gujarat periphery seems to be reasonable and accordingly, the Petitioner has proceeded to tie up power from the same. The project of L1 bidder is in proximity to the coal source SECL (Coal India) and located in Chhattisgarh and may enable savings in coal transportation cost as compared to projects located in the State of Gujarat or outside Chhattisgarh in the event coal remains to be available from SECL coal mines under the PSA. Moreover, tie up of power from domestic coal-based capacity located near the coal source may help the Petitioner in diversifying the power purchase portfolio and minimize the fuel related risk in view of anticipated coal availability by Coal India under the FSA to the bidder selected through competitive bidding process.

- 7.54. In view of the foregoing, the Commission is satisfied with the tendering process conducted by the Petitioner in a transparent manner and discovered tariff of successful bidder (i.e. Respondent M/s D B Power Limited) 293 MW capacity.
- 7.55. The Commission, therefore, decides to adopt the discovered tariff of Rs. 5.05 per Unit by the aforesaid bidder, i.e., M/s D B Power Limited for their 293 MW capacity as sought by them, as prayed by the Petitioner.
- 7.56. We note that the Petitioner has issued the Letter of Award (LOI) vide its Letter No. GUVNL/Commerce/1249 dated 13.09.2023 to the successful bidder M/s D B Power Limited and thereafter, Power Supply Agreement (PSA) was executed with M/s D B Power Limited on 09.10.2023. The Petitioner is directed to submit an affidavit stating that the Articles/provisions of the PSA executed are as per the directions, provisions of Act, Rules, bidding guidelines and deviations approved by the Commission from time to time and that there are no other deviations taken by the Petitioner in the bidding documents other than those approved by the Commission. We also direct the Petitioner that for the purpose of transparency, after execution of the PPAs, to publicly disclose the name (s) of the successful bidder(s) and the tariff quoted by them together with the breakup with the component, for 30 days on its website in terms of the bidding guidelines as amended for knowledge and information of the stakeholders.
8. With this Order, the present Petition stands disposed of accordingly.
9. Order accordingly.

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

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

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

Place: Gandhinagar.  
Date: 09/02/2024.