

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

PETITION NO. _____ OF 2024

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited

-

Petitioner

Versus

1. Essar Power Gujarat Ltd.
2. Energy Watchdog
3. Prayas (Energy Group)

-

Respondents

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[Signature]
31/1/2024
PETITIONER
GUJARAT URJA VIKAS NIGAM LIMITED

PLACE: VADODARA
DATED: 31.01.2024

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR

1

PETITION NO. _____ OF 2024

IN THE MATTER OF:

PETITION UNDER SECTIONS 86 (1)(b) AND 86(1)(f) OF THE ELECTRICITY ACT, 2003 READ WITH ARTICLE 18.1 OF THE POWER PURCHASE AGREEMENT (PPA) DATED 26.02.2007 UNDER 1000 MW (BID-03), EXECUTED BETWEEN GUJARAT URJA VIKAS NIGAM LIMITED AND ESSAR POWER GUJARAT LIMITED FOR APPROVAL OF AMENDMENTS BY WAY OF SUPPLEMENTAL POWER PURCHASE AGREEMENT DATED 05.01.2024.

AND

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited - Petitioner

Versus

1. Essar Power Gujarat Ltd.
2. Energy Watchdog
3. Prayas (Energy Group) - Respondents

PETITION FOR APPROVAL OF THE 5th SUPPLEMENTAL POWER PURCHASE
AGREEMENT DATED 05.01.2024

MOST RESPECTFULLY SHOWETH:

1. That the present Petition is being filed under Sections 86(1)(b) and 86(1)(f) of the Electricity Act, 2003, seeking approval of the 5th Supplemental PPA dated 05.01.2024, between Essar Power Gujarat Limited (hereinafter 'EPGL') and the Petitioner herein, Gujarat Urja Vikas Nigam Limited (hereinafter 'GUVNL') in regard to the Power Purchase Agreement dated 26.02.2007, as amended and existing as on date of the signing of the 5th Supplemental PPA. A copy of the 5th Supplemental PPA dated 05.01.2024 is attached hereto and marked as Annexure 'A'.
2. The Petitioner, Gujarat Urja Vikas Nigam Limited (hereinafter 'GUVNL') is a Company incorporated under the provisions of the Companies Act, 1956. Petitioner is engaged in activities of bulk purchase and bulk supply of electricity and is a Licensee for the said activities under provisions of Electricity Act.





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3. The Respondent No. 1, Essar Power Gujarat Limited (hereinafter 'EPGL') is a Generating Company under Section 2(28) of the Electricity Act, 2003. EPGL has set up thermal power plant having total capacity of 1200 MW (2x660 MW) situated in Salaya, District Jamnagar, Gujarat.
4. Energy Watchdog and Prayas (Energy Group), are the consumer organizations (hereinafter 'Respondent No. 2 & 3') respectively.
5. GUVNL had entered into a Power Purchase Agreement dated 26.02.2007 with EPGL through competitive bidding process in accordance with the guidelines issued under Section 63 of the Electricity Act 2003 for contracted capacity of 1000 MW to be supplied from Units 1 and 2 of Salaya Power Plant (hereinafter 'Bid-03 PPA'). A copy of the PPA dated 26.02.2007 is attached hereto and marked as Annexure 'B'. The Supplemental PPA has been entered into on 25.11.2008, 16.10.2009, 01.03.2019 and 12.08.2021 between the parties, prior to the present 5th Supplemental PPA. GUVNL, if need be, would crave reference to the above Supplemental Agreements at the time of the hearing.
6. That the Petitioner herein had filed the Petition No. 1807 of 2019 before Hon'ble Commission for approval of the Supplemental Power Purchase Agreement dated 01.03.2019 entered into with M/s Essar Power Gujarat Ltd for amendment in PPA dated 26.02.2007. The proposed Amendments were pursuant to the Government of Gujarat Policy Directive vide Government Resolution (GR) No. CGP-12-2018-166-K dated 01.12.2018. A copy of 3rd Supplemental PPA dated 1.03.2019 is attached hereto and marked as Annexure 'C'. The Hon'ble Commission vide order dated 27.04.2020 had after public hearing and receiving representation from consumer organizations in the Petition, granted conditional approval to the said Supplemental Agreement, namely, to incorporate certain modifications as morefully set out in the said Order dated 27.04.2020. A copy of Order dated 27.04.2020 passed by the Hon'ble Commission in Petition No. 1807 of 2019 is attached hereto and marked as Annexure 'D'.
7. Aggrieved by the decision dated 27.04.2020, EPGL had filed an Appeal being Appeal No 108 of 2020 before the Hon'ble Appellate Tribunal for Electricity.

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8. In the meanwhile, the Energy and Petrochemical Dept., Government of Gujarat vide letter dated 12.06.2020 conveyed that the issue related to uniform implementation of Supplemental PPAs with imported coal based power projects located in Gujarat has been examined and Government of Gujarat vide G.R. CGP-12-2018-166-K dated 12.06.2020 has decided that the earlier G.R. dated 01.12.2018 stands revoked for all intents and purposes since the objective and purpose for which the G.R. dated 01.12.2018 was resolved is not being achieved. Further, Government of Gujarat in its letter dated 12.06.2020 had given detailed guidelines regarding further course of action regarding signing of SPPA with EPGL. The copies of the Government of Gujarat G.R. dated 12.06.2020 and the letter dated 12.06.2020 are attached hereto and marked as **Annexure 'E'** ('Colly').
9. In view of modifications directed by the Hon'ble Commission vide Order dated 27.04.2020, Government of Gujarat Guidelines and GR dated 12.06.2020 and further modifications approved vide Government of Gujarat G.R. dated 05.06.2021, the Petitioner and EPGL agreed to and executed the amended and modified Supplemental PPA in substitution of the earlier signed Supplemental PPA dated 01.03.2019. A copy of Government of Gujarat G.R. dated 05.06.2021 is attached hereto and marked as **Annexure 'F'**. A copy of the 4th Supplemental PPA dated 12.08.2021 is attached hereto and marked as **Annexure 'G'**.
10. In view of the above, Appeal No. 108 of 2020 was withdrawn by EPGL, as allowed vide Order dated 25.06.2021. The copies of Order dated 25.06.2021 passed by the Hon'ble Appellate Tribunal and the Letter dated 14.07.2021 by EPGL are attached hereto and marked as **Annexure 'H'** (Colly).
11. The Petitioner on 01.09.2021 had filed the Petition No. 2004 of 2021 for approval of the amendments to the PPA by way of Supplemental PPA dated 12.08.2021 pursuant to the Order dated 27.04.2020 of the Hon'ble Commission and Government of Gujarat GR and Letter dated 12.06.2020 and Government of Gujarat GR dated 05.06.2021.



[Handwritten signature]

12. Vide Order dated 20.11.2021 after hearing the parties and receiving representation from Consumer organizations, the Hon'ble Commission gave approval to the Fourth Supplemental Power Purchase Agreement dated 12.8.2021. The SPPA provided for HBA Index ceiling for imported coal price at 90 USD / MT & Gross Heat Rate (GHR) at lower of (a) actual Gross Station Heat Rate or (b) 2262 Kcal / kwh as approved by Hon'ble Commission in Petition. No. 1296/2013. A copy of the Order dated 20.11.2021 of the Hon'ble Commission in Petition No. 2004 of 2021 is attached hereto and marked as **Annexure 'I'**.
13. On 11.11.2022 EPGL filed Appeal being Appeal No. 457 of 2022 before the Hon'ble Tribunal challenging the Order dated 20.11.2021 of the Hon'ble Commission.
14. Despite the approval of revised SPPA by the Hon'ble Commission, EPGL did not been commence power under the SPPA in spite of repeated requests claiming to be affected by the HBA Index Ceiling. EPGL has alleged that the actual HBA Index is much higher than the ceiling.
15. It to submit that HBA index (6322 GCV) notified by Government of Indonesia for benchmark coal price has remained higher than 90 USD / MT. The month wise details are as under;-

Month	HBA index for 6322 Kcal/ Kg (USD/MT)
Jan-23	305.21
Feb-23	277.05
Mar-23	283.08
Apr-23	265.26
May-23	206.16
Jun-23	191.26
Jul-23	191.60
Aug-23	179.90
Sep-23	133.13
Oct-23	123.96
Nov-23	139.80
Dec-23	117.38
Jan-24	125.28



16. It is submitted that EPGL has supplied power to GUVNL under Section 11 directive for the period 13.09.2022 to 31.12.2022 wherein Energy Charge received for supply of power is in accordance with the benchmark ECR notified by Expert Committee of Ministry of Power, Govt. of India.

17. EPGL vide letters dated 08.12.2022 and 27.12.2022 to E & P department, Government of Gujarat had requested for various modifications in the Supplemental PPA related to removal of HBA Index ceiling, increase in Station Heat Rate etc. EPGL had also made representations to the Government of Gujarat on the aspects of the conditions contained in the 4th Supplementary PPA dated 12.08.2021 regarding HBA Index ceiling and Station Heat Rate .
18. A meeting dated 23.12.2022 was held at Government of Gujarat level to discuss the representation of EPGL with regard to modification in SPPA dated 12.08.2021. In terms of the Minutes of Meeting dated 23.12.2022 forwarded by EPD, Government of Gujarat vide letter dated 10.01.2023, it was decided that ceiling of HBA Index for USD 90/MT shall be relaxed. Further, it was decided that the relaxation in HBA ceiling shall be made effective from 01.01.2023 for which appropriate approval from Hon'ble Commission shall be obtained. Further, it was decided that for allowing revision in SHR, CEA Recommendations would be obtained and the modification in SHR shall be allowed after due approval of Hon'ble Commission.
19. Based on the discussion in the meeting, EPGL had commenced supply of power under the SPPA w.e.f 01.01.2023 pending the approval for modifications in the SPPA towards HBA Index ceiling.
20. In response to EPD, Government of Gujarat letter dated 17.02.2023, CEA vide letter dated 03.03.2023 to Government of Gujarat has referred to its report dated 06.05.2022 submitted to Ministry of Power recommending normative SHR of 2333 kcal/kwh for EPGL Salaya plant and conveying that Expert Committee of Ministry of Power while declaring the benchmark Energy Charge Rate for EPGL under Section 11 is considering the SHR of 2333 kcal/kwh. A copy of Government of Gujarat letter 17.02.2023 is attached hereto and marked as **Annexure J**. A copy of CEA letter dated 03.03.2023 is attached hereto and marked as **Annexure K**.
21. In view of the above, vide letter dated 10.10.2023 the Government of Gujarat has conveyed its approval for modification of SPPA dated 12.08.2021 between GUVNL and EPGL as under:



"I am directed to refer to GUVNL's letters under reference on the subject noted above and the proposal of GUVNL regarding Modification in SPPA dated 12.08.2021 between GUVNL and M/s. EPGL, was examined and considered by the State Government.

2. After careful consideration, the State Government is according an approval for modification of SPPA dated 12.08.2021 between GUVNL and M/s. EPGL on the following aspects:-

i. Removal of "HBA Index Ceiling" of US \$ 90/MT under SPPA w.e.f. 01.01.2023.

ii. Approval for modification of "SHR" from 2262 Kcal/kwh to 2333 kcal/kwh in SPPA as per CEA recommendations which would be effective from 01.01.2023 subject to approval of GERC and any differential payment on account of revision in SHR shall be due and payable only after necessary approval of GERC.

3. I am, therefore, to request you to take appropriate actions accordingly and the same may be intimated to this Department, at the earliest please."

A copy of the letter dated 10.10.2023 to GUVNL is attached hereto and marked as Annexure 'L'.

22. Vide email dated 20.12.2023, GUVNL forwarded a draft of the SPPA to EPGL. Vide letter dated 20.12.2023 EPGL accorded unconditional consent to the draft SPPA forwarded by GUVNL. The copies of GUVNL's email (along with draft SPPA) and EPGL's letter both dated 20.12.2023 are attached hereto and marked as Annexure 'M' (Colly.).
23. Vide letter dated 02.01.2024, GUVNL wrote to EPGL as under:

"This is in reference to various representations made by EPGL before State Govt. and GUVNL requesting the (i) Removal HBA Index Ceiling of USD 90/MT and (ii) Regarding modification in Station Heat Rate under the Supplemental PPA dated 12-08-2021 approved by Hon'ble GERC vide order dated 20.11.2021.

In compliance to the directive and approval received from State Govt., GUVNL vide email dated 20.12.2023 had forwarded the draft of SPPA and EPGL vide letter dated 20.12.2023 has accorded its unconditional consent to the draft SPPA forwarded by GUVNL.

In the above context, EPGL is requested to take appropriate actions for withdrawal of pending suits / petitions / appeals / cases / litigations etc. as per Para 1 (v) of draft SPPA in compliance to the consent given and submit the copy of the affidavit(s) filed before various judicial for a for withdrawal of the matter / cases with GUVNL.

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In view of above, EPGL is requested to take appropriate action towards compliance for signing of SPPA and approach GUVNL for signing of SPPA along with Letter of Authorization from Board of Directors, Stamp Papers & ID proof of signatory with prior confirmation of GUVNL. The finalized draft of fifth SPPA is attached herewith for reference.”

A copy of GUVNL’s letter dated 02.01.2024 to EPGL is attached hereto and marked as Annexure ‘N’.

24. In terms of the above, on 05.01.2024, GUVNL and EPGL entered into the 5th Supplemental PPA in amendment to the 4th Supplemental PPA dated 12.08.2021 as under:

“(i) The Amendment Effective Date shall be January 1, 2023 i.e. the date with effect from which, this amendment to the Fourth Supplemental Agreement shall become effective and binding upon parties subject to approval of Hon’ble GERC.

(ii) It is agreed that the HBA Index Ceiling of USD 90 / MT for 6322 GCV coal as mentioned under Clause 3 of the Supplemental PPA dated 12.08.2021 shall stand removed w.e.f 1.1.2023. For avoidance of doubt, HBA Index ceiling of USD 90 / MT shall not be applicable while computation of Energy Charge for energy supplied from 1.1.2023 onwards subject to consideration of lower of (a) for a (e) under the FOB cost of coal under Clause 3.2.4 (I) of SPPA dated 12.08.2021.

(iii) At Clauses 3.2.3 and 3.5.3 of SPPA dated 12.08.2021, the definition of GHR is to be substituted and replaced by the following:

“GHR = Lower of (a) actual Gross station heat rate or (b) 2333 Kcal per kWh as recommended by Central Electricity Authority, Govt. of India”

It is agreed that the modification in Station Heat Rate as per CEA recommendations shall be effective from 01.01.2023.

The above amendments shall be subject to requisite approval of Hon’ble GERC and any differential payment on account of revision in Station Heat Rate shall be due and payable in accordance with and only after necessary approval of Hon’ble GERC.

(iv) In view of the relief being allowed to EPGL project pursuant to Govt. of Gujarat decision(s), it is agreed that any change in ownership of Essar Power Gujarat Ltd.’s Salaya Power Project (1200 MW) shall only be done with the prior intimation of any such move and only with prior approval of the Govt. of Gujarat and Hon’ble GERC.

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(v) All pending suits / petitions / appeals / cases / litigations etc. filed by EPGL before any judicial fora or any claims of EPGL qua GUVNL shall be withdrawn by EPGL except related to Change in Law claims under the PPA.

2. This Fifth Supplemental Agreement is subject to the approval by Hon'ble GERC and shall be enforceable only upon such approval by Hon'ble GERC w.e.f 1.1.2023.

3. Except for the above all other terms & conditions of the existing PPA read with the existing SPPA(s) shall remain unchanged and shall be effective as before and be read as a part of this Supplemental Agreement.

4. Subject to the above, this Fifth Supplemental Agreement shall be read as an integral part of the PPA dated 26.02.2007 read with Supplemental PPA(s) entered into between the parties as amended from time to time."

25. It is submitted that in view of the above, EPGL has undertaken to withdraw all pending litigations etc. filed by EPGL before all judicial fora except related to change in law claims under the PPA. EPGL has filed an application seeking withdrawal of Appeal No 457 of 2022 in terms of the 5th SPPA which was allowed by the Hon'ble Tribunal on 23.01.2024. Further, in compliance to the SPPA terms regarding withdrawal of all pending litigations / cases filed by EPGL before various fora, EPGL vide letters dated 04-01-2024 has submitted the application for withdrawal of the pending cases in the following:

Forum	Case no.	In the matter	Date of application for Withdrawal
Supreme Court of India	M. A (Dairy) No 32487 of 2023 in Civil Appeal No. 9324-9324 of 2016	M. A filed by EPGL for seeking restoring of C.A (filed by EPGL) in Liquidated Damages (LD)	04-01-2024
Appellate Tribunal (APTEL)	Appeal No. 457 of 2022	Appeal filed against GERC order dated 20.11.2022 approving SPPA	04-01-2024
Hon'ble GERC	Petition No. 2241 of 2023	For determination of adverse financial consequences under	04-01-2024



		Section 11 (2) of the Electricity Act, 2003 (MOP notification dated 05-05-2022)	
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The copies of EPGL's letters dated 04-01-2024 is attached hereto and marked as Annexure 'O'.

26. The 5th Supplemental PPA which modified the 4th Supplemental PPA to the extent mentioned above, which is as per the decision of the Government of Gujarat, requires the approval of this Hon'ble Commission under Section 86(1)(b) of the Electricity Act, 2003 before it can be given effect to and implemented. Accordingly, GUVNL is approaching this Hon'ble Commission for the approval of the 5th Supplemental PPA dated 05.01.2024.
27. GUVNL has paid the requisite court fees.

PRAYERS

28. It is, therefore, most respectfully prayed that this Hon'ble Commission may be pleased to:
- a. Admit the present Petition and take on record the letter dated 10.10.2023 of the Government of Gujarat in regard to the 5th Supplemental PPA for modification of 4th Supplemental PPA dated 12.08.2021 between GUVNL and EPGL;
 - b. Approve the 5th Supplemental PPA dated 05.01.2024 amending certain terms of the 4th Supplemental PPA dated 12.08.2021 and the PPA dated 26.02.2007 duly executed between GUVNL and EPGL ; and
 - c. Pass any such further orders as deemed fit by the Hon'ble Commission.

PLACE: VADODARA
DATED: 31.01.2024



[Signature]
31/1/2024
PETITIONER
GUJARAT URJA VIKAS NIGAM LIMITED

DECLARATION

The Petitioner declares that the subject matter of the Petition has not been raised by the Petitioner before any other competent forum and that no other competent forum is currently seized of the matter or has passed any order in relation thereto.

M 31/11/2024
GUJARAT URJA VIKAS NIGAM LIMITED
PETITIONER





IN-GJ90594333115805V



सत्यमेव जयते

INDIA NON JUDICIAL
Government of Gujarat
Certificate of Stamp Duty

Certificate No. : IN-GJ90594333115805V
 Certificate Issued Date : 12-Dec-2023 11:36 AM
 Account Reference : CSCACC (GV)/ gjcsceg07/ GJ-BAZAH0633/ GJ-BA
 Unique Doc. Reference : SUBIN-GJGJCSCEG0704487998241524V
 Purchased by : HITESH JITENDRA MODI
 Description of Document : Article 5(h) Agreement (not otherwise provided for)
 Description : AGREEMENT
 Consideration Price (Rs.) : 300
 (Three Hundred only)
 First Party : ESSAR POWER GUJARAT LIMITED
 Second Party : GUJARAT URJA VIKAS NIGAM LIMITED
 Stamp Duty Paid By : ESSAR POWER GUJARAT LIMITED
 Stamp Duty Amount(Rs.) : 300
 (Three Hundred only)



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- આ ઈ-સ્ટેમ્પ પ્રમાણપત્રમાં કોઈપણ વિસંગતતા જણાય તો સ્ટોક હોલ્ડિંગની શાખા / કેન્દ્ર પર સંપર્ક કરવો.
- ઈ-સ્ટેમ્પિંગ સંબંધિત જાણકારી માટે અમને estamp.ahmedabad@stockholding.com પર ઈ-મેઈલ કરવો અથવા અમારી શાખા / કેન્દ્ર ની મુલાકાત લેવી.



SUPPLEMENTAL AGREEMENT

THIS AMENDMENT to THE FOURTH SUPPLEMENTAL POWER PURCHASE AGREEMENT (hereinafter 'FIFTH SUPPLEMENTAL AGREEMENT') dated 12.08.2021 is entered into at Vadodara, Gujarat on the 5th day of January, Two Thousand And Twenty Four by and

Prateek

BETWEEN

M/s Essar Power Gujarat Ltd., a Company incorporated under the erstwhile Companies Act, 1956 having its registered office at 44 KM Milestone, Jamnagar – Okha Highway, Khambhaliya, Devbhumi Dwarka (hereinafter referred to as "Seller" or "EPGL" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as Party of the first part;

AND

M/s Gujarat Urja Vikas Nigam Limited, a Government of Gujarat Undertaking and a Company incorporated under the erstwhile Companies Act, 1956 having its registered office at Sardar Patel Vidyut Bhavan, Vadodara (hereinafter referred to as the "Procurer" or "GUVNL" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) as Party of the second part

Each of the "Procurer" and "the "Seller" are individually referred to as "Party" and collectively as the "Parties"

Whereas:

- A. The Seller and the Procurer have executed a Power Purchase Agreement dated 26.02.2007, which was amended by Assignment Agreement dated 25.11.2008 from Essar Power Limited to EPGL and Supplemental Power

Prateek

Prateek



Purchase Agreement dated 16.10.2009 (hereinafter collectively referred to as the "PPA"), for the sale and purchase of electricity in accordance with the terms and conditions contained therein;

- B. The Government of Gujarat, vide Government Resolution No. CGP-12-2018- 166-K dated 3.07.2018 constituted a High Power Committee to, inter alia, suggest sustainable solutions for facilitating the power generation projects located in the state of Gujarat and based on imported Indonesian coal as fuel including the Seller herein, on account of representations made by such power generation projects as to the viability of their continued operation after the decision of the Hon'ble Supreme Court in Energy Watchdog Vs Central Electricity Regulatory Commission (2017) 14 SCC 80 that no relief is admissible to such projects under the terms of the PPA entered into by Procurer with such projects;
- C. The High Power Committee submitted its Report on 3.10.2018 making certain recommendations for resolving the said issues;
- D. The Government of Gujarat accepted the recommendations of the High Power Committee with certain modifications and, issued its policy directions contained in Resolution No. CGP-12-2018-166-K dated 1.12.2018 (Hereinafter referred to as "the Implementation Policy");
- E. The implementation of the said policy directions contained in the Implementation Policy required, inter alia, carrying out certain amendments to the PPA, and obtaining necessary approvals for these amendments, from the Appropriate Commission;
- F. Article 18.1 of the PPA enabled the Parties to amend the provisions of the PPA by written agreement however subject to the condition that any such supplemental agreement can be effective and valid only on the approval by the Appropriate Commission;



Pratik

