

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2098 of 2022.

In the matter of:

Petition under Section 86 read with Section 63 of the Electricity Act, 2003 for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff based Competitive Bidding Process from Grid connected Renewable Energy Sources i.e., Wind, Solar and Wind-Solar Hybrid Projects and for approval of bid documents for carrying out bidding process for procurement of power from Hybrid Power Projects having RE generation with co-located Energy Storage Systems.

And

IA No.02 of 2023 in Petition No. 2098 of 2022.

In the matter of:

Application filed by the Petitioner for amendment in Petition No. 2098 of 2022.

And

IA No. 05 of 2024 in Petition No. 2098 of 2022.

In the matter of:

Application filed by the Petitioner for amendment in Petition No. 2098 of 2022.

Applicant/Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)
Sardar Patel Vidyut Bhavan
Race Course Circle, Vadodara – 390007.

Represented by : Ld. Adv. Mr. Utkarsh Singh along with Mr. M.K.
Jani and Mr. B. B. Patel

V/s.

Objector No. 1 : Wind Independent Power Producers Association

Commercial Block-1, Golf Course Road, DLF City
Zone 6, Sector 43, Gurugram, Haryana 122009.

Represented by : Nobody was present.

Objector No. 2 : Apraava Energy Private Limited
6th Floor, Chanakya, Off Ashram Road
Ahmedabad -, 380009, Gujarat.

Represented by : Nobody was present.

Objector No. 3 : Greenko Energies Private Limited
15th Floor, 18-20 KG Marg
Hindustan Times House, New Delhi – 110001.

Represented by : Nobody was present.

Objector No. 4 : M/s Renew Power Pvt. Limited
Commercial Block-1, Golf Course Road, DLF City
Zone 6, Sector 43, Gurugram, Haryana 122009.

Represented by : Nobody was present.

CORAM:

Pankaj Joshi, Chairman
Jatin N. Thakkar, Member

Date: 08/05/2026.

ORDER

1. Before we proceed, it is to note that the record of this Petition shows that the present Petition along with IAs, were heard on different dates and appropriate Daily Orders were passed by the previous Bench of the

Commission. Subsequently, upon superannuation of the previous Members of the Commission, the present Bench of the Commission heard the matter and proceeded to dispose of the same by this Order.

2. 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 for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff based Competitive Bidding Process from Grid connected Renewable Energy Sources i.e., Wind, Solar and Wind-Solar Hybrid Projects with mandatory installation of Energy Storage Systems.
3. The matter was kept for hearing on 07.06.2022 and the Commission passed Daily Order dated 09.06.2022, wherein directions were given to the Petitioner GUVNL for inviting comments/suggestions/objections from the stakeholders in the present Petition by issuing public notices in newspapers and accordingly, in compliance thereof, the Petitioner published the same in 'Indian Express' and 'Sandesh' newspapers and also uploaded on its website for inviting the objections and suggestions from the stakeholders in the present Petition. Moreover, the Petitioner also filed compliance affidavit dated 15.06.2022 in this regard before the Commission. It is further submitted that as permitted by the Commission in its Order dated 13.06.2022, GUVNL has issued a tender vide RFS dated 14.06.2022 inviting bids for procurement of power through competitive bidding process followed by reverse e-auction from 500 MW grid connected RE projects with assured peak power supply along with energy storage system located in the State of Gujarat and issued the public notice

on 15.06.2022 for the same. The Clause 1.1.3 of the bid documents issued by the Petitioner read as under:

“GUVNL has filed Petition No. 2098 of 2022 before the Hon'ble GERC for approval of deviations from Guidelines for tariff based competitive bidding process notified by Government of India for procurement of power from grid connected RE projects i.e. Wind or Solar or Wind-Solar Hybrid Projects. Hon'ble Commission vide daily order dated 09.06.2022 read with addendum order dated 13.06.2022 in the matter has allowed GUVNL to issue the tender documents subject to final decision and directives of the Hon'ble Commission. Therefore, the terms & conditions of this tender shall be subject to the Hon'ble Commission's orders in Petition No. 2098 of 2022.”

4. In response to the said public notice, the objectors, viz, (i) Wind Independent Power Producers Association, (ii) Apraava Energy Pvt. Limited, (iii) Greenko Energies Pvt. Limited, and (iv) ReNew Power Pvt. Limited have filed their views/suggestions/comments with respect to GUVNL' Tender No. GUVNL/500 MW/RE with ESS (Project XV) dated 14.06.2022:

(A) The Objector Wind Independent Power Producers Association vide its email dated 24.06.2022 filed their suggestions/comments in the matter and submitted that since the country is witnessing several reforms on regulatory and policy aspects, and it would be difficult and practically impossible for any of the developer to factor in all possible scenarios and future/unforeseen outcomes emanating from the change in law during the execution plus PPA period of 25

years and in the worst-case scenario, may render the project financially unviable/un-executable/un-operatable. Based on the above, GUVNL may either to carry out bidding as per the Bidding Guidelines stipulated by the Government of India or defer the bid submission for GUVNL Phase III Wind Auction till the Commission decide the Petition No. 2098 of 2022.

(B) The Objector M/s Apraava Energy Pvt. Limited vide its letter dated 01.07.2022 filed their suggestions/comments in response to public notice dated 15.06.2022 issued by the Petitioner GUVNL and also objected to the deviations sought by GUVNL from the Guidelines.

(i) It is submitted that the Guidelines were issued with the objective of promoting competitive procurement of electricity, by distribution licensees to protect consumers' interests and at the same time provides uniformity in risk-sharing framework between the stakeholders and profitability for the investors. The Guidelines also took into account, the views of the various stakeholders and were finalized after various levels of discussions with the said stakeholders. GUVNL has sought deviations from the Guidelines for procurement of power from grid connected renewable energy sources, to the following bid conditions, viz., (a) Payment Security Fund; (b) Change in Law; (c) Force Majeure; and (d) Delay in commissioning on account of Delay in LTA Operationalisation. The deviations sought by GUVNL in the Petition, are contrary to the objective of the Guidelines i.e., to promote competitive procurement of electricity, protecting consumer interests and providing

uniformity in risk-sharing framework between the stakeholders and profitability for the investors.

- (ii) The contention raised by GUVNL that the definition of Change in Law in the Guidelines leaves room for ambiguity is not acceptable as limiting the scope of the Change in Law as proposed by GUVNL, the provision of Change in Law itself may be rendered infructuous. Hence, contrary to the contention raised by GUVNL, the definition of Change in Law in the Guidelines will in fact, limit the likelihood of frequent litigations.
- (iii) Any change in law is an unforeseeable event and is beyond the control of the developer of a power project. Considering the impact of a change in law event on various stakeholders including the State utilities, power producers, end consumers etc., the Ministry of Power had formalised the provisions pertaining to Change in Law in the Guidelines. However, the proposed changes by GUVNL, would dilute the rights available to the developers, may impact the viability of the projects, which in turn will impact the end consumers.
- (iv) Additionally, in order to further streamlining the process of implementing the Change in Law, the Ministry of Power, Government of India has notified Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 on 22.10.2021 which provides the process for adjustment in tariff on change in law, which is also adopted in the new tenders invited by Solar Energy Corporation of India Limited.

- (v) Furthermore, the deviation sought by GUVNL is not only a departure from the definition provided in the Guidelines but also to the definition approved by the Commission in Petition No. 2069 of 2022, which takes away from the efforts of the Ministry of Power and the Commission, in attempting to arrive at a balanced uniform position on the definition of Change in Law, which suits all parties concerned. It is requested to the Commission not to approve deviations to the Guidelines in relation to the definition and provisions of the Change in Law.
- (vi) It is also requested the Commission to direct the Petitioner GUVNL to adopt the Change in Law provisions as provided under the Guidelines on as is basis, without any deviation in the RfS No. GUVNL/500 MW/Wind (Phase III) dated 09.05.2022 issued by GUVNL for Wind Power Project in the State of Gujarat.
- (C) The Objector M/s Greenko Energy Pvt. Limited (Greenko) vide its letter dated 05.07.2022 filed their suggestions/comments in response to public notice dated 15.06.2022 issued by the Petitioner GUVNL and submitted that Greenko is the L1 Bidder for similar Assured Peak supply tender floated by SECI in the year 2019 and concluded in January 2020, for which PPA and PSA have been signed and the regulatory approvals & project execution are underway.
- (i) The objective of GUVNL for not providing extension in SCOD timelines due to delay in readiness of CTU/STU infrastructure

is to ensure timely commissioning of such projects. It is suggested to increase the SCOD for Pumped Storage projects to be 36 months from the date of execution of PPA and 30 months for Solar/Wind/Hybrid projects along with ESS and providing adequate timelines would facilitate in timely commissioning of RE and ESS/PSP projects. The Clause under Wind-Solar Hybrid Guidelines ensures the pass through happens in an expeditious manner. However, as per the GUVNL proposal, there is no specific timeline where the pass through would be expedited, and the developer would be penalized due to delay in approval by the appropriate Commission. It is suggested to consider the timelines as provided in the Wind-Solar Hybrid Guidelines.

- (ii) With respect to Clause of Force Majeure, it is suggested to retain the timelines as provided under the Solar Guidelines for Force Majeure Clause.
- (iii) It is submitted that as per SECI ISTS-VII Peak power tender, RTC-I and RTC-II, and other RE and Hybrid tenders allows for development of projects anywhere across the country. RE hybrid along with ESS is a next generation projects which requires the specific location for large scale Pumped Storage projects and in-turn DISCOM will get the most competitive tariffs. Considering the above, it is suggested that the developer will be allowed to put up the project anywhere across the country or at least allow the storage capacity anywhere across the country. Also as the delivery point is any way the point at which power is delivered into grid system of GETCO

irrespective of where it is connected, there is no specific advantage by mandating projects to be set up only in Gujarat. Therefore, project may be allowed to be set up anywhere in India.

- (iv) It is requested that any changes in the Transmission charges and losses from the Bid date should be passed on to GUVNL. This is appropriate because the Developer will have no means to absorb such variations, while GUVNL can pass it on in its ARR. It is further requested to clarify that whether GEDA shall be the certifying authority for both STU and CTU connected projects.
- (v) It is submitted that major two proven technologies for storage are PSP (Pumped Hydro Storage Project) and BESS. However, with co-located and prior to the energy meter clause restricts the competition and allows only BESS. SECI RTC I and RTC II tender allows for sources of generation and ESS, if any, may be co-located, or may be located at different locations, to be considered a single Project which supports developer in better optimization of project and would lead to higher competition during e-reverse auction. The Bidder may also be allowed to tie up the ESS with a third party, while self-developing the RE component. Such provision was already allowed in SECI RTC II tender. Additionally, it is proposed another business model wherein the Bidder develops the ESS and ties up the RE with a third party. Such model is needed given the evolving ESS industry. It is requested that RE assets and storage assets are allowed to be held under different SPV's for ease of project

financing and any one of the following options be explored to achieve the same:

- (1) Solar (or Wind) entity (SPV 1) being the lead entity signing the tripartite agreement with GUVNL and a separate ESS entity (SPV 2) being a party to this agreement.
 - (2) Solar (or Wind) entity (SPV 1) signing Power Purchase Agreement with GUVNL and a back-to-back agreement with an ESS entity (SPV 2) for a minimum of X/2 MWh.
- (vi) In case of certain energy storage projects, particularly for pumped storage projects (PSP), the project size may be lower than the overall capacity of such storage project. In such cases, separate control systems and metering may not be feasible. In such cases, part of the larger capacity shall be made available to GUVNL in line with the tender conditions. This is particularly relevant for PSP projects where the economies of scale dictate that the optimal size of project which is beyond a minimum threshold. For instance, in case of Greenko, all the PSP projects are of capacity in excess of 10000 MWh. In view of above, it is suggested that GUVNL may do away with this requirement of separate control systems and metering.
- (vii) It is submitted that for a single Project, contracted capacity and project capacity should be equal. In case of more than one project, arithmetic sum of individual projects should be equal to contracted capacity. It is requested to provide the clarification on contracted capacity and project capacity. It is also to clarify how restricting the installed capacity of the Project is relevant

to GUVNL. There may be cases where the developer may want to install larger capacity for benefiting from economies of scale and offer only part capacity to GUVNL. Therefore, this clause may be deleted. With given supply conditions, minimum storage will be installed with high proportion of Wind as RE source. This will lead to major supply during night hours which in contrast with states demand. It is submitted that Off-Peak hours shall be limited to 09:00 hours up to 18:00 hours so that it will align with States high day time demand along with dispatchable supply during morning evening peak hours.

- (viii) It is submitted that development of RE and ESS are of two different nature and thereby having different investor based, it may be allowed to form two separate SPVs, each for RE and ESS, for setting up the Projects.
- (ix) It is suggested to provide at least 36 months' time for commissioning of Pumped Storage Projects (PSP). This will benefit the state in getting schedulable peak power /RTC power at the most competitive tariff. For solar/wind or hybrid projects with ESS, SCOD shall be 30 months from the date of execution of the PPA.
- (x) Considering the demand pattern of the State, it is suggested for mandatory installation of Energy Storage Systems with minimum rated capacity of the ESS being equal to 'X' MWh, where 'X' is the contracted capacity of the project as per the

PPA, in order to meet the criteria of supply of power during the peak hours, which is the essence of this tender.

- (xi) It is submitted that maximum capacity may be increased to 1000 MW or a Greenshoe option to be included in the said bid, as this will support the developer in passing the economies of scale benefit to DISCOMs. Even cases where single generation source is used along with ESS, oversizing of such source beyond the contracted capacity is required to meet the supply conditions. Therefore, assigning the contracted capacity to the installed capacity is conflicting with the supply conditions of the RfS. Similar provision for Solar + ESS is to be allowed where installed capacity of Solar can be much higher than the Project Capacity (or Contracted Capacity) so as to meet the supply conditions of this tender.
- (xii) It is also submitted that the peak tariff discovered in SECI peak tender with similar supply conditions are Rs. 6.12/kWh (PHSP technology) and Rs. 6.88/kWh (BESS technology) where off-peak tariff was Rs. 2.88/kWh. With off-peak tariff being reduced by Rs. 0.59/Kwh and given location constraints (only BESS eligibility), it is stated that peak tariff is going to be higher. However, average tariff shall remain in the same range. Hence, it is suggested to keep bid eligibility as single tariff for both Peak and Off-Peak. It is also stated that State may consider to off-take 100 MW power for each 1 hour block during the Peak Hours, as technologies are available to meet such requirement and would meet the intended requirement of the State.

- (xiii) It is also stated that shortfall shall be permitted upto 10% below the energy commitment during the peak hours on a monthly basis without any compensation. This will increase the dispatchability for the state and fulfil the intended requirement.
- (xiv) With respect to Clause 4.10.4 of RfS and 5.1 (ii), (viii) (e) of the PPA, the said Clause refers to excess generation at an annual level where the annual CUF supply conditions are met. However, with higher installed capacity than the contracted capacity to meet the supply conditions, there will be excess generation on a day-to-day basis and hour to hour basis. This excess generation on a day-to-day basis and hour to hour basis should be allowed to sell on exchange without any restrictions from GUVNL.
- (xv) It is submitted that submission of Payment on Order Instrument (POI) should also be allowed.
- (xvi) It is further submitted that delay in ISTS substation and network is beyond the control of developers. Therefore, any delay in ISTS system shall correspondingly be allowed for extension of COD with an added period of 30-60 days for testing and commissioning.
- (xvii) It is suggested to increase the timeline for Financial Closure for such RE plus storage projects. For Pumped Storage Projects, HPD shall attain the financial closure in terms of PPA, within 30 months from the date of execution of PPA. For

Solar/Wind/Hybrid projects along with ESS, HPD shall attain the financial closure in terms of PPA within 24 months from the date of execution of PPA. In order to make the said assured peak power more firm, developer to provide 100% Firm power with no revision of day-ahead schedule or as per requirement of DISCOMs to be mutually agreed. Pump storage projects being most critical to develop as compared to other storage technologies. Also, such projects will provide additional benefit of HPO to DISCOMs. It is suggested to pass at least some part of benefit to the developer.

(xviii) It is requested that shareholding is to be kept at least 51%. It is assumed that PPA tariff referred in Schedule 4 of the PPA is Off-Peak tariff. Any excess energy purchased by GUVNL should be at least 90% of the Off-Peak tariff.

5. The record of the present matter shows that the present Petition was kept for hearing on 25.08.2022 and the Commission passed Daily Order dated 30.08.2022, wherein it was recorded about the request of Petitioner GUVNL to file an IA seeking permission of the Commission to amend the present Petition for approval of further deviations as may be required for which two weeks' time is sought which was allowed by the Commission. In terms of aforesaid permission granted by the Commission, the Petitioner GUVNL filed IA being IA No. 02 of 2023 seeking amendments in the main Petition.

6. In accordance with the liberty granted by the Commission vide Daily Order dated 30.08.2024, the Petitioner GUVNL filed IA No. 02 of 2023 inter alia seeking following prayers:

(a) Allow amendment of the present Petition in terms of the present application.

(b) Take on record the amended Memorandum of Petition (Annexure A to the present Application).

(c) Take on record the revised Bid Documents containing RFS and Draft PPA (Annexure II to the Revised Petition).

(d) Take on record the discussions of pre-bid meeting held with prospective bidders (Annexure III to the Revised Petition).

(e) Take on record the statement showing the revisions made in the Bid Documents (Annexure IV to the Revised Petition).

(f) Pass such other or further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

7. It is relevant to note the facts mentioned in the IA No. 02 of 2023 filed by the Petitioner stating as under are as under:

7.1. The Petitioner Gujarat Urja Vikas Nigam Limited had filed the Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff Based Competitive Bidding Process from Grid Connected Renewable Energy sources i. e. Wind, Solar and Wind-Solar Hybrid projects and for approval of bid documents for carrying out bidding process for procurement of power from Hybrid

Power Projects having RE generation with co-located Energy Storage Systems.

- 7.2. That the matter was heard by the Commission on 25.08.2022 wherein the Petitioner had submitted that the Petitioner issued the tender on 14.06.2022 inviting bids for procurement of power through competitive bidding process followed by reverse e-auction from 500 MW grid connected RE projects with assured peak power supply alongwith Energy Storage System in accordance with the interim directives of Hon'ble Commission. It was also submitted that pre-bid conference was also held on 18.07.2022 with the prospective bidders wherein certain representations have been made by the stakeholders/bidders seeking modifications/comments to the tender documents with consideration for discovery of better tariff.
- 7.3. The Commission vide Daily Order dated 30.08.2022 has allowed the Petitioner to file an IA for seeking permission of the Commission for amending the Petition No. 2098 of 2022 with a copy to objectors.
- 7.4. In light of the fact that the present Petition is pending, the Petitioner is seeking permission of the Commission to amend the Petition in the manner detailed out as under:

(A) The Cause title of the Petition may be replaced as follows:

“Miscellaneous Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff Based Competitive Bidding Process from Grid Connected Renewable

Energy sources i. e. Wind, Solar and Wind-Solar Hybrid projects and for approval of bid documents for carrying out bidding process for procurement of power from Hybrid Power Projects having RE generation with co-located or multi-located Energy Storage Systems."

(B) In the last line of Para 12 of the Original Petition, "Annexure A" may be renumbered as "Annexure 1".

(C) Sub-para 15(a) and 15 (d) of Para 15 of the Petition may be revised and additional Sub-paras i.e. 15 (f) and 15 (g) may be inserted after para 15 (e). The 'Annexure B' being referred in the Para has been renumbered as 'Annexure II' Consequently, the entire Para 15 may be read as under: -

"15) GUVNL has been entering into agreements for procurement of power from Wind and Solar Energy projects through competitive bidding process conducted from time to time. Considering that with increasing share of renewable energy in the overall through competitive bidding process conducted from time to time. Considering that with increasing share of renewable energy in the overall capacity mix, the issues of Grid Management are likely to increase in coming years, there is a need for progressively promoting grid connected Energy Storage Systems for large scale integration of RE with stability of grid. In view of the same, GUVNL desires to float the tender for purchase of 500 MW power from Renewable Energy sources with mandatory installation of Energy Storage Systems (ESS) for which the draft bidding documents containing RfS and PPA have been prepared which are placed

herewith as Annexure - 'II'. The salient features of the draft bid documents are as under:

- (i) The procurement of power under the tender would be for 500 MW RE power with Co-located or Multi-located Energy Storage Systems wherein developer can install projects with one of the following four combinations. (1) Combination A - Wind Power Projects with Co-located Energy Storage Systems (2) Combination B - Solar Power Projects with Co-located Energy Storage Systems (3) Combination C - Wind-Solar Hybrid Projects with Co-located Energy Storage Systems (4) Combination D - Generation and blending of power from separate Wind and/or Solar and/or Wind-Solar Hybrid sources alone with ESS connected with the Grid at more than one interconnection points wherein installation of ESS is mandatory;
- (ii) In the aforesaid tender, the time periods from 05-09 Hrs in the morning and 18-24 Hours in the evening have been designated as peak hours. Out of these peak hours, 2 hours in morning and 4 hours in evening on each day would be selected by GUVNL/SLDC in which the developer will be mandatorily required to supply firm dispatchable power either from RE Projects or from ESS;
- (iii) It will be mandatory for the developer to supply 3 MWh energy during peak periods for every 1 MW of contracted capacity for which the developer may install Battery Energy

Storage Systems or Pump Storage Hydro Power Systems or any other Storage Systems along with RE project. The tender would be technology agnostic for ESS;

- (iv) Peak power will be purchased at tariff discovered through competitive bidding whereas Off Peak power will be purchased to fixed rate of Rs. 2.57/unit which is the rate worked out based on average of L1 rates for wind and solar power discovered previously in GUVNL's tenders.*
- (v) The tender documents have been prepared with a view to align the provisions of some to the Guidelines of tariff based competitive bidding issued by Government of India for purchase of power from respective RE sources i.e. Wind or Solar or Wind-Solar Hybrid Projects as there are no guidelines at present for procurement of power from Energy Storage Systems which are included as part of the RE project. The aspects of deviations from the Guidelines are discussed in the subsequent para.*
- (vi) The developers can submit bids for combined/blended RE power from separate wind and/or solar and/or wind-solar hybrid projects alongwith ESS connected with the Grid at more than one interconnection points wherein installation of the ESS is mandatory, and it shall be charged fully with RE power when it seeks to supply power to GUVNL.*

(vii) Normally, in case of procurement of Solar and Wind power, GUVNL has been stipulating the condition of setting up of projects within Gujarat considering the socio-economic benefits of the projects. In such cases, the projects are allowed to be set up with connectivity with STU or CTU Sub-stations located in Gujarat. However, in the present case, developers have stated that Gujarat has a limited potential of Pump Storage Projects. Therefore, GUVNL has proposed to allow projects with ISTS connectivity located outside Gujarat in the present tender so that the tender becomes technology agnostic in real sense."

(D) The title of para 18.3 may be modified and replaced as "Force Majeure and Delay in commissioning on account of delay in LTA operationalization" "instead of "Force Majeure". Further, necessary changes may be made at various places (changes have been italicized and underlined) in the entire Para 18.3 to deal with the issue of delay in commissioning of project on account of delay in LTA operationalization as a Force Majeure event. Consequently, the entire 18.4 may be read as under:

".....

"18.3 - Force Majeure and Delay in Commissioning on account of Delay in LTA operationalization"

The guidelines issued by Central Government for procurement of power from Wind, Solar and Wind-Solar Hybrid sources provide different Force Majeure provisions as detailed below.

Further, the Central Government guidelines provide the provisions relating to issue of Delay in Commissioning of Project on account of delay in LTA Operationalization. All the above provisions are detailed below.

Clause 7.5 of Wind Guidelines - Force Majeure

"Force Majeure: The PPA shall contain provisions with regard to force majeure definitions, exclusions, applicability and available relief on account of force majeure as per the industry standards. The WPG shall intimate the Procurer about the occurrence of force majeure within 15 (fifteen) days of the start of the force majeure and the Procurer shall take a decision on his claim within 15 days of receipt of the intimation.

Government of India from time-to-time issues order for waiver of inter-state transmission system (ISTS) charges & losses on transmission of wind power till a certain date. In case the SCD of wind project is before the date till above ISTS waiver is applicable, and if the commissioning of the wind power gets delayed beyond applicable date of ISTS waiver due to force majeure event, the liability of transmission charges & losses would be shared between the WPG and procurers in ratio of 50:50. However, in case of commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to reasons attributable to the WPG the liability of transmission charges and losses would be of WPG."

Clause 8.6 of Wind Solar Hybrid Guidelines - Force Majeure

"Force Majeure: The PPA shall contain provisions with regard to force majeure definitions, exclusions, applicability and available relief on account of force majeure as per the industry standards. The HPG shall intimate the Procurer about the occurrence of force majeure within 15 (fifteen) days of the start of the force majeure and the Procurer shall take a decision on his claim within 15 days of receipt of the intimation."

Clause 5.4 of the Solar Guidelines Force Majeure

Clause 5.4 of the Guidelines issued by Central Government vide notification dated 03.08.2017 read with amendment dated 22.10.2019 provides detailed provisions regarding Force Majeure including definition of Force Majeure, Categorization of Force Majeure events into natural and non-natural Force Majeure events, Force Majeure exclusions, Notification of Force Majeure event, Performance & Liability related clauses and termination due to Force Majeure. The Hon'ble Commission vide order dated 13.01.2020 in Petition No. 1848/2019 has already approved deviations from the aforesaid provisions of Guidelines and therefore the clauses of Guidelines are not reproduced for the sake of brevity.

Clause 17.4 of the Wind-Solar Hybrid Guidelines Commissioning on account Operationalization: of Delay in delay in LTA

Long Term/ Medium Term/Short Term Access shall be required to be submitted by the Generator prior to commissioning of the Project. However, for sale of power to procurer from SCD, the hybrid power generator shall have LTA. The ISTS/ InSTS substation at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS/ InSTS network, with which the generator applies for connectivity, should be scheduled for completion on or before the SCD of the concerned hybrid project so as to match the two timelines. Subject to adherence to this, subsequent to grant of connectivity, in case there is a delay in grant/operationalization of LTA by the CTU/STU and/or there is a delay in readiness of the ISTS/ InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS/ InSTS network until SCD of the Project, and it is established that:

i. The Generator has complied with the complete application formalities as per the Connectivity Procedure and the ISTS/ InSTS substation at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS/ InSTS network, with which the Generator had applied for connectivity, was scheduled for completion on or before the SCD of the concerned hybrid project

ii. The Generator has adhered to the applicable Procedure in this regard as notified by the CERC/SERC/JERC/CTU/STU, and

iii. The delay in grant of connectivity/ LTA by the CTU/STU and/or delay in readiness of the ISTS/INSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS INSTS network, is a factor solely attributable to the STU/ CTU/ transmission licensee and is beyond the control of the Generator.

The above shall be treated as delays beyond the control of the Generator and such Projects shall be eligible for suitable time extension in their SCD".

Instead of the clauses of Force Majeure provided in the respective guidelines of procurement of power from Wind, Solar and Wind-Solar Hybrid sources issued by Central Government, Petitioner proposes the following clauses in relation to 'Force Majeure' to be kept uniform for all four combinations so as to provide similar dispensation and also to consider the Delay in commissioning of project on account of Delay in LTA operationalization as an event of Force Majeure.

Force Majeure clause proposed by Petitioner:

"ARTICLE 11: FORCE MAJEURE

11.3. Force Majeure Events:

a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this

Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:

i) acts of God.

ii) typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities.

iii) acts of war (whether declared or undeclared), invasion or civil unrest.

iv) any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the Power Producer or GUVNL of any Law or any of their respective obligations under this Agreement);

v) inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals.

vi) earthquakes, explosions, accidents, landslides; fire.

vii) expropriation and/or compulsory acquisition of the Project in whole or in part by Government Instrumentality.

viii) *chemical or radioactive contamination or ionizing radiation; or*

ix) *damage to or breakdown of transmission facilities of GETCO/DISCOMS.*

x) *Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.*

xi) *The delay in grant of connectivity/LTA, if applicable, by the CTU / STU and/or delay in readiness of the ISTS / InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS network, will be considered as a factor attributable to the CTU / STU / transmission licensee and beyond the control of the Parties subject to the following.*

(a) The ISTS / InSTS sub-station at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS / InSTS network, with which the Project Developer applies for connectivity, shall be scheduled for completion on or before the SCOD of the concerned Project so as to match the two timelines.

(b) Subject to adherence to above, subsequent to grant of connectivity, in case there is a delay in grant / operationalization of connectivity /LTA by CTU / STU and/or there is a delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of

the power evacuation & transmission infrastructure of the ISTS / InSTS network until SCOD of the project and it is established that;

(c) The Power Producer has complied with the complete application formalities as per the connectivity procedure(s) and the ISTS / InSTS sub-station at the delivery point at the power evacuation and transmission infrastructure of the ISTS/InSTS Network with which the Power Producer had applied for connectivity, was scheduled for completion on or before the SCOD of the project and;

(d) The Power Producer has adhered to the applicable procedure in this regard as notified by the CERC / GERC / CTU / STU and;

(e) The delay in grant of connectivity / LTA by CTU / STU and / or delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation and transmission infrastructure of the ISTS /InSTS Network, is a factor solely attributable to CTUSTU / transmission licensee and is beyond the control of the Parties.

b) Force Majeure Exclusions: Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:

1. *Unavailability, Late Delivery or Change in cost of plants and machineries, equipment, materials, spares parts or consumables for the project.*
 2. *Delay in performance of any contractor / sub-contractor or their agents.*
 3. *Nonperformance resulting from normal wear and tear experience in power generation materials and equipment.*
 4. *Strike or Labour Disturbances at the facilities of affected parties.*
 5. *Insufficiency of finances or funds or the agreement becoming onerous to perform, and*
 6. *Nonperformance caused by, or concerned with, the affected party's*
 - i. *Negligent and intentional acts, errors or omissions.*
 - ii. *Failure to comply with Indian law or Indian Directive; or*
 - iii. *Breach of, or default under this agreement or any Project agreement or Government*
- c) *The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 days after the date on which such Party knew or should*

reasonably have known of the commencement of the event of Force Majeure. If any event of Force Majeure results in a breakdown of communication rendering it not reasonable to give notice within the applicable time limit specified herein, then the party claiming Force Majeure shall give notice as soon as reasonably practicable after reinstatement of communication, but not later than one day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the situation.

- d) The affected Party shall give notice to the other Party of (1) cessation of relevant event of Force Majeure; and (2) cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this agreement, as soon as practicable after becoming aware of each of these cessations.*
- e) To the extent not prevented by a Force Majeure event, the affected party shall continue to perform its obligations pursuant to this agreement. The affected party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.*

11.4. Available Relief for a Force Majeure Event:

No Party shall be in breach of its obligations pursuant to this agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event. However, adjustment in tariff shall not be allowed on account of Force Majeure event. For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party."

The event specified at Article 8.1(a)(xi) above and consequent delay shall be treated as delay beyond the control of the parties and both parties shall be eligible for suitable time extension in the SCOD.

- (E) The Petitioner hereby seeks approval of the Commission for the deviation from the respective force majeure clauses provided in the Guidelines issued by Central Government and approve the clause proposed by Petitioner as detailed above. It is stated that the Commission vide its Order dated 15.03.2018 in Petition No. 1706/2018 has already approved the similar Force Majeure clauses in respect of procurement of solar power and the issue of LTA operationalization which is the additional issue for which the approval of the Commission is sought.
- (F) Para 18.4 of the Petition may be deleted.

(G) The prayer clause of the Petition i.e. Para 21, may be modified as under:

".....

21) PRAYER:

The Petitioner most respectfully prays that this Hon'ble Commission maybe pleased to:

- a) To admit the present Petition.*
- b) To approve the deviations from the Solar Guidelines dated 03.08.2017, Wind Guidelines dated 08.12.2017 and the Wind-Solar Hybrid Guidelines dated 14.10.2020 issued by Central Government for procurement of power from Wind, Solar and Wind-Solar Hybrid Including modifications, as proposed by Petitioner as per details stated at para 18 of the present petition.*
- c) To approve the Draft Bidding Document (RFS and PPA) annexed with the Petition.*
- d) To allow Petitioner to issue a fresh tender with the proposed deviations as an interim measure during pendency of the petition and the aforesaid tender may be concluded & opened only after final decision of Hon'ble Commission in the matter and in accordance with the directives of Hon'ble Commission.*
- e) To condone any inadvertent omissions /errors/shortcomings and permit the petitioner to make addition / change/modification*

/alter this filing and make further submissions as may be required at a future date.

f) To crave relief for filing any further submissions.

g) 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."

(H) A copy of the amended petition is also filed as Annexure A and the Annexures of the original Petition have been renumbered as Annexures I & II and further additional annexures being Annexure III and Annexure IV have been appended in the revised Petition for placing on record the discussions that took place with the prospective bidders during the pre-bid meeting and the relevant amendments proposed to be made in the Bid Documents. It is also stated that the Petitioner has incorporated the relevant amendments in the revised Bid documents in view of discussions with prospective bidders and the revised prayer regarding approval of deviations from the Guidelines.

7.5. It is submitted that the present Amendment is necessary for adjudication of all issues relating to the Petition No. 2098 of 2022.

8. Thereafter, the matter was kept for hearing on 15.03.2023 and the Commission passed Daily Order dated 29.03.2023, wherein after recording the submissions of the Applicant/Petitioner GUVNL, the Commission directed GUVNL to issue public notice in one daily Gujarati

Newspaper and one English Newspaper having wide circulation in the State of Gujarat and also upload the IA No.02 of 2023 along with amended Petition and all the documents on its website, inviting suggestions and objections on the amendments sought through IA No. 02 of 2023 in Petition No. 2098 of 2022 from the stakeholders with consideration of all deviations that are sought and revised the bidding documents.

9. In response to the aforesaid directives, the Petitioner GUVNL filed compliance affidavit dated 29.04.2023 and submitted that in compliance to the aforesaid Daily Order, the Petitioner published the public notice in 'Indian Express' and 'Divya Bhaskar' on 11.04.2023 and also uploaded the Public Notice, IA No. 02 of 2023, Petition No. 2098 of 2022 along with RfS and Draft PPA documents on its website for inviting the objections and suggestions from the stakeholders in the present Petition.
10. In response to the said public notice, ReNew Power Pvt. Limited has filed its views/suggestions/comments with respect to GUVNL' Tender No. GUVNL/500 MW/RE with ESS (Project XV) dated 14.06.2022, as under:
 - (a) That as per the current tender construct, the Hybrid Power Developers (HPDs) are required to quote the peak tariff while the off-peak tariff has been fixed by GUVNL at Rs. 2.57/kWh. It is requested to remove bifurcation of the tariff into two (2) parts and requested HPDs to quote a single blended tariff, which in turn will put all the RE technologies on an equal competitive footing. Further, the two-part tariff approach will increase the peak tariff by Rs. 1/kWh to recover the shortfall of tariff realization for the wind energy generated during the non-peak hours. SECI has concluded

the 1200 MW ISTS-connected Wind-Solar Hybrid Power Projects with assured peak power supply in India (Tranche-VI) on 12.04.2023 with a discovered single blended tariff of Rs. 4.64/unit which is very competitive which also ensures a high CUF under the PPA thereby increasing the utilization of evacuation infrastructure. GUVNL in its tender for purchase of 300 MW Wind Power (Phase-IV) on 31.01.2023 through competitive bidding, has awarded project to developers at the rate of Rs. 2.96/kWh and also, in auction to supply 500MW solar power (Tranche-XIX) on 20.04.2023, the lowest discovered tariff is Rs. 2.71/kWh. Therefore, in case blending the two-part tariff into one is not feasible for GUVNL, it is requested to increase the off-peak tariff to Rs. 2.87/kWh (i.e., weighted average of Rs. 2.96/kWh and Rs. 2.71/kWh considering 67:33 ratio of capacity of wind and solar to be installed) as the peak hours defined are predominantly wind generation hours.

- (b) In the blended tariff as stated above, increasing the CUF supply under the PPA will subsidize the overall bid tariff. This will require oversizing wind and solar capacity which will result in surplus power generation during the high wind season. In order to allow optimization of operation of RE sources, the generator should be allowed to supply any surplus power from RE sources after fulfilling requirements under PPA, to any third party or power exchange without requiring any No-Objection Certificate (NOC) from GUVNL. The generator may also be allowed to sell the power which was offered to GUVNL but not scheduled to any third party or power exchange without requiring NOC from GUVNL on day ahead basis,

which will help developers to generate revenue and will ultimately result in low tariff discovery in the auction. Further, since the RE plant will be oversized, this will also reduce the impact of a low wind season on the CUF committed under the PPA.

- (c) The tender mandates minimum ESS installation of X/2 MWh of the PPA capacity. Since meeting the peak compliance is on account of the successful bidder, it is requested to allow bidders to decide the ESS capacity based on the design of the bidder and remove the mandatory X/2 MWh condition to enable better tariff discovery. After fulfilling the peak compliance of the PPA, the ESS may be allowed to utilize for any other alternate use outside the PPA as per developer's choice.
- (d) It is stated that in large projects, the wind component is commissioned in parts. It is requested to allow HPDs to commission the project early on a technology-wise basis rather than allowing for pro-rata early commissioning as per the combination chosen by the HPD. This will incentivize the project by utilization of RE components prior to the project readiness for complete commercial operation and will encourage the developer to plan early construction of the project.
- (e) RE sources vary over months and years and to avoid penalty for non-compliance, and therefore the developers are allowed to arrange power via alternate sources through MTOA/bilateral STOA/ Power Exchange or any other arrangement to meet peak hour compliances.

The energy from alternate source should be from RE sources or must be balanced with an equivalent REC's or any other mechanism so that the same can be treated as renewable energy. The quantum of alternative sources can be restricted to maximum of 10% of annual contracted energy. This will help in lowering the risk of wind intermittency and levy of double LDs under the PPA.

11. The Objector M/s Greenko Energies Pvt. Limited also filed written submissions on 23.03.2023. The Gist of the same are as enumerated as under:
 - 11.1. That the amended /revised Request for Selection (RfS) document for purchase of power through competitive bidding process followed by reverse e-auction, from 500 MW grid connected Renewable Energy (RE) projects with assured peak power supply along with Energy Storage System (ESS) located anywhere in India, inter alia, requires the successful bidder to setup RE Power Project with ESS at its own cost.
 - 11.2. That the bidder can be either an Energy Storage developer or an RE Project developer and in turn to have allowed them to tie up with a third party RE Project Developer (for development of tender specific project RE capacity) or third-party Energy Storage Developer, to fulfil the supply conditions, considering the following rationales:
 - a. Project under this tender comprises new RE based power generation component including ESS component. Each of these components has its own attributes, w.r.to the nature of assets, gestation period, technology, operational needs, and the resource requirement.

- b. Each component has its own class of investors, both from equity and debt perspective. These dissimilarities widen further in case of Pumped Storage Project (PSP) technology for ESS.
- c. In order to attain maximum Structural and Financial efficiencies, it is required to effectively distinguish the ESS component and RE component separately for efficient execution and operation the project.
- d. Generally, the size of PSP is much larger than the storage capacity required under the subject matter bid, for economies of scale and to meet future PPA/Storage contract needs.
- e. Efficiencies and benefits of economies of scale would result into discovery of competitive tariff.
- f. It would widen the pool of bidders which further lead to discovery of competitive tariff.

11.3. Following RE with Energy Storage bids issued by various agencies till date, for supplying assured peak power or round the clock power, as the case may be, have permitted bidders to tie-up with 3rd Party energy storage developers:

- a. Solar Energy Corporation of India Limited (SECI) issued an RfS for Selection of RE Power Developers for Supply of 5000 MW of Round-the-Clock (RTC) Power from Grid-Connected Renewable Energy (RE) Power Projects under Tariff-based Competitive Bidding (RTC-II) No. SECI/C&P/RPD RTCII/RfS/5000MW/032020 dated 17.03.2020, wherein SECI issued its Amendment No. 3 vide

SECI/C&P/RPD/RTC-II/032020/Amendment - 03 dated 09.12.2020 and inter alia modified the Clause 13 and clarified that an RPD using ESS as part of the Project for supplying RTC power, it may be tied-up separately with a third party. The relevant clause is read as under:

Modified as follows:

It is hereby clarified that the bidders are allowed to tie up with any quantum (MW) of non-RE power capacity, including NIL, capacity. The clause pertaining to any other source, tie-up with thermal power generator, etc. in the provisions of RfS. PPA and PSA documents will, therefore, not be applicable for Projects without any tie-up with a non-RE power plant.

Further, in case the developer chooses not to tie-up with any spare capacity until the bid submission deadline, subsequent tie-up with a spare capacity will not be allowed during the Term of the PPA.

In case the developer chooses to tie-up with any other source for complementing the RE power supplied from the Project, such tie-up will be limited to a single non-RE power source for each developer. The source and quantum of tied up capacity from a non-RE source cannot change during the PPA tenure. The "source" here refers to the technology of the non-RE power component, and not the entity owning such non-RE component. Thus, while the "source" of the non-RE power (i.e. coal/gas etc.) will remain unchanged during the PPA period, the entity owning such power plant may be changed, keeping the quantum of tie-up of non-RE power unchanged.

In case of a tie-up with a coal-based thermal power plant swing domestic coal only, the coal-based generator shall also be a party in the PPA as the case may be, so that domestic coal can be supplied to such power plants as per the extent policy.

For avoidance of any doubt, it is hereby clarified that ESS, if any, may be constituted as part of the Project or may be tied up separately with a third party, by the RPD for supply of power. However, tying up with an ESS keeps the option to tie-up with a non-RE power component open for the RPD.

(Provisions in the RfS, PPA and PSA contradictory to this clause will be read in line with the above provisions)

b. REMCL 1000 MW RE RTC TENDER

REMC Limited [Formerly known as Railway Energy Management Co. Limited (REMCL)] issued a Request for Selection (RfS) Document for Selection of Project Developers for Supply of 1000 MW of Round-the-Clock (RTC) Power from Grid-Connected Renewable Energy (RE) Power Projects with or without Storage (RfS No. REMCL/CO/PP/P-85/RTC/1000 MW/2022) dated 14.07.2022. Clause 2.14 of the said RfS states that a renewable energy project developer has to set-up RE Generating system(s) and in order to meet the commitment of RTC supply may be tied up with third party ESS separately. Relevant clause is read as under:

“2.14 The RPD shall set-up RE Generating systems) with or without ESS (Energy Storage system for RE Power supply of in order to meet the commitment of RTC supply. It is hereby clarified that ESS, If any may be constituted as part of the project OR may be tied-up with third party separately, by the RPD. However, it is clarified that ESS power supplied for this project should be from RE source.

- c. MSEDCL RIS FOR PURCHASE OF 250 MW FLEXIBLE AND SCHEDULABLE POWER THROUGH COMPETITIVE BIDDING PROCESS FOLLOWED BY E-REVERSE AUCTION FROM GRID CONNECTED RENEWABLE ENERGY SOURCES WITH ENERGY STORAGE FACILITY ON LONG TERM BASIS WITH GREEN SHOE OPTION

Clause 3.2.1 of the Maharashtra State Electricity Distribution Company Limited (MSEDCL) RfS document (RfS No. MSEDCL/RE/2022/Flexible Power/T-07 dated 10.08.2022) states that in case bidder is RE developer, it will be allowed to tie up with third party energy storage developer to fulfil the supply conditions. Relevant clause of RfS is as under:

“3.2.1. It is hereby clarified that in case bidder is RE developer, it will be allowed so tie up with third party energy storage developer to fulfil the supply conditions. It is further clarified that RE developer can tie up with available spare capacities of 3rd party energy storage developer However, it is clarified that ESS power supplied for this project should be from RE source. Further, the bidder has to submit proof of energy storage the-up at

the time of the bidding Only the spare storage capacity available with the third-party energy storage developer shall be offered for the bud. Self-undertaking in this regard needs to be submitted on the bidder's letter head. In Such case, the bidder will submit a binding storage agreement with that third party energy storage developer for a tenure equal to that of the PPA under this RfS. It is further clarified such energy storage agreement shall be considered part of the bidding response to the RfS and shall form integral part of the PPA to be executed with MSEDCL. However, the obligations with respect to the PPA shall be under the Successful bidder(s) scope. It is further clarified that no change in storage technology, source and tenure shall be allowed post signing of PPA in case of third party tied up for the energy storage”

11.4. That the Petitioner GUVNL during the hearing insisted that the bidder has to set-up both the component, i.e. RE Power Project as well as Energy Storage system, at its own cost. GUVNL, further stated that they do not want to enter into a tripartite agreement among GUVNL, RE project developer and Storage Service Provider. It appears that GUVNL has apprehension that the bidder, who is developing RE project and tied up with third party storage service provider, might not be able to fulfil its obligation of supplying assured peak power under the Power Purchase Agreement in case any dispute arises between RE developer and Storage service provider.

11.5. In this regard GREENKO submits that considering GUVNL's huge RE capacity addition plan and State is going to witness energy surplus with peak deficit situation, GUVNL may tie up RE power and Standalone Storage

separately, Greenko further submits that the Gujarat State generation mix is similar to the State of Karnataka, with following peculiarity:

- High Solar and Wind supply in total energy mix.
- High day time demand
- Peak demand month (Apr-Jun)
- Lean demand month Monsson (Jul-Sep)

Karnataka State utility Power Corporation of Karnataka Limited (PCKL) has decided to procure Standalone Storage to align its intermittent RE and high intraday and seasonal demand variability. PCKL has recently called for Standalone Storage of 1000 MW (8 Hour storage) with continuous discharge of 5 hours. Such Standalone Storage tie up would result in making available firm-dispatchable power to meet the demand patterns of Karnataka DISCOMs during Peak Hours, thereby strengthening the peak power supply capacity and power system stabilization measures in the State.

11.6. It is further submitted that the assured Peak supply tender has only one utility of storage and only single cycle can be utilized by the RE Developer at the fixed annual cost of capacity, whereas Gujarat State if tie up with Standalone Storage separately, then it can use storage with multiple utilities and cycles.

11.7. Hence, contemplating GUVNL's evolving demand and supply scenario, it is suggested that the Commission may advice GUVNL to consider to invite bid for RE power separately and Standalone Storage of about 1000-1500 MW

X 8-10 hours (with continuous discharge of 6 hours) separately. Separate RE and Storage bid will bring more competition and will discover lower tariff. This will also help GUVNL to align its intraday and inter seasonal demand variation along with increasing intermittent and ToD wise available RE supply at competitive rates.

- 11.8. It is further submitted that the Ministry of Power has recently come out draft guidelines for procurement and utilization of energy storage systems (short and long duration) for various end-use applications including standalone storage capacity, for stakeholder consultation. GUVNL, may invite bid for Stand-alone Storage under such Standard Bidding Guidelines.
- 11.9. It is submitted that the bidders should be allowed either to tie-up with third party storage developers to ensure tender supply conditions or GUVNL may advise to invite separate bids for RE power and Standalone Storage for wider benefits from such storage capacity as mentioned above.
12. Thereafter, the matter was kept for hearing on 19.06.2023 and the Commission passed Daily Order dated 11.08.2023, wherein after hearing the parties, the Commission noted that in view of the Notification dated 09.06.2023 issued by Ministry of Power, Govt. of India regarding guidelines for tariff based Competitive Bidding Process for procurement of firm and dispatchable power from grid connected RE power project with Energy Storage System, the Petitioner sought liberty of the Commission to further amend the main Petition to incorporate the relevant provisions as per the aforesaid guidelines published by the MoP, Govt. of India and to modify the draft RfS and tender document accordingly. It was also noted the submission of the Petitioner that earlier there were not any such

guidelines for procurement of power from Hybrid projects of RE generators with Energy Storage System. In view of the guidelines published by the Ministry of Power vide its Notification dated 09.06.2023, the Petitioner has sought to amend the main Petition for incorporating the relevant provisions in the tender documents for the procurement of power from the Hybrid project of RE generators with Energy Storage System. The said guidelines will require to amend the RfS as well as the tender document. Accordingly, the Commission directed the Petitioner to issue revised RfS and tender document incorporating the relevant provisions of guidelines for tariff based competitive bidding process for procurement of firm and dispatchable power from grid connected RE power project with Energy Storage System. The Commission also noted that the Petitioner desire to file an IA seeking permission of the Commission for amending present Petition for approval of further deviations as may be required in view of the MoP Notification dated 09.06.2023. Accordingly the Commission granted liberty to Petitioner to amend the Petition and the Objectors to file their submissions, if any, to such application and the Petitioner to file its rejoinder reply, if any.

13. Accordingly, IA No. 05 of 2024 is preferred by the Applicant/Petitioner Gujarat Urja Vikas Nigam Limited (GUVNL) on 07.02.2024 in present Petition.
14. The IA No. 05 of 2024 has been filed by the Petitioner GUVNL inter alia seeking following prayers:

(a) Allow amendment of the present Petition in terms of the present application.

(b) Take on record the amended Memorandum of Petition (Annexure A to the present Application).

(c) Take on record the revised Bid Documents containing RFS and Draft PPA (Annexure IV to V to the Revised Petition).

(d) Pass such other or further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

15. Facts mentioned in the IA No. 05 of 2024 in brief are as under:

15.1. Subsequent to the present Petition, an IA No. 02 of 2023 had been filed on 23.01.2023 for seeking amendments to the Petition based on certain representations made by the stakeholders/bidders seeking modifications/comments to the tender documents issued on 14.06.2022 in accordance with the interim directives of the Commission. A copy of the amended Petition was also filed to the said Application along with the revised bid documents for whose deviations approval was being sought.

15.2. The Petition had been filed on the basis of the Solar Guidelines dated 03.08.2017, Wind Guidelines dated 08.12.2017 and Wind Solar Hybrid Guidelines dated 14.10.2020 as amended till the date of filing of the Petition. Further Guidelines dated 10.03.2022 in relation to Procurement and Utilization of Battery Energy Storage Systems (BESS) as part of Generation, Transmission and Distribution assets, along with Ancillary Services were referred.

15.3. Subsequent to the filing of the Petition and the IA No. 02 of 2023, the Central Government issued new guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from

Grid Connected Renewable Energy Power Projects with Energy Storage Systems vide its Notification No. 23/03/2023-R &R dated 09.06.2023. These Guidelines are issued under Section 63 of the Act to enable procurement of firm and dispatchable RE power by DISCOMs from grid connected RE power projects, with energy storage through tariff based competitive bidding. Firm and dispatchable RE power means supply of electricity as per the demand profile specified in the RfS/ bidding documents. These Guidelines would now govern the procurement in question in the present Petition. In the said Guidelines, Clause 2.2 (C) specifies the definition of 'Firm and Dispatchable RE Power' as under:

"The term 'firm and dispatchable power' denotes, the power profile configuration that is defined in the RfS that is sought to be met by RE power sources and will include configurations like assured peak power, Round the Clock RE with firm delivery of power at rated capacity at any hour of the day as per demand or load following power delivery as specified by DISCOM, RE projects with firm delivery of power for fixed hours of requirement by DISCOMS etc."

15.4. The introduction of the above Guidelines was brought to the notice of the Commission, and it was submitted that amendments to the Petition would be required in light of the Guidelines. The Commission vide its Daily Order dated 11.08.2023 allowed GUVNL to file application for amendment of the deviations with a copy to the objectors. Pursuant to the above Guidelines, GUVNL had prepared the Bid Documents afresh and is hereby seeking amendment of the Petition in the following manner:

(A) The cause title of the Petition may be replaced as under:

Miscellaneous Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff Based Competitive Bidding Process of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems and for approval of bid documents

(B) The last lines of Para 12 after 12(iii) be deleted.

(C) Para 15 be replaced as under:

GUVNL has been entering into agreements for procurement of power from Wind and Solar energy projects through competitive bidding process conducted from time to time. Considering that with increasing share of renewable energy in the overall capacity mix, the issues of Grid Management are likely to increase in coming years, there is a need for progressively promoting grid connected Energy Storage Systems for large scale integration of RE with stability of grid. In view of the same, GUVNL desires to float the tender for purchase of 500 MW power from Renewable Energy sources with mandatory installation of Energy Storage Systems (ESS) for which the draft bidding documents containing RfS and PPA had been prepared.

(D) Para 16 be replaced as under:

It is submitted that Central Government has recently notified the Guidelines under Section 63 of the Electricity Act, 2003 for Procurement and Utilization of Battery Energy Storage Systems (BESS) as part of Generation, Transmission and Distribution assets, along with

Ancillary Services vide notification dated 10.03.2022 which provides that in case of systems which contain RE generating stations along with BESS as a single Project (co-located or multi-located), the respective Standard Bidding Guidelines issued for procurement of power from Solar, Wind and Hybrid Power Projects, or the Unified Standard Bidding Guidelines, as issued by the Ministry of Power, shall be applicable. It is also provided in this Guidelines that the BESS may be charged by RE power or non-RE power or through a combination of RE and non-RE power, however, when it seeks to supply RE power, it will need to be charged with RE power only. The tender documents referred in the earlier paragraph were in consonance with the provisions of the aforesaid Guidelines dated 10.03.2022.

(E) Para 16A to 16D to be added:

16A. Subsequent to the above, the Government of India has issued on 09.06.2023, the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems. The Guidelines now provide for approval of deviations by Government under Clause 3.1.1 and Appropriate Commission under Clause 17 as under:

“3. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

3.1. Conditions to be met by the Procurer

The Procurer shall meet the following conditions:

3.1.1. Bid Documentation

(a). Prepare the bid documents in accordance with these Guidelines.

(b). Seek approval of the Government for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 17 of these Guidelines.

However, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.”

Further, Clause 17 of the FDRE Guidelines Dtd.09.06.2023 states that

“17. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

The objective of these Guidelines is to bring standardization & uniformity in processes so that there is fairness & transparency in procurement. As such, these Guidelines need to be strictly followed in the bidding process and no bid, under section 63 of the Electricity Act, for procurement of Firm and Dispatchable RE power from grid-connected Renewable Energy (RE) power projects, with Energy Storage System shall be issued in contravention to these Guidelines. However, in case it becomes imperative for the Procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission before the initiation of bidding process itself. The Appropriate Commission shall approve or

require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days of filing such petition.”

(Emphasis Supplied)

16 B. In terms of amendments made to other Guidelines wherein both Clause 3.1.1 and 17 provides for approval of Government, it appears. that the intent is for approval by Government. However, by way of abundant caution, GUVNL is seeking approval of both Government of Gujarat and Hon'ble Commission.

16 C. It is stated that in view of the Guidelines dated 09.06.2023 being issued, GUVNL had after consideration of Guidelines, prepared the Bid documents afresh in line with the Guidelines and to the extent that the GUVNL sought to deviate, GUVNL sought the approval of appropriate government i.e. Government of Gujarat for deviations from Guidelines vide letter no. GUVNL/GM (RE)/FDRE/1457 Dtd.04.11.2023 seeking approval for the deviations in the clauses for the Change-in-Law, Force Majeure, issue of LoI after evaluation of Financial bids and conclusion of E-reverse auction, Maximum bid capacity allocation to the successful bidder, Procurement of power in excess of contracted capacity, Delay in commencement of power supply delay in transmission system, definition of delivery point, role of state nodal agency.

16 D. The Government of Gujarat vide letter No. EPCD/0140/11/2023 dated 16.11.2023 has conveyed the approval in regard to the GUVNL's letter dated 04.11.2023 as under:

“With reference to the above cited subject, your proposal for seeking approval of the Government for deviations from the new guideline

dated 09/06/2023 issued by the Ministry of Power (MOP) for tariff based competitive bidding process for long term procurement of Firm and Dispatchable Power from grid connected Renewable Energy Power Projects with Energy Storage Systems, has been reviewed at Government level. In accordance with your proposal, approval has been granted within the scope of the above guidelines of MoP.

16 F. Para 17 be replaced as under:

“17. It is submitted that the Bid Documents have been prepared considering the Guidelines as well as deviations earlier approved by this Hon'ble Commission vide orders dated 15.03.2018 in Petition No. 1706 of 2018, 1848 of 2019 & order dated 19.05.2022 in Petition No. 2069 OF 2022 in case of solar projects and vide order dated 15.03.2018 in Petition No. 1709 of 2018 in case of Wind projects and further deviations considered appropriate by GUVNL. In the present tender, the Change in Law clause of all three RE sources i.e. Wind or Solar or Wind-Solar Hybrid are proposed to be kept uniform.”

16 G. Para 18 be replaced as under:

18. While all the other provisions of the bid documents are prepared with a view to align the provisions of the same with the Guidelines issued by Central Government, the Petitioner is seeking approval for the following deviations/ modifications as detailed below for which the approval of the Government of Gujarat has already been obtained:

FORCE MAJEURE CLAUSE.

Guidelines:

The guidelines issued by Central Government for of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems provide for Force Majeure provisions as under:

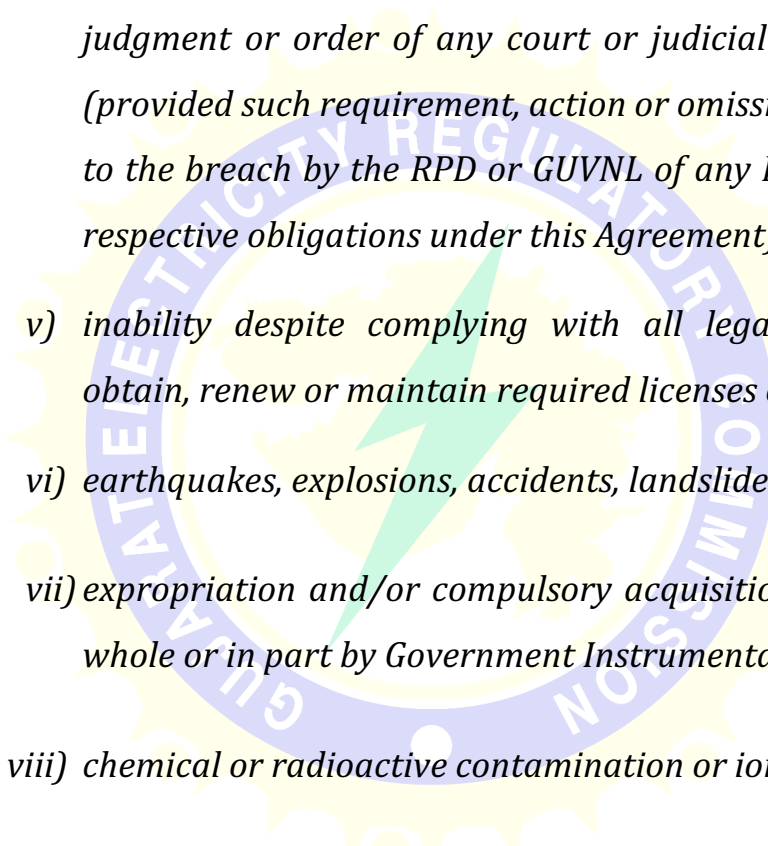
7.4.1. The PPA shall contain provisions with regard to Force Majeure definitions, exclusions, applicability and available relief on account of force majeure as per the Industry Standards. The Generator shall intimate the procurer about the occurrence of force majeure within 15 (fifteen) days of the start of the force majeure and the procurer shall respond on his claim within 15 days of the receipt of the intimation.

Force Majeure clause proposed by Petitioner

“ARTICLE: FORCE MAJEURE

11.1. “Force Majeure Events

(A) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a “Force Majeure Event”) beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:

- 
- i) *acts of God.*
 - ii) *typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities.*
 - iii) *acts of war (whether declared or undeclared), invasion or civil unrest.*
 - iv) *any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the RPD or GUVNL of any Law or any of their respective obligations under this Agreement);*
 - v) *inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals.*
 - vi) *earthquakes, explosions, accidents, landslides; fire.*
 - vii) *expropriation and/or compulsory acquisition of the Project in whole or in part by Government Instrumentality.*
 - viii) *chemical or radioactive contamination or ionizing radiation; or*
 - ix) *damage to or breakdown of transmission facilities of CTU/GETCO/DISCOMs.*
 - x) *Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.*
 - xi) *The delay in grant of connectivity/LTA, if applicable, by the CTU / STU and/or delay in readiness of the ISTS / InSTS substation*

at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS network, will be considered as a factor attributable to the CTU STU /transmission licensee and beyond the control of the Parties subject to the following;

(a) The ISTS / InSTS sub-station at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS / InSTS network, with which the Project Developer applies for connectivity, shall be scheduled for completion on or before the SCSD of the concerned Project so as to match the two timelines.

(b) Subject to adherence to above, subsequent to grant of connectivity, in case there is a delay in grant /operationalization of connectivity / LTA by CTU / STU and/or there is a delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation & transmission infrastructure of the ISTS / InSTS network until SCSD of the project and it is established that;

(c) The RPD has complied with the complete application formalities as per the connectivity procedure(s) and in this regard as notified by the CERC / GERC / CTU / STU and;

(d) The delay in grant of connectivity / LTA by CTU / STU and /or delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation

and transmission infrastructure of the ISTS / InSTS Network, is a factor solely attributable to CTU/STU/transmission licensee and is beyond the control of the Parties.

(B) Force Majeure Exclusions: Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- 1. Unavailability, Late Delivery or Change in cost of plants and machineries, equipment, materials, spares parts or consumables for the project.*
- 2. Delay in performance of any contractor / sub-contractor or their agents.*
- 3. Non-performance resulting from normal wear and tear experience in power generation materials and equipment.*
- 4. Strike or Labour Disturbances at the facilities of affected parties.*
- 5. Insufficiency of finances or funds or the agreement becoming onerous to perform, and*
- 6. Non-performance caused by, or concerned with, the affected party's*
 - I. Negligent and intentional acts, errors or omissions.*
 - II. Failure to comply with Indian law or Indian Directive; or*
 - III. Breach of, or default under this agreement or any Project agreement or Government agreement.*

(C) The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 15 days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If any event of Force Majeure results in a breakdown of communication rendering it not reasonable to give notice within the applicable time limit specified herein, then the party claiming Force Majeure shall give notice as soon as reasonably practicable after reinstatement of communication, but not later than one day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the situation.

b) The affected Party shall give notice to the other Party of (1) cessation of relevant event of Force Majeure; and (2) cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this agreement, as soon as practicable after becoming aware of each of these cessations.

c) To the extent not prevented by a Force Majeure event, the affected party shall continue to perform its obligations pursuant to this agreement. The affected party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

11.2. Available Relief for a Force Majeure Event:

No Party shall be in breach of its obligations pursuant to this agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party."

17. 5. Justification for the deviation: -

“The clause 7.4 of new Guidelines provides generally for the provisions to be included and requires detailing of specific. A broad or general provision may lead to litigations with the Developers. Further it is submitted that the reference is made to Industry Standards which can be ambiguous and therefore GUVNL has proposed a specific clause.

Force majeure as proposed by GUVNL provides better clarity and specification with regard to force majeure events to avoid future litigations. The above clause is similar to the clauses as per other tenders of GUVNL.

Therefore, it is proposed to keep the clause as per present tenders of GUVNL which clearly specifies the events of force Majeure and offers better clarity.

Proposed change in Force Majeure' is already approved by the Hon'ble Commission for Solar tenders in Petition no. 1848/2019 vide Order dated 13.01.2020.

II) **CHANGE-IN-LAW.**

Guidelines

The guidelines issued by Central Government for of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems provide for Change-in-law provisions as under:

7.7. CHANGE IN LAW/ REGULATION

The provisions for Change in Law shall be in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by Ministry of Power vide notification dated 22nd October 2021 including amendments and clarification thereof issued from time to time.

Change-in-law clause proposed by Petitioner

ARTICLE 12: CHANGE IN LAW

12.1. Definition

12.1.1. *"Change in Law" shall refer to the occurrence of any of the following events notified after the Bid Deadline.*

- a. the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree,*

ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.

- b. Introduction/modification / changes in rates of safeguard duty and/or anti-dumping duty and/or custom duty and or Goods and Services Tax including surcharge thereon which have direct effect on the Project cost.*

12.2. Relief for Change in Law

12.2.1. In case Change in Law on account of 12.1.1 (a) above results in the RPD's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the RPD shall be appropriately increased or decreased with due approval of GERC.

12.2.2. In case of Change in Law on account of 12.1.1 (b) above, the RPD shall be allowed an increase / decrease in tariff of 1 paise / unit for every increase /decrease of INR 2.0 Lakh per MW in the Project Cost incurred upto the Scheduled Commencement of Supply Date (SCSD) upon submission of proof of payment made

by the RPD towards safeguard duty and/or anti-dumping duty and/or custom duty and or Goods and Services Tax to the concerned Authority and with due approval of GERC. Change in law shall be limited to the installed capacity required for the supply of contracted power.

12.2.3. The RPD / GUVNL or the RPD, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.

12.2.4. The revised tariff shall be effective from the date of such Change in Law as approved by GERC.

Justification for the deviation: -

The new Guidelines have referred to the Rules. The said Rules only provide for definition “unless otherwise defined in the agreement”. Therefore, it is upto the parties to define the Change in Law. In this context, it is stated that Change in Law clause under the new Guidelines may be used as a tool for seeking frequent tariff revision and result into litigations/Petitions. Further, it may create uncertainty in tariff to DISCOMs and/or end consumers as the scope of change in law is too wide which may create ambiguity to figure out the implications related thereto.

GUVNL has therefore modified the Change in Law clause in the earlier wind and solar tenders invited by GUVNL specifying instances of Change in Law resulting into additional tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity to be pass through. Further, in subsequent bids GUVNL has incorporated specific taxes and duties in the Change in Law clause during construction period and provided relief as per a formula for the same. Such limited Change In law clauses have already been approved by the Commission for Solar tenders in Petitions No. 1706/2018 and 2069/2022 vide Orders dated 15.03.2018 and 19.05.2022 respectively.

Any other post-bidding increase in costs should be risk factored by the Developer and the same shall not be allowed as pass-through as it may unnecessarily increase the uncertainty and burden on end consumers at large.

Further, as per the guidelines the bidder/developer shall have either set up storage capacity itself; or tie up with energy storage system developers to meet the project parameters for 'firmness and dispatchability', and submit a single bid for the same, in a particular tender. As this tie-up may change by developer which can cause further litigations for change in Law. Hence, above deviations have been considered.

III) BID STRUCTURE

Guidelines

The guidelines issued by Central Government for of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems provides Bid Structure provisions as detailed below:

“6. BID STRUCTURE

6.3. A maximum of 50 percent of bid capacity can be allocated to a single bidder in a tender.”

Bid-structure clause proposed by Petitioner

“Bidder including its Parent, Affiliate or Ultimate Parent or any Group Company shall be eligible to bid upto 100% bid capacity of the RfS.”

Justification for the deviation: -

This condition may result in sub-optimal rate discovery. Further, if any bidder offers a better rate for the entire quantum, there is no reason to give some capacity to the L2 party. In view of above, the deviation in above clause is proposed.

IV) POWER PROCUREMENT

Guidelines

The guidelines issued by Central Government for of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems provides power procurement provisions as under:

“7.2. Power Procurement

.....

(c). In order to allow optimization of operation of RE, the Generator is allowed to supply power from the RE power plant in excess of contracted capacity, to any third party or power exchange without requiring any No-Objection Certificate (NOC) from the Procurer. The Generator may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in power exchange without requiring NOC from the Procurer.”

Power-Procurement clause proposed by Petitioner

“The RPD is allowed to supply power in excess of the Contracted Capacity to any third party or power exchange, subject to No Objection from GUVNL. First right of refusal for offtake of full/part quantum of excess power will be vested with the GUVNL as per PPA. GUVNL may purchase such part/full excess power at PPA tariff. In case GUVNL does not agree to purchase such excess energy, the RPD will be free to sell such energy to a third party or power exchange. Intimation regarding consent to procure excess energy supply from the project shall be provided by GUVNL within 15 days of receipt of the request being made by the RPD, beyond which it would be considered as deemed refusal.”

Justification for the deviation: -

The Guideline does not mandate any maximum DC capacity for the contracted AC capacity and also provides any requirement of CUF fulfilment criteria will be on annual basis. As generator may get higher tariff during the peak period of power demand, generator may sell power to third party or power exchange. To avoid such instances, it is

proposed for deviation to add "first right of refusal to be vested with GUVNL."

VII) INDICATIVE TIMETABLE FOR BID PROCESS:

Guidelines

The guidelines issued by Central Government for Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems provides Bid Process provisions are as under:

"10. INDICATIVE TIMETABLE FOR BID PROCESS

10.1. In the bidding process, a minimum period of 22 (twenty-two) days shall be allowed between the issuance of RfS document and the last date of bid submission. The indicative timetable for the bidding process is indicated below:

<i>Sl. No.</i>	<i>Event</i>	<i>Elapsed Time from Zero date</i>
<i>1</i>	<i>Date of issue of Request for Selection (RFS) document, Project specific draft Power Purchase Agreements and other draft Project Agreements, and the Power Sale Agreement (PSA), if applicable</i>	<i>Zero date</i>
<i>..</i>	<i>.....</i>	<i>.....</i>
<i>6</i>	<i>Issuance of Letter of Award (LOA)</i>	<i>110 days</i>

.....

11. CONTRACT AWARD AND CONCLUSION

11.5. Subsequent to the distribution licensee or Intermediary Procurer, as the case may be, approaching the Appropriate Commission for

adoption of tariffs under Section 63 of the Act, in case, the Appropriate Commission does not decide upon the same within sixty days of such submission or within 120 (one hundred and twenty) days from the date of Power Sale Agreement (PSA), whichever is more, the Procurer(s) shall grant appropriate extension of time in SCSD to the generators, corresponding to the delay [beyond 60 (sixty) days of submission or 120 (one hundred and twenty) days of PSA whichever is more] in adoption/ approval by the Appropriate Commission, till the date of adoption/ approval by the Appropriate Commission.”

INDICATIVE TIMETABLE FOR BID PROCESS clause proposed by Petitioner

“At the end of selection process, Letters of Intent (LOIs) will be issued to the Successful Bidders discovered through e-RA. The LOIs shall be awarded for the Contracted Capacity as quoted by the respective successful bidder, or the partial Contracted Capacity, as the case may be. In case of a Consortium being selected as the successful Bidder, the LOI will be issued to the Lead Member of the Consortium.”

Justification for the deviation: -

The event of signing of PPA is always subject to adoption of tariff by the Commission. In the event of non-adoption of tariff, after the issuance of LOA, it may give rise to a litigation in future. Therefore, it is proposed to continue with the clause as per current tenders regarding issuance of Letter of Intent (LOI) to the Successful Bidder and PPA is to be signed after the adoption of tariff by the Commission.

Therefore, GUVNL may continue with the present clause regarding issuance of Letter of Intent (LOI) as per current tenders.

VI) TARIFF

Guidelines

The guidelines issued by Central Government for Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems provides tariff provisions are detailed below:

“5. TARIFF

5.1. A single tariff for supply of firm and dispatchable RE power shall be quoted by the bidders (the “Tariff”).

5.2. The Tariff shall be quoted at the Delivery Point which shall be at the CTU interconnection point. All charges and losses till the delivery point shall be borne by the Generator.”

Tariff clause proposed by Petitioner

“Delivery Point in respect of for park and non-park based projects connected with Intra State Transmission Network of Gujarat State shall be the point at voltage level of 66 KV or above of the sub-station of Gujarat STU at which the project is inter-connected through a dedicated transmission line to deliver the energy into grid system of GETCO and in respect of for park and non-park based projects connected with Inter State Transmission Network shall be the point or points of inter-connection of Intra State Transmission Network of

Gujarat with Inter State Transmission Network, at which Electricity is delivered into the Grid System of GETCO.”

Justification for the deviation: As per prevailing practice for GUVNL tenders, the delivery point will be at STU (i.e. GETCO) periphery.

As guidelines have provisions for multiple sources and/or locations, developers may have project capacity within a state or at multiple location outside the State.

It is proposed to take deviation from guideline as multiple project locations can have CTU/STU injection point at various locations. However, GUVNL has specified that delivery point shall be at GETCO periphery for both park and non-park project developers to get the power delivered at grid system of GETCO, all charges and losses upto the delivery point of GETCO shall be borne by the Developers.

VII) **ROLE OF STATE NODAL AGENCY**

Guidelines

The guidelines issued by Central Government for Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems has not specified the role of the Nodal Agency.

Role of Nodal Agency clause proposed by Petitioner

“Commercial Operation Date” with respect to the Project shall be the date certified by GEDA in case the project is located in Gujarat or as

certified by Representatives/ Agency authorized by GUVNL in case the project is located outside of Gujarat.

Justification for the further Elaboration: -

It is proposed that GUVNL shall specify in the tender documents that "Commercial Operation Date" with respect to the Project shall be the date certified by GEDA in case the project is located in Gujarat or as certified by Representatives/Agency authorized by GUVNL in case the project is located outside of Gujarat.

In the existing RE tenders of GUVNL, GEDA is specified as State nodal agency for RE projects and role of GEDA is to provide necessary support to facilitate the required approvals and sanctions so as to achieve commissioning of the Projects located in the Gujarat.

VIII) DELAY IN COMMENCEMENT OF POWER SUPPLY ON ACCOUNT OF DELAY IN TRANSMISSION SYSTEM

Guidelines:

The guidelines issued by Central Government for of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems has not specified the clauses for Delay in Commencement of power supply on Account of Delay in Transmission system.

Delay in Commencement of power supply on Account of Delay in Transmission system Clause proposed by Petitioner

"The responsibility of obtaining connectivity under General Network Access (GNA) up to the injection point shall be of the RPD for sale of

power the GUVNL. Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of GNA by the CTU/STU and/or there is a delay in readiness of the ISTS/STU substation at Injection point(s) [for non-co-located projects), including readiness of the power evacuation and transmission infrastructure of the ISTS/STU network until SCSD of the Project, and it is established that:

- (i) The RPD has complied with the complete application formalities for connectivity at STU/CTU and as per the Detailed Procedure as issued by the CTU/STU,
- (ii) The RPD has adhered to the applicable regulations/ procedures in this regard as notified by the CERC/CEA, and
- (iii) The delay in grant of connectivity/GNA by the CTU/STU and/or delay in readiness of the ISTS/STU substation at the Injection Point(s), including readiness of the power evacuation and transmission infrastructure of the ISTS/STU network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the RPD.

The above shall be treated as delays beyond the control of the RPD and SCSD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Injection Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by GUVNL. In case of delay in commencement of power supply from the Project due to reasons beyond the reasonable control of the RPD, GUVNL may extend the SCSD after examining the issue on a case-to-case basis. In case of change in Project location(s) by the RPD,

extension requests under this clause shall be dealt by GUVNL on case-to-case basis. For avoidance of ambiguity, it is clarified that for decisions made under this Clause, the phrase “change in Project location” or its similar connotations, shall refer solely to change in Injection Point(s) of the Project.

Further, in case of delay in commencement of power supply on account of reasons solely attributable to the RPD, resulting in any liquidated damages/penalty levied on the GUVNL including Transmission charges under the GNA Regulations and/or applicable regulation as notified by CERC, such damages/penalty shall be passed on to the RPD.”

Justification for the further Elaboration: -

As establishment of new transmission network is not under the direct control of RPD, there are chances that project is ready for commissioning But, evacuation facility is not ready on account of CTU/STU/other delays for which RPD is not directly responsible. Hence, it is proposed for deviation to add the clause “Delay in Commencement of power supply on Account of Delay in Transmission system” to avoid the litigations / Petitions for the project timelines.

IX) ARRANGEMENTS RELATED TO COMMENCEMENT OF SUPPLY

Guidelines:

The Clause No.3.2 of Guideline provides as under:

“3.2. Arrangements related to Commencement of Supply The RfS may specify additional milestones for the project with respect to land acquisition, connectivity etc.as well as regular reporting requirements

by the Generator and shall specify penalties with respect to noncompliance with such milestones/requirements. Obtaining all clearances, permits, licenses including arrangement of land and connectivity to the Grid and access (if applicable) prior to scheduled date of commencement of supply of power shall be the responsibility of the Generator and the Procurer shall not be responsible in case of delay in obtaining such clearances, permits, licenses etc.”

Proposed by Petitioner

In order to have proper monitoring of the project milestones, it is proposed to add the following clause in performance monitoring. Arrangements related to Commencement of Supply.

RPD shall submit quarterly project report in the month of February, May, August and November showing specific status of the following milestones for performance monitoring of the Projects from the date of issuance of LoI;

- a. Application of registration of project with GEDA in case project is to be set up in the Gujarat and Representatives / Agency authorized by GUVNL in case of project is to be set up outside of Gujarat.
- b. Connectivity application
- c. Financial Closure
- d. Award of EPC contract
- e. Solar PV Module Supply Agreement
- f. WTG Supply agreement
- g. Land acquisition

- h. Civil work status
- i. Erection work status
- j. Commissioning

In addition to above, selected bidders shall achieve 'Financial Closure' and 'Land acquisition' as under:

Financial closure: "Financial Closure" shall mean arrangement of necessary funds by the Power Producer either by way of commitment of funds by the Company from its internal resources and / or tie up of funds through a bank / financial institution by way of sanction of a loan or letter agreeing to finance. At this stage, Power Producer shall ensure submission of documents / certificates evidencing the tie up of project cost through internal resources and/or through external Financing Agency and Implementation and Service Agreement executed with SPPD. The Power Producer shall obtain financial closure within twelve (12) months from date of execution of PPA for Non-Park & Park based tenders. The Power Producer will have to submit the required documents to GUVNL at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, GUVNL shall not be liable for delay in verification of documents and subsequent delay in Financial Closure. An extension for the attainment of the financial closure can however be considered by GUVNL, on the sole request of the Power Producer, on advance payment of extension charges of Rs.1000/- per day per MW plus GST (As Applicable). In case of any delay in depositing this extension charge, the Power Producer has to pay an interest on this extension

charge for the days lapsed beyond due date of Financial Closure @ SBI MCLR (1Year).

Land Acquisition: "Land Acquisition" shall mean acquisition of required land to establish Solar PV Project by the Power Producer either by way of purchase of land or through lease/rent of the land. At this stage, Power Producer shall ensure submission of notarized copy of sale deed or / and lease / rent agreement evidencing the acquisition of land. The Power Producer shall acquire land for the project within eighteen (18) months from date of execution of PPA for Non-Park based tenders. The Power Producer will have to submit the required documents to GUVNL at least 14 days prior to the scheduled Land Acquisition date. In case of delay in submission of documents mentioned above, GUVNL shall not be liable for delay in verification of documents. An extension for the acquisition of land can however be considered by GUVNL, on the sole request of the Power Producer, on advance payment of extension charges of Rs.1000/- per day per MW plus GST(As Applicable). In case of any delay in depositing this extension charge, the Power Producer has to pay an interest on this extension charge for the days lapsed beyond due date of Land Acquisition @ SBI MCLR (1 Year).

GUVNL shall not be liable for issuing any intimations/ reminders to RPDs for timely completion of milestones and/or submission of compliance documents. Any additional documents required as per the conditions of Guidelines, RfS and PPA must be timely submitted by the RPD.

These extensions granted for “Financial Closure” and “Land Acquisition” milestones on payment of extension charges will not have any impact on the SCSD. Any extension charges paid so, shall be returned to the Power Producer without any interest on achievement of successful commissioning within the SCSD on pro-rata basis, based on the Project Capacity commissioned on SCSD. However, in case of any delay in commissioning of the project beyond the Scheduled Commissioning Date, the amount as deposited above by the Power Producer shall not be refunded by GUVNL.

(F) Para 18A to 18C be added:

18A. GUVNL has prepared the revised Draft Bidding Documents (Request for Selection and Power Purchase Agreement) based on the New Guidelines dated 09.06.2023 along with the detailing provisions as well as deviations which are now approved by the Government of Gujarat.

18B The salient features of the bidding process to be conducted for procurement of power from the said Firm and Dispatchable RE power are as under:

- a) Under this RfS, the RE Power Developer (RPD) shall set up STU or CTU Sub-station connected RE Power Project(s) Anywhere in India, including the dedicated transmission network up to the Interconnection/ Injection Point(s), with the primary objective of supplying RE power to GUVNL, at its own cost and as per the provisions of the RfS and PPA.

b) RE Project” or “Project” or “Plant”- shall mean the renewable energy generation facility of Capacity of[Insert capacity as per the committed Installed Capacity, separately for Wind, Solar PV, any other renewable energy generating source and ESS components] MW, located at [Insert names of Village(s), Tehsil(s), District(s) and State(s)] comprising RE power generating systems or a combination thereof, for supply of RE power, including ESS, if any (which may be leased/tied-up from a third-party), having single or multiple point(s) of injection into the grid at Interconnection/Delivery/ Metering Point, or in case of sharing of transmission lines, by separate injection at Pooling Point and having separate control systems and metering,

The Project shall include all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement.

It may be noted that the sources of generation and ESS, may be co- located, or may be located at different locations, to be considered a single Project. However, it is clarified that ESS charged using a source other than RE power would not qualify as

RE power. In case the ESS component is located separately from the RE power generating components of a Project, the charges for charging the ESS will be borne by the RPD under GNA regulations and other orders issued by MoP/CERC in this regard.

It is clarified that arithmetic summation of the rated capacities of Wind, Solar PV and other renewable power generating components of the Project can be more than the Contracted capacity.

- c) Energy Storage Systems (ESS) shall mandatorily constitute part of the Project. For avoidance of any doubt, it is hereby clarified that ESS may be constituted as part of the Project or may be tied-up separately with a third party by the RPD, for supply of power. The ESS technology can be changed by the RPD at any time during the Term of the PPA. Any change in the ESS component during the term of the PPA shall be at risk and cost of the RPD and also under intimation to GUVNL.
- d) The RE component sizing should be suited to meet 100% FDRE power supply requirement of GUVNL, in a "demand-following" manner. For each Project, the Project configuration, i.e. the Installed Capacity proposed, will be submitted by the Bidder at the time of bid submission, and it shall remain unchanged until the issuance of LOI. The above configuration can be changed subsequent to issuance of LOIs until the date as on 12 months prior to Scheduled Commencement of Supply Date (SCSD) of the Project. Also, any change in project location(s)/ Injection

point(s) is/are allowed upto 12 months prior to SCSD of the Project.

- e) A Bidder, including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit a single bid offering a minimum quantum of cumulative Contracted Capacity of 50 MW and a maximum quantum of 100% bid capacity of RfS in the prescribed formats. The cumulative Contracted Capacity shall be quoted in multiple of 50 MW only.
- f) If the Bidders opt for connecting its power station and facilities to an Inter State Transmission System, the Delivery Point for the purposes of this would be binding as per the PPA to be executed with the selected bidder and shall be at the point or points of connection at which Electricity is delivered into the Grid System of the GETCO. GUVNL shall not bear interstate transmission charges and losses for the energy procured during the term of the PPA.
- g) In case the ESS component is located separately from the RE generating components of a Project, the charges for charging the ESS, as applicable under GNA regulations and other orders issued by MoP/CERC will be borne by the RPD.
- h) The RE (including Energy Storage System (ESS) component charged with RE sources) bought under this RfS shall be eligible for RPO compliance. The apportionment of RPO between the different RE components shall be on the lines of the principle adopted in case of hybrid plants.

- i) The RPD is allowed to supply power in excess of the Contracted Capacity to any third party or power exchange, subject to No Objection Certificate from GUVNL. First right of refusal for offtake of full/part quantum of excess power will be vested with the GUVNL. GUVNL may purchase such part/full excess power at PPA tariff. The RPD shall inform at least 30 days in advance of such excess generation to GUVNL, to enable GUVNL take necessary actions for sale / consumption of this excess generated energy. Intimation regarding consent to procure excess energy supply from the project shall be provided by GUVNL within 15 days of receipt of the request being made by the RPD, beyond which it would be considered as deemed refusal.
- j) Part commencement of supply of power from the Project shall be accepted by GUVNL subject to the condition that the minimum capacity for acceptance of first and subsequent part(s) shall be 50 MW (with the last part being the balance Contracted Capacity), without prejudice to the imposition of liquidated damages in terms of the PPA on the part which has not yet commenced supply of power.
- k) The Scheduled Commencement of Supply Date (SCSD) for supplying power from the full Project capacity shall be the date as on 24 months from the Effective Date of the PPA. The maximum time period allowed for commencement of power supply from the full Project Capacity with applicable penalty, shall be limited to the date as on 6 months from the SCSD or the extended SCSD (if applicable).

- l) In case of delay in commencement of power supply from the Project due to reasons beyond the reasonable control of the RPD, GUVNL may extend the SCSD after examining the issue on a case-to-case basis.
- m) RPD shall be eligible for generation compensations for off take constraints due to Grid Unavailability and in case of reduced offtake as per the provisions of guidelines.
- n) Early commencement of power supply will be allowed solely at the risk and cost of the RPD, and first right of refusal for offtake of such power will be vested with the GUVNL. In case GUVNL agrees to purchase power from such early part/full commencement of power supply prior to SCSD, such power will be purchased at the PPA tariff.
- o) In case of multiple Project components, and if one or more such component (wind, solar PV or any other RE source) is/are ready for injection of power into the grid, but the remaining component(s) is/are unable to commence supply of power, the RPD will be allowed to commence power supply from such component which is ready, outside the ambit of PPA, with first right of refusal for such power being vested with GUVNL. In case GUVNL decides to buy such discrete component's power outside the PPA, such power shall be purchased @ 50% of the PPA Tariff.

Further, it is to submit that the definition of the term 'firm and dispatchable power' denotes, the power profile configuration that is

defined in the RfS that is sought to be met by RE power sources and will include configurations like assured peak power, Round the Clock RE with firm delivery of power at rated capacity at any hour of the day as per demand or load following power delivery as specified by DISCOM, RE projects with firm delivery of power for fixed hours of requirement by DISCOMs etc.”.

Accordingly, the terms & conditions in bidding documents (RfS & PPA issued for tenders) for procurement of power from firm and dispatchable power depending upon the configuration of power profile defined in respective RfS will vary in line with power requirements of GUVNL.

It is submitted once approved, all future tenders of GUVNL for 'Firm & Dispatchable power' configuration will incorporate these approved clauses for deviations from the guidelines issued by Ministry of Power vide Notifications Dtd.09.06.2023 subject to any further deviations for which approval would be sought as per the Guidelines.

(G) Para 19 be replaced as under:

The Petitioner has filed the present petition for approval of deviations from the guidelines issued by Central Government for procurement of firm and dispatchable power from Grid Connected Renewable Energy Power Projects with Energy Storage System in accordance with the provisions of the respective guidelines and for approval of bidding documents. The approval of the Government of Gujarat to the above deviations has already been obtained.

(H) Para 20 be replaced as under:

It is submitted that the Draft Bidding Documents with deviations as approved by the Government of Gujarat is being placed before the Hon'ble Commission for intimation and approval to the Draft Bidding Documents and allow the Petitioner to initiate the process of inviting tenders from time to time for procurement of power from RE sources with mandatory installation of ESS. It may also be considered that the said deviations may be approved for any future tenders also.

(I) The prayer clause of the Petition i.e. Para 21 may be modified as under:

21. The Petitioner most respectfully prays that this Hon'ble Commission may be pleased to:

- a) To admit the present Petition.
- b) To approve the deviations from the Guidelines dated 09.06.2023 issued by Central Government for procurement of power from Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems including modifications, as proposed by Petitioner as per details stated at para 7(g) of the present petition for the present and future bids including for defining of the power profile configuration as per the requirements at the time of the bid/tender;
- c) To approve the Draft Bidding Document (RFS and PPA) annexed with the Petition.

- d) To allow Petitioner to issue a fresh tender with the proposed deviations & provisions, as an interim measure during pendency of the petition and the aforesaid tender may be opened only after final decision of Hon'ble Commission in the matter and in accordance with the directives of the Commission.
- e) To condone any inadvertent omissions /errors/shortcomings and permit the petitioner to make addition / change /modification /alter this filing and make further submissions as may be required at a future date.
- f) To crave relief for filing any further submissions.
- g) 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.

15.5. It is submitted that the present Amendment is necessary for adjudication of all issues relating to the Petition No. 2098 of 2022.

16. Thereafter, the said IA No. 05 of 2024 of the Applicant/Petitioner alongwith IA No. 02 of 2023 in the above Petition was heard on 20.02.2024 and the Commission passed Daily Order dated 27.02.2024, wherein it was submitted by the Counsel of the Petitioner that subsequent to the filing of Petition and IA No. 02 of 2023, the Central Government issued new Guidelines for Tariff based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems vide its Notification No.

23/03/2023-R &R dated 09.06.2023 under Section 63 of the Electricity Act, 2003 to enable procurement of firm and dispatchable RE power by DISCOMs from grid connected RE power projects, with energy storage through tariff based competitive bidding. These Guidelines would now be governed the procurement in question in the present Petition. Therefore, the Petitioner has filed IA No. 05 of 2024 in present Petition seeking further amendment of present Petition in terms of the above guidelines issued by the Central Government. Ld. Adv. for the Petitioner submitted that pursuant to the guidelines, the Petitioner prepared fresh bid documents and sought amendment in the Petition including the cause title of the main Petition. It was further submitted that deviations/modifications, which the Petitioner has made in the aforesaid tender, are in accordance with deviations approved by the Government of Gujarat from new guideline dated 09.06.2023 issued by the MoP, GoI. On the query of the Commission about the reply to the objections being filed by various objectors, it was submitted to the Applicant/Petitioner that in the present IA No. 05 of 2024, there is no objections received whereas in the earlier IA No. 02 of 2023, certain objections were raised by various parties which are already replied by the Petitioner. On the further query of the Commission as to whether the Petitioner has further amended the said Petition or not, it was submitted that the Petition is amended by filing the IA No. 05 of 2024. It was further submitted that the Petitioner has taken the approval of the Govt. of Gujarat for seeking approval of various deviations in terms of the provisions of guidelines issued by Ministry of Power. Further, it is submitted that only approved deviations from new guidelines dated 09.06.2023, issued by MoP, GoI for tariff based competitive bidding process for procurement of firm and dispatchable

power from grid connected energy project by the Government of Gujarat has been incorporated in the modified Bid documents and submitted with the IA No. 05 of 2024 in Petition No. 2098 of 2023. After recording the submissions of the Petitioner GUVNL, the Commission directed to the Petitioner GUVNL to issue public notice in one daily Gujarati Newspaper and one English Newspaper having wide circulation in the State of Gujarat and also upload the IA No. 05 of 2024 along with amended Petition and all the documents on its website, inviting suggestions and objections on the amendments sought through IA No. 05 of 2024 in Petition No. 2098 of 2022 from the stakeholders with consideration of all deviations that are sought and revised bidding documents.

17. In response to the aforesaid directives, the Petitioner GUVNL has filed compliance affidavit dated 22.04.2024 and submitted that in response to the aforesaid directives of the Commission, the Petitioner has published the Public Notice in 'Indian Express' and 'Sandesh' & 'Divya Bhaskar' on 13.03.2024 and also uploaded the Public Notice, IA No. 05 of 2024, Petition No. 2098 of 2022 along with RfS and Draft PPA documents on its website for inviting the objections and suggestions from the stakeholders in the present Petition.
18. Thereafter, the matter was listed for hearing on 25.09.2024 and 04.09.2025. During the hearing on 04.09.2025 the Counsel for the Petitioner drawn the attention of the Commission that subsequent to the hearing held on 25.09.2024, the Central Government has issued the amendment to the Guidelines for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems on 12.02.2025. It was submitted that on account

of the amendment to the Guidelines issued by MoP, GoI on 12.02.2025, the Petitioner desires to seek 10 (ten) deviations from clauses of the amended Guideline for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems. It was submitted that out of 10 (ten) deviations, 09 (nine) deviations are already approved by the Commission/Government and accordingly, requested the Commission to allow the Applicant/Petitioner GUVNL to deviate from the amended bidding Guidelines provisions so that the Applicant/Petitioner may amend/add clause (s) in the existing bidding documents (RfS and draft PPA) to align with the provisions of the amended guidelines issued by MoP, Govt. of India on 12.02.2025. It was also submitted that the MNRE had issued Memorandum dated 09.12.2024 for amendment in the Approved list of Models and Manufacturers of Solar Photovoltaic Modules (ALMM). In view of this, the Applicant is required to amend bidding documents. After recording the submissions of the Petitioner GUVNL, the Commission vide its Daily Order dated 15.09.2025 directed to GUVNL to issue public notice in one daily Gujarati Newspaper and one English Newspaper having wide circulation in the State of Gujarat and also upload the Petition & IAs along with amended Petition and all the documents on its website, inviting suggestions and objections from the stakeholders with consideration of all deviations that are sought and revised bidding documents.

19. In response to the aforesaid directives, the Applicant/Petitioner GUVNL has filed compliance affidavit dated 19.11.2025 and submitted that in response to the aforesaid directives of the Commission, the Petitioner has published the public notice in 'Indian Express' and 'Gujarat Samachar' & 'Divya Bhaskar' and also uploaded the Public Notice, IA No. 05 of 2024,

Petition No. 2098 of 2022 along with RfS and Draft PPA documents on its website for inviting the objections and suggestions from the stakeholders in the present Petition.

20. Thereafter, the matter was listed for hearing 17.02.2026 and the Commission passed the Daily Order dated 19.02.2026. In response to the query of the Commission for proposing Demand Fulfilment Ratio (DFR) criteria in the bid documents instead of guaranteed CUF criteria provided under the Central Government Guidelines as amended, and as to why any revision in DFR value is not permitted post commissioning of the project, the representative appearing on behalf of the Applicant/Petitioner submitted that, under the present Bid Documents, the minimum supply obligation has been stipulated in terms of DFR, defined as the ratio of [Power Injection scheduled by the RPD (MW) in a particular time block / Demand (MW) specified by GUVNL for the corresponding time block]. It is submitted that DFR is based on block-wise scheduling of power by the power developer (RPD), whereas CUF is determined on the basis of total energy generated over an entire financial year and does not envisage block-wise scheduling. According to the Applicant/Petitioner, the proposed bid is for Firm supply of power on Round the Clock basis and therefore stringent and time-specific performance criterion in terms of DFR is proposed in the bid instead of CUF based criteria which is generic in nature. It was further submitted that any revision in the minimum DFR stipulated in the Bid Documents would have substantial financial bearing on the tariffs to be discovered. The Bid Documents, having prescribed DFR as the minimum performance benchmark, form the basis of tariff determination. Therefore, permitting revision of the minimum DFR post-

commissioning, without corresponding adjustment in tariff, would materially affect the annual energy supply obligation of the project developer and consequently impose significant financial implications upon the Applicant/Petitioner. The Applicant/Petitioner also submitted that the minimum energy supply obligations either in terms of CUF or DFR, each having a direct bearing on tariff discovery. In CUF-based bids, bidders are not permitted to quote CUF lower than the stipulated minimum CUF, which may subsequently be revised downward but not below the tender-specified minimum CUF. In contrast, where DFR is prescribed as the minimum performance criterion, the same already represents the threshold obligation and cannot be reduced further by the project developer.

- 20.1. In response to the query of the Commission regarding the likely impact on the discovered rate/tariff in the event the said provision/condition is allowed to be retained, it was submitted by the Applicant/Petitioner that considering the nature of bid i.e., supply of Firm and Dispatchable Power for Round the Clock, the DFR based criteria is more relevant than CUF based criteria and therefore, deviations is proposed for incorporation of DFR based supply obligation instead of CUF based supply obligation. It was further submitted that the Applicant/Petitioner, through the present tender, seeks to convert the inherently infirm nature of Renewable Energy (RE) into a firm and dispatchable supply framework. He further submitted that the present procurement is structured as a Round-the-Clock (RTC) tender, and therefore the performance obligations and risk allocation embedded therein have a direct bearing on tariff determination.

20.2. In response to the further query of the Commission, it was submitted that the Applicant/Petitioner has sought amendments in the present Petition by filing IAs (IAs No. 02 of 2023 and 05 of 2024) from time to time and also filed additional submissions seeking amendment in the deviation from Competitive Bidding Guidelines due to various reasons including amendment in FDRE Bidding Guidelines by the Central Government from time to time during the pendency of the present Petition. It was fairly submitted by the Ld. Counsel of the Petitioner that the Applicant/Petitioner will file consolidated written submissions in the matter so as to placing on record various deviations sought by the Applicant/Petitioner from time to time, in a single documents i.e. consolidated written submissions. It was further requested to the Commission that the Commission while granting liberty to the Applicant/Petitioner to file written submissions, may also reserve the matter for final order. Accordingly, the Commission granted two weeks' time to the Applicant/Petitioner to file consolidated submissions in the matter placing on records various deviations sought by the Applicant/Petitioner from time to time. Further, the Commission also directed to the Applicant/Petitioner to file its response, if any, to the objection/suggestions received from the objectors in the present matter.

21. In complied with the directives of the Commission in its Daily Order dated 19.02.2026, the Petitioner GUVNL has filed its submissions vide its affidavit dated 10.04.2026 in the matter on 13.04.2026 as under:

“

2. *The sequence of events for ease of reference is as under:*

- a. *At the time of the original Petition, the Petition and bid documents had been prepared on the basis of the Solar Guidelines dated 03.08.2017, Wind Guidelines dated 08.12.2017 and Wind Solar Hybrid Guidelines dated 14.10.2020 as amended till the date of filing of the Petition. Further Guidelines dated 10.03.2022 in relation to Procurement and Utilization of Battery Energy Storage Systems (BESS) as part of Generation, Transmission and Distribution assets, along with Ancillary Services were referred.*
- b. *Subsequent to the above Petition, an application being IA No. 02 of 2023 on 27.12.2022 had been filed for seeking amendments to the Petition based on certain representations made by the stakeholders/bidders seeking modifications/comments to the tender documents issued on 14.06.2022 in accordance with the interim directives of the Hon'ble Commission. Further a copy of the amended Petition was annexed to the said Application along with the revised bid documents for whose deviations approval was being sought.*
- c. *Subsequent to the above, the Government of India has issued on 09.06.2023, the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems. These Guidelines are issued under section 63 of the Act to enable procurement of Firm and Dispatchable RE power by DISCOMs from grid-connected Renewable Energy (RE) power projects, with Energy Storage through tariff based competitive bidding. Firm and Dispatchable RE power means supply of*

electricity as per the demand profile specified in the RfS/ bidding documents.

- d. In terms of the Guidelines dated 09.06.2023, the approval of deviations by Government under Clause 3.1.1 and Appropriate Commission under clause 17 as under:

“3. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

3.1. Conditions to be met by the Procurer

The Procurer shall meet the following conditions:

3.1.1. Bid Documentation

(a). Prepare the bid documents in accordance with these Guidelines.

(b). Seek approval of the Government for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 17 of these Guidelines.

However, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.”

Further, Clause 17 of the FDRE guidelines Dtd.09.06.2023 states that

“17. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

The objective of these Guidelines is to bring standardization & uniformity in processes so that there is fairness & transparency in procurement. As such, these Guidelines need to be strictly followed in the bidding process and no bid, under section 63 of the Electricity Act, for procurement of Firm and Dispatchable

RE power from grid-connected Renewable Energy (RE) power projects, with Energy Storage System shall be issued in contravention to these Guidelines. However, in case it becomes imperative for the Procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission before the initiation of bidding process itself. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days of filing such petition.”

(Emphasis Supplied)

- e. In terms of amendments made to other Guidelines wherein both Clause 3.1.1 and 17 provides for approval of Government, it appears that the intent is for approval by Government. However by way of abundant caution, GUVNL had sought approval of both Government of Gujarat and Hon'ble Commission.*
- f. In view of the Guidelines dated 09.06.2023 being issued, GUVNL had after consideration of Guidelines, prepared the Bid documents afresh in line with the Guidelines and to the extent that the GUVNL sought to deviate, GUVNL sought the approval of appropriate government i.e. Government of Gujarat for deviations from Guidelines vide letter no. GUVNL/GM (RE)/FDRE/1457 Dtd.04.11.2023 – seeking approval for the deviations [Page 54].*
- g. The Government of Gujarat vide letter No. EPCD/0140/11/2023 Dt: 16.11.2023 [Page 73] has conveyed the approval in regard to the GUVNL Letter dated 04.11.2023.*
- h. GUVNL had thereafter moved an Application for Amendment being I.A. No. 5 of 2024 for the amendment of the Petition based on the issuance of the New Guidelines. The Amended Petition was also*

annexed with the Application. The Bidding documents based on the Guidelines and deviations thereto are at Pages 74 to 302.

- i. The Government of India, MNRE had issued the Memorandum dated 09.12.2024 issued by MNRE for Amendment in list of Approved Models and Manufacturers of Solar Photovoltaic Modules (ALMM).*
 - j. Thereafter Government of India issued the Amendment to the guideline for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems on 12.02.2025 [Page 727].*
 - k. Accordingly GUVNL would have to amend the Bid documents based on the above amendments. Further GUVNL is seeking certain deviations in regard to the amended provisions of the Guidelines.*
 - l. Accordingly, GUVNL filed Additional Submissions in I.A. No. 5 of 2024 seeking approval of deviations. In view of the above deviations, the Bid documents would be modified based on the approval of the Hon'ble Commission.*
- 3. That in terms of the above, the Bid documents have to be considered in terms of the Guidelines dated 09.06.2023 as amended on 12.02.2025 and any deviations as approved.*
 - 4. As already submitted the Guidelines dated 09.06.2023 had provided for approval of deviations by Government in Clause 3 and Commission in Clause 17 and accordingly GUVNL had obtained approval of the Deviations from Government of Gujarat and had also filed the same before the Commission.*

5. *The Amendment to the Guidelines dated 12.02.2025 provide as under for approval of deviations:*

3.1.1.....

(b). Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDS, in accordance with the process described in Clause 17 of these Guidelines.

Provided that if, for a bid, the deviations are already approved by the Government prior to notification of these amendments, fresh approval by the Appropriate Commission shall not be required for that bid. However, for purpose of clarity, if the Procurer while preparing the draft Rfs, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

6. *In this regard, GUVNL has already placed on record the Approval of the deviations by the Government of Gujarat.*

7. *GUVNL is filing the present Submissions to collate and present in a consolidated manner the deviations by GUVNL in regard to the Guidelines dated 09.06.2023 as amended on 12.02.2025. A chart of the existing provisions of the Guidelines, the deviations proposed and reasons/justification for deviations is attached hereto and marked as Annexure A.*

8. *It is respectfully submitted that the deviations as approved by the Government of Gujarat and further deviations from the Amendment to Guidelines is being placed before the Hon'ble Commission for intimation and approval and the Hon'ble Commission may allow the Petitioner to*

prepare the Bid Documents and initiate the process of inviting tenders from time to time for procurement of power from RE sources with mandatory installation of ESS.

9. It may also be considered that the said deviations may be approved for any future tenders also.

10. The Bidding Documents as per Guidelines dated 09.06.2023 with deviations as approved by the Government of Gujarat is on record. Further amendments pursuant to the Amended Guidelines need to be incorporated in the Bid Documents. The Bid documents would be modified based on the approval of the Hon'ble Commission and intimated to the Hon'ble Commission.

11. For the ease of reference, the amendments, to be made to the Bid Documents drafted by GUVNL based on the Amended Guidelines dated 12.02.2025 and the Memorandum dated 09.12.2024 issued by MNRE, are attached hereto and marked as Annexure B.

.....”

22. In compliance with the directives of the Commission in its Daily Order dated 19.02.2026, the Petitioner GUVNL has filed its response to objections filed by the Objectors in the matter vide its submissions dated 13.04.2026 as stated under:

22.1. The Petitioner had filed the Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Guidelines issued by Central Government for Procurement of Power through Tariff Based Competitive Bidding Process from Grid Connected Renewable Energy Sources i. e. Wind, Solar and Wind-Solar Hybrid Projects and for

approval of bid documents for carrying out bidding process for procurement of power from Hybrid Power Projects having RE generation with co-located Energy Storage Systems.

- 22.2. It is submitted that at the time of filing of the Petition, the Guidelines dated 09.06.2023 had not been issued and therefore, the Petition had been based on Solar Guidelines dated 03.08.2017, Wind Guidelines dated 08.12.2017 and Wind Solar Hybrid Guidelines dated 14.10.2020 as amended till the date of filing of the present Petition. Further, Guidelines dated 10.03.2022 in relation to Procurement and Utilization of Battery Energy Storage Systems (BESS) as part of Generation, Transmission and Distribution assets, along with Ancillary Services were referred.
- 22.3. Subsequently, the deviations are to be considered as per Guidelines dated 09.06.2023 issued by the MoP, Govt. of India as amended on 12.02.2025. The objections have been received by the Applicant/Petitioner in pursuant to the Public Notice issued in regard to the Original Petition and prior to Guidelines dated 09.06.2023. No objections have been received in response to the Amendments sought by the Applicant/Petitioner pursuant to the Guidelines dated 09.06.2023. Therefore, these objections may not strictly apply to the final deviations sought by the Applicant/Petitioner; however the Petitioner GUVNL is responding to the objections as per deviations sought against the final Guidelines.
- 22.4. It is submitted that the issues have to be considered confined to the issues raised in the Petition. Any aspect sought to be raised beyond the scope of the Petition cannot be considered.

- 22.5. It is submitted that GUVNL has filed the Petition in regard to deviations. The issues sought to be raised on the aspects beyond the deviations and in regard to detailing etc cannot be considered. GUVNL is entitled to detail the provisions in bidding documents and to the extent that they are not deviations, no approval is required. It is therefore not a subject matter of the present proceedings.
- 22.6. The suggestion/objection has been made by WIPPA in regard to the change in law clause. The change in law referred by GUVNL is based on the Change in Law clause in the earlier wind and solar tenders invited by GUVNL specifying instances of Change in Law resulting into additional tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity to be pass through. The intention is to restrict the change in law clause for the operation period and for the taxes/duties/charges on the final output in the form of energy and not for any inputs. The intention is also to ensure certainty of tariff and reduce the litigations seeking increase in tariff. Further, in subsequent bids GUVNL has incorporated specific taxes and duties in the Change in Law clause during construction period and provided relief as per a formula for the same. These are specific taxes and exclude all other taxes. Such limited Change In law clauses have already been approved by the Commission for solar tenders in Petitions No. 1706/2018 and 2069/2022 vide Order dated 15.03.2018 and 19.05.2022 respectively.
- 22.7. It is submitted that Apraava Energy has raised the suggestions/objections on change in law provisions. It is stated that the change in law provision is intended to limit the scope to ensure certainty in tariff and reduce the

litigation for increase in cost. Such limited Change In Law clauses have already been approved by the Commission for Solar tenders in Petitions No. 1706/2018 and 2069/2022 vide Order dated 15.03.2018 and 19.05.2022 respectively. Any other post-bidding increase in costs should be risk factored by the Developer and the same shall not be allowed as pass-through as it may unnecessarily increase the uncertainty and burden on end consumers at large.

- 22.8. The Guidelines 2023 only refer to Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 on October 22, 2021 (Rules). The said Rules only provide for definition “unless otherwise defined in the agreement”. Therefore, it is upon the parties to define the Change in Law. In this context, it is stated that Change in Law clause under the new Guidelines may be used as a tool for seeking frequent tariff revision and result into litigations / Petitions. Further, it may create uncertainty in tariff to DISCOMs and/or end consumers as the scope of change in law is too wide which may create ambiguity to figure out the implications related thereto.
- 22.9. As per the Guidelines, the bidder/developer shall have either set up storage capacity itself; or tie up with energy storage system developers to meet the project parameters for ‘firmness and dispatchability’, and submit a single bid for the same, in a particular tender. As this tie-up may change by developer which can cause further litigations for change in Law. Hence, above deviations have been considered.

- 22.10. The Change in law clause is also an allocation of risk and there is no reason why GUVNL and consumers at large should bear such risks of increase in tariff subsequent to the bid.
- 22.11. GUVNL has modified the Change in Law clause in the earlier Wind and Solar tenders invited by GUVNL specifying instances of Change in Law resulting into additional tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity to be pass through. Further, in subsequent bids GUVNL has incorporated specific taxes and duties in the Change in Law clause during construction period and provided relief as per a formula for the same. Such limited Change in Law clauses have already been approved by the Commission for Solar tenders in Petition No. 1706/2018 and 2069/2022 vide Order dated 15.03.2018 and 19.05.2022 respectively.
- 22.12. In fact the State Commission has approved similar clauses and approved deviation in case of Torrent Power Limited vide Order dated 26.02.2021 in Petition No. 1905 of 2021 and restricted to safeguard duty/anti-dumping duty/customs duty. Further, in Order dated 25.03.2021 passed in Petition No. 1954 of 2021 in relation to small scale solar projects, the issue of change in law clause was specifically discussed in Para 22.3 and approved. In the present case, GST has been added under the proposed clause.
- 22.13. It is submitted that the Renew Power has raised issue in regard to the bidding documents prior to the Guidelines dated 09.06.2023. Subsequent

to the same, the Guidelines dated 09.06.2023 has been issued and provides as under:

“Clause 5.1-

A single tariff for supply of firm and Dispatchable RE power shall be quoted by the bidders (the “Tariff”).”

22.14. Accordingly, GUVNL has provided under Clause 29.2 of RFS document of FDRE (Phase-I) Bid dated 16.07.2024:

II. Financial Bid (Second Envelope)

***Only single tariff bid for all the Projects** applied for, shall have to be filled online in the Electronic Form provided at the ISN-ETS portal. The instructions mentioned in the Financial Bid Electronic Form have to be strictly followed without any deviation, else the bid shall be considered as non-responsive.*

22.15. As emphasised, only single tariff is to be submitted by Bidder for the project. Through the provisions of FDRE Guidelines and GUVNL Bid, the representation is addressed. The issues sought to be raised by Renew would not survive in view of the provision of the Guidelines and the provision hereinabove.

22.16. It is submitted that the Petitioner is seeking to sell alleged excess power outside without requirement of NOC from GUVNL i.e. without giving GUVNL the right of first refusal. GUVNL has sought a specific deviation in regard to the above provision from the Guidelines Clause 7.2. The provision in the RFS proposed by GUVNL is as under:

“8.2 Excess Power Supply

The RPD is allowed to supply power in excess of the Contracted Capacity to any third party or power exchange, subject to No Objection Certificate from GUVNL. First right of refusal for offtake of full/part quantum of excess power will be vested with the GUVNL. GUVNL may purchase such part/full excess power at PPA tariff. The RPD shall inform at least 30 days in advance of such excess generation to GUVNL, to enable GUVNL take necessary actions for sale / consumption of this excess generated energy. Intimation regarding consent to procure excess energy supply from the project shall be provided by GUVNL within 15 days of receipt of the request being made by the RPD, beyond which it would be considered as deemed refusal.....”

22.17. GUVNL has taken deviation from the Guidelines through GoG approval with due justification as guideline does not mandate any maximum DC capacity for the contracted AC capacity. As generator may get higher tariff during the peak period of power demand, generator may sale power to third party or power exchange. To avoid such instances, approval for deviation to add “first right of refusal to be vested with GUVNL is obtained. Further, GUVNL being prudent procurer will provide opportunity to the bidders to sell the excess power at PPA tariff to GUVNL instead of Market sell which will be uncertain. The said aspect already stands approved by the Government of Gujarat. In terms of the Amendment to Guidelines, there is no requirement for the approval of deviation from the Commission.

22.18. The power project is being set up on the basis of the PPA and the GUVNL has a right over the capacity. GUVNL is willing to procure the power at PPA tariff and in case of refusal by GUVNL, the same can be sold to third parties. However, the right of GUVNL cannot be taken away at the first instance.

22.19. It is submitted that Renew is seeking the removal of mandatory X/2 MWh condition and allow bidders to decide the ESS capacity based on the design of the bidder. This objection was taken on the bid documents prior to Guidelines dated 09.06.2023. In this regard, it is submitted that the Guidelines as under:

“Clause 2.2- Explanations

...

(b). ‘Renewable (RE) Power’: The term ‘RE Power’, or ‘Renewable Power’, or ‘Renewable Energy Power’, wherever used in these Guidelines, shall refer to power from Solar Power Generating Systems, Wind Power Generating Systems, Wind Solar hybrid; or any other renewable energy resource based Generating System or a combination thereof, with Energy Storage System (ESS). It is clarified that ESS charged using a source other than RE power would not qualify as RE power...”

22.20. Relevant Provision of RFS document of FDRE(Phase-I) Bid dtd.16.07.2024 are as follows

“4.2 Configuration for Firm and Dispatched peak power and RE Power

...

iii. Energy Storage Systems (ESS) shall mandatorily constitute part of the Project. It is clarified that ESS charged using a source other than RE power would not qualify as RE power. For avoidance of any doubt, it is hereby clarified that ESS may be owned by the RPD or may be tied-up separately with a third party by the RPD, for supply of power. The ESS technology can be changed by the RPD at any time during the Term of the PPA. Any change in the ESS component during the term of the PPA may be at risk and cost of the RPD and also under intimation to GUVNL...”

As per the above, the developers are free to choose the ESS capacity without any minimum Capacity restrictions. Through the above provisions of FDRE Guidelines and GUVNL Bid, the representation is addressed.

22.21. M/s Renew is seeking allowance of ESS to be utilised for any other alternate use outside the PPA as per developer's choice.

22.22. It is submitted that the present tender is for procurement of power from Firm and Dispatchable RE projects with ESS being the mandatory part of the project as per the provisions of FDRE Guidelines. There will be a single bilateral PPA with developer for FDRE Project, where ESS capacity will be part of the project. However, as per the provisions of Clause 8.2 of the RFS Document of FDRE(Phase-I) Bid dtd.16.07.2024

"8.2 Excess Energy

....

Any instance of third-party sale of power from the Project by the RPD, while the demand specified in the PPA remains unfulfilled, shall constitute a breach of RPD's obligations under the PPA and make the RPD liable for penalty @1.5 times of extant market rate/kWh (reference rate being the applicable rate on the Green- Day Ahead Market (G-DAM) of Indian Energy Exchange (IEX) for the quantum of such sale.

The RPD may sell the power which was offered to the GUVNL (within the Contracted Capacity) but was not scheduled by the GUVNL, to any third party or power exchange, without requiring NOC from the GUVNL...."

Through the above provisions of RFS, the representation is addressed.

22.23. It is submitted that Renew is seeking to allow the HPDs to commission the project early on technology wise basis rather than allowing pro-rata early commissioning as per the combination chosen by HPD. The above issue was raised on the bidding documents prior to Guidelines.

22.24. The provisions relevant to the partial commissioning of single component as per FDRE Guideline dated 09.06.2023 is as follows:

“14.5. Early Commencement of Supply of Power from single component outside PPA

In case of multiple project components and if one or more such component (wind, solar or other RE Power generating system) is ready for injection of power into the grid, but the remaining component is unable to commence supply of power, the Generator will be allowed to commence supply of power from such component which is ready outside the ambit of PPA, with first right of refusal for such power being vested with the End Procurer. Subsequent to refusal of such power by the End Procurer, the right of refusal shall vest with the Intermediary Procurer. In case the Procurer/Intermediary Procurer decides to buy such discrete component(s) power outside the PPA, such power shall be purchased at upto 50% of the PPA Tariff for the applicable Contract Year or specific provisions in this regard will be stipulated in the tender documents.”

22.25. Accordingly, the relevant provision of RFS document of FDRE (Phase-I) Bid dated 16.07.2024 are as follows:

“11 Early Commencement of supply of power

..

11.2 In case of multiple Project components, and if one or more such component (wind, solar PV or any other RE source) is/are ready for injection of power into the grid, but the remaining component(s) is/are unable to commence supply of power, the RPD will be allowed to commence power supply from such component which is ready, outside the ambit of PPA, with first right of refusal for such power being vested with GUVNL. In case GUVNL decides to buy such discrete component's power outside the PPA, such power shall be purchased @ 50% of the PPA Tariff. Following should be noted under this scenario:

The above scenario does not qualify under the provisions of Part/Early Commencement of power supply under the RfS, and PPA. This is a special scenario wherein in case one or more project component(s)

is/are ready, the power supply from such component is not wasted. The above scenario will be applicable until the RPD is ready to commence power supply as per the provisions of Clauses 9 and 11.1 of the RfS.”

The provision of GUVNL is as per the Guidelines and therefore no further issue remains. When there is no deviation sought, there cannot be any issue raised.

22.26. It is submitted that Renew is seeking to allow the developer to arrange power via alternate sources through MTOA and Bilateral STOA or power exchange of any other arrangement to meet peak hour compliance and further the alternate source should be such that same is treated as renewable energy and restricted to 10% of annual contracted energy.

22.27. The above issue was raised on bidding documents prior to Guidelines dated 09.06.2023 which read as under:

“4.0 Energy Mix

...

4.2 The Generator has to offer power such that 100% of the annual energy offered corresponds to RE Power. The Generator can, however, source up to 5% RE power (on energy terms) on annual basis from the green market sources/bi lateral agreements towards meeting the supply conditions stipulated in the RfS....”

22.28. The relevant provision of RFS document of FDRE (Phase-I) Bid dated 16.07.2024 are as follows:

“8.1 Criteria for Power Supply

d.. The RPD shall offer power such that 100% of the annual energy offered corresponds to RE power. The RPD can, however, source up to 5% RE power (in energy terms), on annual basis, from the green

market sources/ bilateral agreements, towards meeting the supply conditions stipulated in the RfS/PPA..."

The provision of GUVNL is as per the Guidelines and therefore no further issue remains. When there is no deviation sought, there cannot be any issue raised.

22.29. It is submitted that Greenko has filed two submissions dated 23.03.2023 and 05.07.2022. The submissions dated 23.03.2023 was filed after the revised RFS was drafted. In the said submissions, other issues raised earlier was not raised.

22.30. In the submissions dated 23.03.2023, Greenko has raised only one aspect i.e. the bidders should be allowed either to tie-up with 3rd party storage developers to ensure tender supply conditions or GUVNL may advise to invite separate bids for RE power and Standalone Storage.

22.31. In regard to the said suggestion, it is stated that the Guidelines dated 09.06.2023 provides as under:

"Clause 2.2- Explanations

...

(b). 'Renewable (RE) Power': The term 'RE Power', or 'Renewable Power', or 'Renewable Energy Power', wherever used in these Guidelines, shall refer to power from Solar Power Generating Systems, Wind Power Generating Systems, Wind Solar hybrid; or any other renewable energy resource based Generating System or a combination thereof, with Energy Storage System (ESS). It is clarified that ESS charged using a source other than RE power would not qualify as RE power..."

22.32. Relevant Provision of RFS document of FDRE(Phase-I) Bid dated 16.07.2024 are as follows

*“4.2 Configuration for **Firm and Dispatched** peak power and RE Power*

...

iii. Energy Storage Systems (ESS) shall mandatorily constitute part of the Project. It is clarified that ESS charged using a source other than RE power would not qualify as RE power. For avoidance of any doubt, it is hereby clarified that ESS may be owned by the RPD or may be tied-up separately with a third party by the RPD, for supply of power. The ESS technology can be changed by the RPD at any time during the Term of the PPA. Any change in the ESS component during the term of the PPA may be at risk and cost of the RPD and also under intimation to GUVNL...”

22.33. Further, as per Clause 14 of the RFS provides as under:

PROJECT SCOPE & TECHNOLOGY SELECTION

*Under this RfS, the RPD shall set up the RE Power Project(s), including the dedicated transmission network up to the Interconnection/Delivery Point, at its own cost and in accordance to the provisions of this RfS document. All approvals, permits and clearances required for setting up of the Project(s) and/or dedicated transmission network upto the Interconnection/ Delivery Point (along with connectivity), including those required from State Government and local bodies, shall be in the scope of the RPD. The Projects to be selected under this scheme provide for deployment of RE and ESS capacities. **However, the selection of Projects would be technology agnostic.**”*

22.34. As emphasised above, the Developers are free to choose the ESS capacity and technology and bid is technology agnostic regarding the ESS capacity. Further, GUVNL is following separate Energy Storage tendering plan which is approved by GUVNL' Board based on the RA study results by CEA.

22.35. It is submitted that Greenko has sought to refer to the extension in timelines due to delay in readiness of CTU/STU infrastructure. The above

issue was in regard to bid documents prior to the Guidelines dated 09.06.2023.

22.36. It is stated that in terms of the draft proposed, in the force majeure clause, the provision is as under:

12.3 Force Majeure events

.....

- xi. The delay in grant of connectivity/LTA, if applicable, by the CTU / STU and/or delay in readiness of the ISTS / InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS network, will be considered as a factor attributable to the CTU / STU / transmission licensee and beyond the control of the Parties subject to the following;*
- (a) The ISTS / InSTS sub-station at the Injection Point and the power evacuation and transmission infrastructure of the ISTS / InSTS network, with which the Project Developer applies for connectivity, shall be scheduled for completion on or before the SCSD of the concerned Project so as to match the two timelines.*
 - (b) Subject to adherence to above, subsequent to grant of connectivity, in case there is a delay in grant / operationalization of connectivity / LTA by CTU / STU and/or there is a delay in readiness of the ISTS / InSTS sub-station at the injection point, including readiness of the power evacuation & transmission infrastructure of the ISTS / InSTS network until SCSD of the project and it is established that;*
 - (c) The RPD has complied with the complete application formalities as per the connectivity procedure(s) and in this regard as notified by the CERC / GERC / CTU / STU and;*
 - (d) The delay in grant of connectivity / LTA by CTU / STU and / or delay in readiness of the ISTS / InSTS sub-station at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS Network, is a factor solely attributable to CTU / STU / transmission licensee and is beyond the control of the Parties;*

22.37. The above already stands approved by the Government of Gujarat.

22.38. Further the RFS Document proposed provides as under:

10 Delay in Commencement of power supply on Account of Delay in Transmission system

10.1 The responsibility of obtaining General Network Access (GNA) up to the Interconnection Point(s) shall be of the RPD to commencement of supply of power from the project. For drawl of power, the GNA is require to be obtained by GUVNL. Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of GNA by the CTU/STU and/or there is a delay in readiness of the ISTS/STU substation at any interconnection Point(s), including readiness of the power evacuation and transmission infrastructure of the ISTS/STU network until SCSD of the Project, and it is established that:

- i. The RPD has complied with the complete application formalities as per Clause 7.4 above and as per the Detailed Procedure as issued by the CTU/STU,*
- ii. The RPD has adhered to the applicable regulations/ procedures in this regard as notified by the CERC/CEA, and*
- iii. The delay in grant of connectivity/GNA by the CTU/STU and/or delay in readiness of the ISTS/STU substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS/STU network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the RPD;*

The above shall be treated as delays beyond the control of the RPD and SCSD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Interconnection Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by GUVNL.

In case of delay in commencement of power supply from the Project due to reasons beyond the reasonable control of the RPD, GUVNL may extend the SCSD after examining the issue on a case-to-case basis. In case of change in Project location(s) by the RPD, extension requests under this clause shall be dealt by GUVNL on

case-to-case basis. For avoidance of ambiguity, it is clarified that for decisions made under this Clause, the phrase “change in Project location” or its similar connotations, shall refer solely to change in Interconnection Point(s) of the Project.

Further, in case of delay in commencement of power supply on account of reasons solely attributable to the RPD, resulting in any liquidated damages/penalty levied on the GUVNL including Transmission charges under the GNA Regulations and/or applicable regulation as notified by CERC, such damages/penalty shall be passed on to the RPD.”

22.39. Through the above provisions, extensions for the SCOD/SCSD of the project will be permitted for Delay in readiness of the Interconnection Point and power evacuation infrastructure and/or grant/operationalization of GNA of ISTS substation and network which is beyond the control of developers and prudent steps are taken by the Developers.

22.40. Further, in regard to the aspect of 30 months for SCOD, it is stated the timelines now considered by GUVNL with the Guidelines dated 09.06.2023 which provides as under:

“14. COMMENCEMENT OF SUPPLY OF POWER

14.1. The Power Purchase Agreement between the RE Project and Procurer/Intermediate procurer shall clearly indicate the SCSD and quantum of supply.

14.2. Commencement of Supply Schedule

(a). The projects shall generally commence supply of power, within a period of :

(i). 24 (twenty-four) months from the date of execution of the Power Purchase Agreement, for project size not more than 1,000 MW;

(ii). 30 (thirty) months from the date of execution of the Power Purchase Agreement, for project size more than 1,000 MW..."

22.41. Accordingly, relevant provisions of RFS document of FDRE (Phase-I) Bid dated 16.07.2024 are as follows:

***“SCHEDULED COMMERCIAL OPERATION DATE” or “SCOD”
“SCHEDULE COMMENCEMENT OF SUPPLY DATE” OR “SCSD” shall
be the date as declared by the Successful Bidder in the PPA which shall
not exceed 24 (twenty four) from the date of execution of the PPA for
RE power with ESS.”***

22.42. M/s Greenko has to referred the aspect of pass through formula for change in law. However, this was considering the Wind Solar Hybrid Guidelines. However, since then, the specific Guidelines have been issued for FDRE and the bid documents are being prepared on the said basis. The provision under the Guidelines dated 09.06.2023 is not similar to Wind Solar Hybrid Guidelines.

22.43. Further, the new Guidelines have referred to the Rules i.e. Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 on October 22, 2021 (Rules). The said Rules only provide for definition “unless otherwise defined in the agreement”. Therefore, it is upto the parties to define the Change in Law. In this context, GUVNL has already obtained approval of Government for Change-in-Law with specific provisions so that it may not be used as tool for seeking frequent tariff revision and result into litigations / Petitions and create uncertainty in tariff to DISCOMs and/or end consumers.

22.44. In addition, the Hon’ble Tribunal in OP No. 1 of 2022 dated 05.04.2022 and the Central Commission in Petition No. 131/MP/2024 dated 20.04.2025

have taken a view that the provisions under Change in law Rules do not apply when there is a dispute.

22.45. The attempt made to refer to delay in approval by the Commission is also not correct. It is upto the developer to approach the Commission within time and with full particulars so that expeditious disposal can take place. The developers in providing information and thereafter claim that it is being penalised is not correct. On other hand, the developers cannot be allowed to claim and pass on the alleged impact of change in law as per its own calculations and whims and fancies. The determination of tariff is within jurisdiction of the Commission and the same cannot be taken away in such manner.

22.46. M/s Greenko have vaguely under this provision referred that timelines as per solar Guidelines be retained for force majeure clause. In this regard, it is clarified that the Guidelines dated 09.06.2023 have been specifically issued and based on the same, the force majeure clause has been detailed by GUVNL and the approval obtained from Government of Gujarat. The Amendment to Guidelines notes that any deviation already approved by Government does not require approval by the Hon'ble Commission.

22.47. M/s Greenko has sought that the developer be allowed to put up the project anywhere across the country or atleast allow the storage capacity anywhere across the country. It is noted that the delivery point is GETCO point. The said issue was prior to the Guidelines.

22.48. As per the Bid documents prepared on 16.07.2024 after the Guidelines dated 09.06.2023, the following is provided:

SCOPE OF WORK

Under this RfS, the RE Power Developer (RPD) shall set up Gujarat STU or CTU Sub-station connected RE Power Project(s) Anywhere in India, including the dedicated transmission network up to the Interconnection Point(s), with the primary objective of supplying RE power to GUVNL, at its own cost and as per the provisions of the RfS and PPA...”

22.49. As per the above provisions, bidder is allowed to put up the project anywhere across the country.

22.50. Greenko has sought for pass through of changes in transmission charges and losses from Bid date to GUVNL even for aspect from the Project and Delivery Point. This contradicts its own rationale for seeking project location to be anywhere in the country that delivery point is GETCO and therefore, there is no specific advantage to mandating the project in Gujarat.

22.51. The Guidelines dated 09.06.2023 provides as under:

5.2. The Tariff shall be quoted at the Delivery Point which shall be at the CTU interconnection point. All charges and losses till the delivery point shall be borne by the Generator.

22.52. The charges till delivery point is to be borne by Generator. As per prevailing practice for GUVNL tenders, the delivery point will be at STU (i.e. GETCO) periphery. This aspect has also been approved by Government of Gujarat. Further in the justification for the consideration of delivery point, it has been that “All charges and losses upto the delivery point of GETCO shall be borne by the Developers.”

22.53. Since the aspect of charges and losses till delivery point is not in deviation, therefore the same is not subject matter of the present proceedings and cannot be considered. Without prejudice to the above contention, RFS provides as under:

“...7.11 All expenses including transmission and wheeling charges and losses up to the Delivery Point including on account of any change in law event shall be paid by the RPD (for park and non-park projects) without any reimbursement by GUVNL during the entire contract period...”

As per the provisions of the Bid, Developers are free to establish projects anywhere in India. Hence, all the bidder are required to quote the tariff considering all requirement upto the delivery point as per RfS so that all projects can be evaluated at par with specific delivery point at i.e. at GETCO periphery.

22.54. Further, accounting all expenses including transmission and wheeling charges and losses between the Project and the Delivery Point including on account of any change in law event will become tool for seeking frequent tariff revision and result into litigations / Petitions and create uncertainty in tariff to DISCOMs and/or end consumers. The Bidders establishing the projects needs to be prudent and factor-in the all the cost implications for delivery of the power upto the Delivery point.

22.55. By allowing the pass through of transmission and wheeling costs of other states/ISTS, the burden on GUVNL of a project located outside Gujarat is significant. The bids are to be compared as they impact GUVNL not as they cost the developer. Therefore for GUVNL, the bid is to be considered irrespective of location of developer. Therefore there cannot be a scenario

that the developer in one location has a higher cost on basis of bid than another location and therefore losses in the bid but after revision in transmission charges/losses, the changed tariff of latter developer is now higher than the former developer. To have uniformity for comparison, the bids are considered at delivery point.

22.56. It is submitted that the Greenko has raised the issue of certification by GEDA in relation to the projects, particularly outside the State of Gujarat.

22.57. It is stated that the above aspect was in relation to the Bidding Documents prior to the Guidelines dated 09.06.2023. As per the subsequent bid documents, while there is no role of State Nodal Agency defined in Guidelines, in case of Gujarat, GEDA is the State Nodal Agency which certifies the COD and therefore, for all projects located in Gujarat, the same has been provided. Recognising the issue for outside Gujarat, the following provision was made in the bidding documents:

"Commercial Operation Date" with respect to the Project shall be the date certified by GEDA in case the project is located in Gujarat or as certified by Representatives / Agency authorized by GUVNL in case the project is located outside of Gujarat.

"9 Commencement of Power Supply

Project commissioning shall be declared from the date certified by GEDA in case project located in Gujarat and State Nodal Agency or Representatives / Agency authorized by GUVNL in case project located outside of Gujarat for which the commissioning certificate is issued upon successful commissioning of the full/part capacity of the Project."

22.58. As per the above, GEDA shall be the certifying authority for both STU and CTU connected projects if project site is located in Gujarat. For the Projects located in the State other than Gujarat, State Nodal Agency of the respective State or Representatives / Agency authorized by GUVNL will be the certifying authority.

22.59. Greenko has sought for option of co-location or located at different locations as well as tie up with third party and has sought to rely on SECI Bid. The said issue is for bidding documents prior to Guidelines.

22.60. In the Guidelines dated 09.06.2023, it has been provided as under:

“Clause 2.2- Explanations

...

(b). ‘Renewable (RE) Power’: The term ‘RE Power’, or ‘Renewable Power’, or ‘Renewable Energy Power’, wherever used in these Guidelines, shall refer to power from Solar Power Generating Systems, Wind Power Generating Systems, Wind Solar hybrid; or any other renewable energy resource based Generating System or a combination thereof, with Energy Storage System (ESS). It is clarified that ESS charged using a source other than RE power would not qualify as RE power...”

22.61. Relevant provisions of RFS document of FDRE (Phase-I) Bid dated 16.07.2024 are as follows:

*“4.2 Configuration for **Firm and Dispatched** peak power and RE Power*

...

iii. Energy Storage Systems (ESS) shall mandatorily constitute part of the Project. It is clarified that ESS charged using a source other than RE power would not qualify as RE power. For avoidance of any doubt, it is hereby clarified that ESS may be owned by the RPD or may be tied-up separately with a third party by the RPD, for supply of power. The ESS technology can be changed by the RPD at any time during the Term of the PPA. Any change in the ESS component during the term of

the PPA may be at risk and cost of the RPD and also under intimation to GUVNL...”

As per the above, the developers are free to choose the ESS capacity without any direct obligation to own the ESS Capacity.

- 22.62. Greenko has referred to the definition of the project in the older bidding documents and sought to raise issue on separate control system and metering.
- 22.63. There is no aspect on this in Guidelines and this is not an issue of deviation but only detailing of provisions. Greenko cannot expand the scope of the Petition. When GUVNL has not sought any deviation on this aspect, no issue can be raised in the present proceedings.
- 22.64. In any event, it is submitted that as per the Relevant provisions of Bid documents dated 16.07.2024:

“PROJECT” or “RENEWABLE POWER PROJECT” or “RE PROJECT” or “PLANT” shall mean the renewable energy generation facility owned by the RPD, comprising Solar Power Generating systems, Wind Power Generating systems, other renewable energy generating source(s) or a combination thereof, for supply of RE power, including ESS (which may be leased/tied-up from a third party), having single or multiple point(s) of injection into the grid at Interconnection Point, or in case of sharing of transmission lines, by separate injection at Pooling Point and having separate control systems and metering. The Project shall include auxiliaries and associated facilities, bay(s) for transmission system in the their switchyard, dedicated transmission line up to the injection point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power to GUVNL. It may be noted that the sources of generation and ESS, if any, may be co-located, or may be located at different locations, to be

considered a single Project. However, it is clarified that ESS charged using a source other than RE power would not qualify as RE power.”

*“**DELIVERED ENERGY**” in case of projects connected with GETCO grid shall mean energy actually fed and measured by the energy meters at the Delivery Point as certified by Gujarat SLDC in State Energy Account as per provisions of PPA and in case of projects connected with CTU grid shall mean the energy supplied at the Delivery Point as certified by Gujarat SLDC in State Energy Account, based on energy certified under Regional Energy Account.....”*

“Appendix A2

Commissioning Procedure

....Approval of Metering arrangement/scheme from CTU/GRID-INDIA/STU any other concerned authority as applicable shall be taken by the RPD.”

As per the above, the ESS needs to have separate metering system as approved by CTU/GRID-INDIA/STU any other concerned authority as applicable for clear accounting of the Delivered Energy, for which payment will be required to meet.

- 22.65. Sharing the part of larger ESS system for GUVNL project and having common control system with other projects will create operational difficulties along with ambiguity for energy certification of Delivered energy. In view of above, the requirement for separate control systems and metering for individual project component persists.
- 22.66. While referring definitions for contracted capacity and project capacity being different, Greenko has sought to suggest that for a single project, they should be same and in case of more than one project, then arithmetic sum of individual projects should be equal to Contracted Capacity.

Greenko is asking for clarification on contracted capacity and project capacity.

22.67. It is submitted that the present Petition is for approval of deviations and not for clarifications. Greenko cannot expand the scope of the Petition. Any clarifications on bid documents is to be sought as per bid process. The scope of the present petition cannot be expanded in such manner. When GUVNL has not sought any deviation on this aspect, no issue can be raised in the present proceedings.

22.68. In any event, it is submitted that the bid documents dated 16.07.2024 provide as under:

“CONTRACTED CAPACITY” shall mean the AC capacity in MW contracted with GUVNL for supply of power by the RPD to GUVNL at the Delivery Point(s) of the Project(s), based on which the PPA is executed with GUVNL.”

“PROJECT CAPACITY” or “INSTALLED CAPACITY shall mean the rated AC capacity of the installed Project components, i.e. Solar PV, Wind Power and any other RE generating components, along with ESS Components of the Project, as committed in the PPA. This shall be equal to the “installed capacity” for which connectivity is sought by the RPD under the GNA Regulations. The quantum of Installed Capacity (in AC MW), including that of the revised Installed Capacity, if any, shall be greater than or equal to the Contracted Capacity”

22.69. Greenko is asking for clarification on the relevance of installed capacity. It is submitted that the present Petition is for approval of deviations and not for clarifications. Greenko cannot expand the scope of the Petition. Any clarifications on bid documents is to be sought as per bid process. The scope of the present petition cannot be expanded in such manner. When

GUVNL has not sought any deviation on this aspect, no issue can be raised in the present proceedings.

22.70. In any event, as per the bid documents dated 16.07.2024, there is no restriction on Project Capacity/Installed Capacity:

“CONTRACTED CAPACITY” shall mean the AC capacity in MW contracted with GUVNL for supply of power by the RPD to GUVNL at the Delivery Point(s) of the Project(s), based on which the PPA is executed with GUVNL.”

“PROJECT CAPACITY” or “INSTALLED CAPACITY shall mean the rated AC capacity of the installed Project components, i.e. Solar PV, Wind Power and any other RE generating components, along with ESS Components of the Project, as committed in the PPA. This shall be equal to the “installed capacity” for which connectivity is sought by the RPD under the GNA Regulations. The quantum of Installed Capacity (in AC MW), including that of the revised Installed Capacity, if any, shall be greater than or equal to the Contracted Capacity”

22.71. Greenko in regard to peak and off-peak hours had made submissions which was prior to Guidelines. However it is stated that as per Bid Documents dated 16.07.2024:

“8.1 Criteria for Power Supply

a. The procurement shall be in power (MW) terms. The RPD shall supply RE power, in a Firm and Dispatchable manner, matching the demand profile provided by GUVNL (enclosed as Annexure-B of the RfS). The demand profile has been provided for all the 96 time-blocks (each block comprising a 15 minutes’ duration) for a representative day of each month of the year. The same profile shall be applicable for each Contract Year during the Term of the PPA, and shall be matched by the RPD.”

22.72. Annexure-B of the RFS have specified the Flat demand profile of 500 MW for each block in the day irrespective of peak or off-peak hours. This

Demand profile is specified according to the requirement of GUVNL and to act as firm RE power. No comments have been received on this aspect after the amendment by GUVNL subsequent to the Guidelines.

22.73. Greenko has based on earlier bidding documents sought to allow to form two separate SPVs each for RE and ESS. This was not a deviation as such and was outside the scope of proceedings. In any case, in terms of the Guidelines dated 09.06.2023,

“Clause 2.2- Explanations

...

(b). ‘Renewable (RE) Power’: The term ‘RE Power’, or ‘Renewable Power’, or ‘Renewable Energy Power’, wherever used in these Guidelines, shall refer to power from Solar Power Generating Systems, Wind Power Generating Systems, Wind Solar hybrid; or any other renewable energy resource based Generating System or a combination thereof, with Energy Storage System (ESS). It is clarified that ESS charged using a source other than RE power would not qualify as RE power...”

22.74. Relevant provision of RFS document of FDRE(Phase-I) Bid dtd.16.07.2024 are as follows

*“4.2 Configuration for **Firm and Dispatched** peak power and RE Power*

...

iii. Energy Storage Systems (ESS) shall mandatorily constitute part of the Project. It is clarified that ESS charged using a source other than RE power would not qualify as RE power. For avoidance of any doubt, it is hereby clarified that ESS may be owned by the RPD or may be tied-up separately with a third party by the RPD, for supply of power. The ESS technology can be changed by the RPD at any time during the Term of the PPA. Any change in the ESS component during the term of the PPA may be at risk and cost of the RPD and also under intimation to GUVNL...”

As per the above, Developers are free to choose the ESS capacity without any direct obligation to own the ESS Capacity.

22.75. Greenko has raised issues on the timelines for SCOD. This is not a deviation from Guidelines as such but detailing by GUVNL. In any event, now the Guidelines dated 09.06.2023 provide as under:

“14. COMMENCEMENT OF SUPPLY OF POWER

14.1. The Power Purchase Agreement between the RE Project and Procurer/Intermediate procurer shall clearly indicate the SCSD and quantum of supply.

14.2. Commencement of Supply Schedule

(a). The projects shall generally commence supply of power, within a period of:

(i). 24 (twenty-four) months from the date of execution of the Power Purchase Agreement, for project size not more than 1,000 MW;

(ii). 30 (thirty) months from the date of execution of the Power Purchase Agreement, for project size more than 1,000 MW...”

22.76. Accordingly, Bid document dated 16.07.2024 provide as under:

“SCHEDULED COMMERCIAL OPERATION DATE” or “SCOD” “SCHEDULE COMMENCEMENT OF SUPPLY DATE” OR “SCSD” shall be the date as declared by the Successful Bidder in the PPA which shall not exceed 24 (twenty four) from the date of execution of the PPA for RE power with ESS.”

Further,

“Clause 1.7

Bidders who have already commissioned RE plants/storage plants or are in process of constructing such plants and have untied capacity may also participate under this RfS. In such case, they will be given the benefit of a longer period of PPA, commensurate to the duration between the actual date of commencement of supply of power and Scheduled Commencement of Supply Date (SCSD). It is clarified that the Bidders who have already signed PPAs with any entity as on the bid

submission deadline, are not allowed to suo-moto terminate such PPAs and participate in this RfS for the respective project(s)".

22.77. Thus there is no deviation and no aspect in this regard can be raised in the present proceedings. As emphasised above, the time limit for the projects (SCOD/SCSD) are in line with FDRE Guidelines and any un-tied Pumped Storage projects under commissioning and scheduled to be commissioned before SCOD/SCSD will be eligible for the Bid.

22.78. Greenko is seeking the mandate of ESS with minimum rated capacity being equal to X being contracted capacity instead of $x/2$ which had been initially provided prior to the Guideline dated 09.06.2023. This objection was taken on the bid documents prior to Guidelines dated 09.06.2023. It may be noted that Renew had suggested for removal of minimum rated capacity. Therefore, the objection by Greenko and Renew are different.

22.79. It is stated that there is no deviation sought by GUVNL in this regard and therefore, the same is outside the scope of the present proceedings. The installation of Energy Storage Systems (ESS) capacity is mandatory part of the FDRE Project as per the FDRE Guidelines and Bid documents.

22.80. M/s Greenko has suggested maximum capacity to be 1000 MW or green shoe option instead of 500 MW which was initially suggested.

22.81. At the outset it is submitted the choice of capacity is entirely of GUVNL and it is not open to the objectors to choose the capacity for GUVNL. GUVNL has not sought any deviation in this regard and therefore no aspect can be considered in the present Petition which is for approval of deviations from Guidelines.

22.82. In any event, in the Bid Documents dated 16.07.2024, it is provided as under:

*“4.2 Configuration for **Firm and Dispatched** peak power and RE Power*

ii. The RfS has been issued for procurement of cumulative “Contracted Capacity” of 500 MW with Greenshoe Option of additional upto 500 MW, which corresponds to Firm and Dispatchable RE (FDRE) Power from the Projects..”.

22.83. M/s Greenko has raised issues in regard to the aspect of Contracted Capacity being rated capacity in case of single generation source in addition to ESS.

22.84. Further based on the provision of Hybrid project where project capacity does not necessarily have to be arithmetic sum of Installed capacity of the two components, Greenko has sought similar provision for Solar + ESS where installed capacity of solar can be higher than project capacity. There is no deviation sought in this regard and therefore this is outside the scope of present proceedings.

22.85. Even otherwise, the relevant provision of RFS document of FDRE (Phase-I) Bid dated 16.07.2024 are as follows

*“**CONTRACTED CAPACITY**” shall mean the AC capacity in MW contracted with GUVNL for supply of power by the RPD to GUVNL at the Delivery Point(s) of the Project(s), based on which the PPA is executed with GUVNL.”*

*“**PROJECT CAPACITY**” or “**INSTALLED CAPACITY** shall mean the rated AC capacity of the installed Project components, i.e. Solar PV, Wind Power and any other RE generating components, along with ESS Components of the Project, as committed in the PPA. This shall be equal to the “installed capacity” for which connectivity is sought by the RPD under the GNA Regulations. The quantum of Installed Capacity (in AC*

MW), including that of the revised Installed Capacity, if any, shall be greater than or equal to the Contracted Capacity”

As per the above, there is no any restriction on ‘Project Capacity/Installed capacity’ corresponding to the ‘Contracted Capacity’.

22.86. M/s Greenko has considering the older bid documents which had peak and off peak suggested single tariff for both peak and off peak. However, only a single tariff is to be submitted by the Bidder for the project in terms of the Guidelines dated 09.06.2023 and Bid Documents dated 16.07.2024.

22.87. The suggestion was made in response to the older bid documents prior to the Guidelines. In terms of the Bid documents dated 16.07.2024, the provision is as under:

“8.1 Criteria for Power Supply

a. The procurement shall be in power (MW) terms. The RPD shall supply RE power, in a Firm and Dispatchable manner, matching the demand profile provided by GUVNL (enclosed as Annexure-B of the Rfs). The demand profile has been provided for all the 96 time-blocks (each block comprising a 15 minutes’ duration) for a representative day of each month of the year. The same profile shall be applicable for each Contract Year during the Term of the PPA, and shall be matched by the RPD.”

22.88. Annexure-B of the RFS have specified the Flat demand profile of 500MW for each block in the day irrespective of peak or off-peak hours. This Demand profile is specified according to the requirement of GUVNL and to act as firm RE power. There is no deviation from the Guidelines and therefore this cannot be a subject matter of the present proceedings. The suggestion was made in response to the older bid documents prior to the Guidelines wherein in case of shortfall during peak hours, compensation

was provided and Greenko had suggested 10% below energy commitment without any compensation on monthly basis.

22.89. The Bid Documents after Guidelines have provided as under:

“8.1 Criteria for Power Supply

..
c. ***Demand Fulfilment Ratio (DFR):*** *In each Contract Year, the RPD shall be required to maintain a Demand Fulfilment Ratio (DFR) of at least 90% on a monthly basis for peak hour (peak hours defined as follows 07:00 Hrs to 10:00 Hrs and 16:00hrs to 20:00hrs and 80% during Off-Peak Hours (all other hours of the day not defined as Peak Hours), separately. In case of deviation in meeting minimum DFR as mentioned above, penalty for the shortfall from minimum DFR shall be calculated separately for the Peak Hours and Off-Peak Hours as per Clause 8.2.b of the RfS and the cumulative penalty shall be levied.*

Demand Fulfilment Ratio for a particular time-block shall be calculated as follows:

DFR = [Power Injection Scheduled by the RPD (MW)in a particular time block/Demand (MW)specified by the GUVNL(MW)for the corresponding time block], subject to the max value of DFR being 1. The RPD’s performance against this metric will be measured by calculating the average DFR of all time blocks (Peak & Off-peak Hours separately) during the month in a contract year. “

As per the above, there is inherent provision for permitted shortfall upto 10% below the energy commitment during the Peak Hours on a monthly basis without any compensation charges. Further there is no deviation sought in this regard and therefore the same is outside the scope of the *present* proceedings.

22.90. M/s Greenko has sought for allowing submission of Payment on Order Instrument. It is stated that the payment on order instrument is an additional optional instrument for submission of EMD/PBG and is not mandatory. As per GR of Govt. of Gujarat (Finance Dept), it is resolved that

Government Departments and State Government Boards / Corporations / PSUs would accept the Bank Guarantee towards Security Deposit and Earnest Money Deposit issued by the Banks as per the notified time to time through to the Resolution. Accordingly, bank guarantees of the banks notified in the GR of Govt. of Gujarat (Finance Dept) are accepted towards Earnest Money Deposit and performance guarantee. Accordingly, RFS document of FDRE(Phase-I) Bid dated 16.07.2024 has provisions to submit EMD/PBG through Bank Guarantees issued by the Banks as notified under G.R. of Govt. of Gujarat (Finance Dept).

22.91. M/s Greenko has suggested for delay in ISTS Sub-station and network to be considered for extension of COD. In this regard, it is submitted that the Bid documents under RFS provide as under:

“10 Delay in Commencement of power supply on Account of Delay in Transmission system

10.1 The responsibility of obtaining General Network Access (GNA) up to the Interconnection Point(s) shall be of the RPD to commencement of supply of power from the project. For drawl of power, the GNA is require to be obtained by GUVNL. Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of GNA by the CTU/STU and/or there is a delay in readiness of the ISTS/STU substation at any interconnection Point(s), including readiness of the power evacuation and transmission infrastructure of the ISTS/STU network until SCSD of the Project, and it is established that:

i. The RPD has complied with the complete application formalities as per Clause 7.4 above and as per the Detailed Procedure as issued by the CTU/STU,

ii. The RPD has adhered to the applicable regulations/ procedures in this regard as notified by the CERC/CEA, and

iii. The delay in grant of connectivity/GNA by the CTU/STU and/or delay in readiness of the ISTS/STU substation at the Delivery Point,

including readiness of the power evacuation and transmission infrastructure of the ISTS/STU network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the RPD;

The above shall be treated as delays beyond the control of the RPD and SCSD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Interconnection Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by GUVNL.

In case of delay in commencement of power supply from the Project due to reasons beyond the reasonable control of the RPD, GUVNL may extend the SCSD after examining the issue on a case-to-case basis. In case of change in Project location(s) by the RPD, extension requests under this clause shall be dealt by GUVNL on case-to-case basis. For avoidance of ambiguity, it is clarified that for decisions made under this Clause, the phrase “change in Project location” or its similar connotations, shall refer solely to change in Interconnection Point(s) of the Project.

Further, in case of delay in commencement of power supply on account of reasons solely attributable to the RPD, resulting in any liquidated damages/penalty levied on the GUVNL including Transmission charges under the GNA Regulations and/or applicable regulation as notified by CERC, such damages/penalty shall be passed on to the RPD.”

22.92. Through the above provisions, extensions for the SCOD/SCSD of the project will be permitted for Delay in readiness of the Interconnection Point and power evacuation infrastructure and/or grant/operationalization of GNA of ISTS substation and network which is beyond the control of developers and prudent steps are taken by the Developers.

22.93. Based on the older bid documents, Greenko has vaguely said FY 31.03.2022 or 31.03.2021. This is not a deviation from any Guidelines and

such clarifications cannot be sought in the present proceedings. In any event, the Bid submission dates are extended and the older documents no longer apply. The Bid documents dated 16.07.2024 provides as under:

iv. Certified copies of annual audited accounts for the last financial year, i.e. FY 2023-24, or provisional accounts duly certified by a practicing Chartered Accountant (as applicable), along with certified copies of Balance Sheet, Profit & Loss Account, Schedules and Cash Flow Statement supported with bank statements as on the date at least 7 days prior to the due date of bid submission (if applicable)...

The Financial year is applicable from corresponding April to March period.

22.94. Greenko has sought for increase in timelines for financial closure referring to 30 months and 24 months based on older bid documents. In terms of the Guidelines there is no specific timeline for financial closure and in fact the SCOD itself is 24 months. Therefore, clearly financial closure cannot be 24 or 30 months. In order to commission the project as per the stipulated timeline, the developers needs to plan for the Project Financing in advance. For ensuring the seriousness of the Project developer and in order to ensure the timely completion of the project, the Financial Closure needs to be achieved within specific time frame as specified in the bid documents. GUVNL has provided as under in the Bid documents dated 16.07.2024:

“22.3 The RPD shall obtain financial closure within twelve (12) months from date of execution of PPA for Non-Park & Park based tenders.”

22.95. The above aspect is not a deviation from Guidelines and GUVNL is entitled to detail the terms. Therefore, such aspects cannot be raised in the present proceedings which is only for approval of Deviations.

22.96. Greenko has sought to make suggestions at Serial No. 26 and 27 – developer to provide 100% firm power and pump storage projects being most critical to developer and providing additional benefit of HPO to discom, some benefit to be passed to developer. These are vague and not related to the issues raised in the Petition at all. Greenko cannot under the Petition for approval of deviations raise completely new issues. When GUVNL has not sought deviations on these aspects, there cannot be any issue raised by any objector.

22.97. In any event, in regard to 100% firm power, it is stated that Annexure-B of the RfS have specified the Flat demand profile of 500MW for Each block in the day irrespective of peak or off-peak hours. This Demand profile is specified according to the requirement of GUVNL and to act as firm RE power. These are aspects to be left to the Procurer. In regard to pump storage, it is stated that the Bid documents provide as under:

PROJECT SCOPE & TECHNOLOGY SELECTION

*Under this RfS, the RPD shall set up the RE Power Project(s), including the dedicated transmission network up to the Interconnection/Delivery Point, at its own cost and in accordance to the provisions of this RfS document. All approvals, permits and clearances required for setting up of the Project(s) and/or dedicated transmission network upto the Interconnection/ Delivery Point (along with connectivity), including those required from State Government and local bodies, shall be in the scope of the RPD. The Projects to be selected under this scheme provide for deployment of RE and ESS capacities. **However, the selection of Projects would be technology agnostic.***

As emphasised above, Developers are free to choose the ESS capacity and technology and bid is technology agnostic regarding the ESS capacity.

There is nothing in the Guidelines to provide any such special benefit. In fact providing benefit would be deviation from Guidelines and there cannot be any compulsion on GUVNL to seek deviations.

22.98. M/s Greenko had suggested based on older bid documents for consideration of requirement of shareholding in SPV to be considered at 51%. This issue was prior to the Guidelines dated 09.06.2023, which provides as under:

“13. SHAREHOLDING BY THE PROMOTER

13.1. The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% (fifty-one per cent) at any time prior to 1 (one) year from the SCSD except with the prior approval of the Procurer. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) years from the SCSD, except with the prior approval of the Procurer. Further, the successful bidder shall ensure that its promoters shall not cede control² of the bidding company/ consortium till 1 (one) years from the SCSD, except with the prior approval of the Procurer. In this case it shall also be essential that the successful bidder shall provide the information about its promoters and their shareholding to the Procurer before signing of the PPA with Procurer.

[²The expression ‘control’ shall mean the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Company or right to appoint majority Directors.]”

22.99. Relevant provisions of RFS document of FDRE (Phase-I) Bid dated 16.07.2024 are as follows:

“25 Shareholding by the Promoter

25.5 In case of Project being executed through SPVs: The Successful Bidder, if being a single company, shall ensure that its

shareholding in the SPV/ Project Company executing the PPA shall not fall below 51% at any time prior to 1 year after SCSD, except with the prior approval of GUVNL. In the event the Successful Bidder is a consortium, then the combined shareholding of the consortium members in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 1 year after SCSD, except with the prior approval of GUVNL. Further, the successful bidder shall ensure that its promoters shall not cede control of the bidding company till 1 (one) years from the SCSD, except with the prior approval of GUVNL. However, in case the Project is being set up by a listed Company, this condition will not be applicable.”

The provisions of FDRE Guidelines and corresponding provisions in RFS permits the PPA execution through SPV with atleast 51% shareholding of the bidder till 01 year from SCSD.

22.100. Based on older documents which required the net worth to be established as on previous financial year which was FY 2021-22 at that time, a suggestion was made to include FY 2020-21 if FY 2021-22 was not ready.

22.101. In view of extension of Bid date, the issue stands modified and would be modified further based on the date of final bid submission. The Guidelines dated 09.06.2023 provide as under:

“9.2.2. Financial Criteria

(a). Net worth

(i). The Procurer shall specify financial criteria in the form of net worth as a part of the qualification requirement. Considering that the developer is responsible for supply of Firm and Dispatchable Power, the net-worth requirement should be at least 20% (twenty per cent) of the estimated ‘RE Project’ cost or any other criteria specified in the RfS....

(iii). It is clarified that the net-worth to be considered for this clause will be the total net-worth as calculated in accordance with the Companies Act.”

22.102. Relevant Provision of RFS document of FDRE(Phase-I) Bid dated 16.07.2024 are as follows:

“38.1 Net-Worth

i. The Net-Worth of the Bidder should be equal to or greater than the amount calculated as per the following formula, based on the Installed Capacity break-up quoted by the Bidder:

Minimum Net-Worth requirement shall be the amount calculated as 10 times the amount payable as part of EMD in line with Clause 17 of the RfS. For example, if the EMD calculated as per Clause 17 is determined as Rs. 75 lakhs, the minimum Net-Worth requirement shall be Rs. 75 lakhs x 10, i.e. Rs. 7.5 Cr. (INR 7,50,00,000).

The above Net-Worth amount shall be demonstrated by the Bidder as on the last of previous Financial Year, i.e., FY 2023-24 or as on the day at least 7 days prior to the bid submission deadline.”

22.103. As bid submission dates has been extended after the issue of bid documents RFS document of FDRE (Phase-I) Bid dated 16.07.2024, the corresponding changes will be made through amendments. The Financial year is applicable from corresponding April to March period. There is no deviation on this aspect and therefore such issues cannot be raised in the present proceedings. Greenko cannot use these proceedings to make suggestions on bid documents in general.

22.104. It is submitted that Greenko based on older Bid documents has suggested for excess energy purchased to be atleast 90% of off peak tariff. The same was prior to the Guidelines. The Guidelines dated 09.06.2023 provides as under:

“...Clause 7.2 –Power procurement

“(c). In order to allow optimization of operation of RE, the Generator is allowed to supply power from the RE power plant in excess of contracted capacity, to any third party or power exchange without requiring any No-Objection Certificate (NOC) from the Procurer. The Generator may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in power exchange without requiring NOC from the Procurer”

22.105. The Bid documents dated 16.07.2024 provides as under:

“8.2 Excess Power Supply

*The RPD is allowed to supply power in excess of the Contracted Capacity to any third party or power exchange, subject to No Objection Certificate from GUVNL. First right of refusal for offtake of full/part quantum of excess power will be vested with the GUVNL. **GUVNL may purchase such part/full excess power at PPA tariff.** The RPD shall inform at least 30 days in advance of such excess generation to GUVNL, to enable GUVNL take necessary actions for sale / consumption of this excess generated energy. Intimation regarding consent to procure excess energy supply from the project shall be provided by GUVNL within 15 days of receipt of the request being made by the RPD, beyond which it would be considered as deemed refusal.....”*

22.106. Power Procurement profile for the current bid is defined on Block to block Basis. Representation for payment of excess power at PPA tariff is addressed by the provision of FDRE Guideline and relevant provisions of RFS document.

23. We have carefully considered the Petition, Interlocutory Applications, written submissions, objections/suggestions received from stakeholders, responses filed by the Petitioner GUVNL and the consolidated submissions dated 13.04.2026 alongwith the applicable provisions of the Electricity

Act, 2003, the National Tariff Policy, 2016, the Guidelines issued by the Ministry of Power, Government of India, dated 09.06.2023 as amended from time to time including amendment dated 12.02.2025, and the relevant Regulations and earlier decisions of this Commission as well approval granted by the Govt. of Gujarat with respect to deviations sought by the Applicant/Petitioner .

- 23.1. We note that the present Petition has been filed by the Petitioner GUVNL under Section 86 read with Section 63 of the Electricity Act, 2003 seeking approval of deviations from the Guidelines issued by Central Government for procurement of power through tariff based Competitive Bidding Process from Grid connected Renewable Energy Sources i.e., Wind, Solar and Wind-Solar Hybrid Projects with mandatory installation of Energy Storage Systems and for approval of bid documents for carrying out bidding process for procurement of power from such RE Power Projects having RE generation with co-located Energy Storage Systems.
- 23.2. The Commission notes that Section 63 of the Electricity Act, 2003 provides that where tariff is discovered through a transparent process of bidding in accordance with the Guidelines issued by the Central Government, the Appropriate Commission shall adopt such tariff. Thus, the Commission is required to satisfy itself that the bidding process is transparent, competitive, non-discriminatory and the bidding documents are conformity with the applicable Guidelines. Further, under Section 86(1)(b) of the Electricity Act, 2003, this Commission is vested with the statutory function of regulating electricity purchase and procurement process of distribution licensees, including the price at which electricity is procured through agreements. Therefore, approval of deviations from bidding

guidelines falls within the regulatory jurisdiction of this Commission, particularly when such deviations may have bearing on tariff discovery, risk allocation, consumer interest and long-term procurement planning.

- 23.3. We note the submissions of the Petitioner GUVNL that the present Petition was filed by GUVNL for approval of the Bid Documents for carrying out bidding process for procurement of power from Hybrid Power Projects having RE generation with co-located energy storage system with a view to avail supply of Firm and Dispatchable Renewable (FDRE) power. It was submitted by the Petitioner that in the absence of competitive bidding guidelines from the MoP, Govt. of India for procurement of Firm and Dispatchable Renewable Energy at the time of filing of present petition, the Petitioner proceeded to prepare bid documents in line with Competitive Bidding Guidelines issued by MoP, Govt. of India for procurement of power from Wind, Solar, Wind-Solar Hybrid projects, by incorporating certain modifications/deviations from these guidelines, and for which approval of the Commission was sought in the present Petition.
- 23.4. We further note the submissions of the Petitioner that during the pendency of present Petition, the Commission vide its Daily Order dated 13.06.2022 granted a liberty to the Petitioner to initiate the bidding process and publish the bid documents accordingly subject to the final outcome in the present Petition. Pursuant to the same, the Petitioner GUVNL published the bid documents on 14.06.2022 for procurement of 500 MW power from Hybrid Power Projects having RE generation with co-located energy storage system. Further, the Petitioner GUVNL held pre-bid conference on 18.07.2022 with the stakeholders on the aforesaid bid documents published by the Petitioner. During the pre-bid conference,

various developers/stakeholders have suggested various modifications/comments to the bid documents with consideration for discovery of competitive tariff. Based on the suggestions/comments received from the stakeholders, the Petitioner GUVNL sought permission of the Commission to file appropriate application for seeking amendment in the Petition for approval of further deviations in the bid documents. Accordingly, the Petitioner GUVNL filed IA No. 02 of 2023 seeking amendments in the bid documents and procurement process from the RE projects with storage facility.

- 23.5. We further note that during the pendency of present Petition as well as IA No. 02 of 2023, Ministry of Power, Govt. of India issued Competitive Bidding Guidelines for procurement of power through tariff based Competitive Bidding Process for procurement of Firm and Dispatchable power grid connected RE projects with energy storage system vide Notification No. 23/03/2023-R&R dated 09.06.2023. The said guidelines would govern the procurement of Firm and Dispatchable power from Renewable Energy based projects by the Petitioner GUVNL.
- 23.6. It is the submission of the Petitioner GUVNL that as per the Clause No. 3.1.1 of the aforesaid guidelines, the approval of the deviations has to be granted by appropriate government whereas Clause No. 17 of the guidelines provides that the deviations if any from the provisions of the guidelines shall be subject to the approval by the appropriate Commission before initiation of bidding process. Therefore, the Petitioner GUVNL preferred to seek approval for deviations from both the authorities, i.e., from State Government under Clause 3.1.1 of the guidelines and from the Commission under Clause 17 of the guidelines.

23.7. In pursuance to the aforesaid subsequent development, the Petitioner GUVNL has filed IA No. 05 of 2024 in the present Petition seeking further amendments in the Petition for approval for incorporation of further deviations in the bid documents from the Guidelines dated 09.06.2023 issued by the Ministry of Power, Govt. of India for procurement of Firm and Dispatchable Renewable Energy power with Energy Storage Systems. In the said IA, the Petitioner GUVNL placed on record its letter dated 04.11.2023 seeking approval of State Government on certain deviations from the competitive bidding guidelines dated 09.06.2023 as stated in the letter. The Petitioner GUVNL also placed on records the letter dated 21.11.2023 of State Government granting its approval to the deviations sought by the Petitioner GUVNL from the bidding guidelines dated 09.06.2023. We also note that during the pendency of present Petition, the Ministry of Power, Govt. of India, on 12.02.2025 has issued amendment to the FDRE guidelines dated 09.06.2023. The Petitioner vide its additional submissions dated 23.04.2025 while placing on records the aforesaid Notification dated 12.02.2025, sought approval for further corresponding deviations in the bid documents from the amended guidelines.

23.8. We perused the documents on record of the present Petition including IAs No. 02 of 2023 and 05 of 2024 filed by the Petitioner GUVNL in the present Petition. As per the submissions of the Petitioner available on the record, in effect, the Petitioner is seeking deviations from the bidding guidelines dated 09.06.2023 and its amendment from time to time, viz. (i) Clause 6.3 - Bid Structure, (ii) Clause 7.2 (c)- Power Procurement, (iii) Clause 7.4 - Force Majeure, (iv) Clause 7.7 - Change in Law, (v) Clause 10 - Indicative timelines for bid process, (vi) Clause 5 - tariff, with respect to delivery

point for supply of power, (vii) role of State Nodal Agency (not specified in the guidelines), (viii) provisions for delay in commencement of power supply on account of delay in transmission system/storage system (not specified in the guidelines), and (ix) Clause 3.2 arrangement related to commencement of supply.

23.9. In addition to the aforesaid deviations, the Petitioner has also sought deviations from the amended FDRE guidelines dated 12.02.2025 as stated in its additional submissions dated 23.04.2025 in relation to Clause 7.6 (b) pertaining to maintaining energy supply corresponding to the minimum CUF as declared in the PPA for two consecutive years.

23.10. We further note that the Petitioner GUVNL in its submissions dated 10.04.2026, in compliance to the Daily Order dated 19.02.2026 raised by the Commission has sought to incorporate certain new clauses/modifications in the existing clauses of Bid documents with consideration of amendment in the FDRE guidelines dated 12.02.2025 and Memorandum dated 09.12.2024 issued by MNRE viz., (i) incorporation of new clause with respect to install and maintain GPS enabled weather station, (ii) incorporation of new clause with respect to compliance with applicable cyber security Regulations directives and guidelines, (iii) modification in Clause 21.1 of RfS relating to signing of the PPA with GUVNL, (iv) Clause No. 37.3 of RfS relating to compliance with ALMM requirements as specified by MNRE vide Memorandum dated 09.12.2024, (v) Modification in formats 7.8 and 7.8 A of RfS relating to compliance requirements of ALMM and (vi) Article 4.1.1 (k) of draft PPA relating to fulfilment of technical requirement according to criteria mentioned in the RfS documents.

23.11. The Commission has gone through the Petition along with IAs, additional submissions and relevant guidelines and, the subsequent amendments. The Petitioner GUVNL has placed on record vide its submission dated 23.04.2026 the deviations sought by it in a consolidated manner along with the reasons, justification and has also stated that the bid documents shall be suitably modified based on the approval of the Commission. The Commission has also taken into consideration the evolution of the regulatory framework, particularly the Guidelines dated 09.06.2023 and subsequent amendments thereto, governing to procurement of Firm and Dispatchable Renewable Energy (FDRE) power with Energy Storage Systems (ESS).

23.12. The Commission observes that the present procurement is slightly different than procurement of power from standalone Solar, Wind or Wind-Solar Hybrid power. The present case involves procurement of Firm and Dispatchable Renewable Energy power with Energy Storage System. The essential object of such procurement is to procure renewable energy with Firm and Dispatchable supply so as to mitigate the issue of intermediate supply of renewable energy by ensuring dispatchability, reliability, scheduling discipline and to support safe and secure grid operations. Therefore, the traditional parameters applicable to ordinary renewable procurement, such as CUF-based supply obligation etc. may not be sufficient to address the requirements of FDRE procurement. In such circumstances, procurement-specific deviations may be justified where the objective is to promote tariff competitiveness along with achieving the objective of firmness power supply for grid stability and reliability.

23.13. The Commission also notes that renewable purchase obligations of distribution licensees have substantially increased periodically. The Commission also note that purchase of energy from standalone RE sources which is infirm in nature putting severe stress on the operation of the Grid specifically increased share of such infirm power in the total power mix. Therefore, there is need to put in place benign regulatory framework for promotion of Firm and Dispatchable renewable energy. The Commission notified the GERC (Procurement of Energy from Renewable Sources) Regulations, 2025 on 12.08.2025 prescribing the minimum percentage targets for procurement of power from Wind, Solar, Biomass, Bagasse and Other Sources, in line with Notification No. 09/13/2021-RCM dated 22.07.2022 issued by the Ministry of Power, Government of India. The Distribution licensees are therefore required to plan procurement in advance, keeping in view the lead time required for competitive bidding, project development, commissioning, connectivity, transmission system readiness and commercial operation. Timely procurement of FDRE power is also relevant from the perspective of resource adequacy, peak demand management and compliance with renewable purchase obligations. The Commission has stipulated the RPO trajectory for Distribution Licensees till the FY 2029-30 as under:

Minimum Quantum of Purchase in percentage (%) from renewable sources (in terms of energy in kWh) of total consumption						
Sl. No	Year	Wind Renewable Energy	Hydro Renewable Energy	Distributed renewable energy	Other renewable energy	Total renewable energy
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	2024-25	0.67%	0.38%	1.50%	27.35%	29.91%
2.	2025-26	1.45%	1.22%	2.10%	28.24%	33.01%
3.	2026-27	1.97%	1.34%	2.70%	29.94%	35.95%
4.	2027-28	2.45%	1.42%	3.30%	31.64%	38.81%

5.	2028-29	2.95%	1.42%	3.90%	33.10%	41.36%
6.	2029-30	3.48%	1.33%	4.50%	34.02%	43.33%

23.14. From the above, it is apparent that the Petitioner GUVNL is required to procure substantial quantum of RE power, since the Commission has enhanced the RPO in view of the requirement stipulated in the Regulations. As per trajectory stipulated under the Notification dated 22.07.2022 issued by MoP, Government of India and GERC RPO Regulations, 2025 the percentage of total energy consumed from RE sources for the Obligated entities of Gujarat are also increasing every year. Accordingly, the distribution licensee has to initiate necessary action for tying up RE power considering necessary lead time for commissioning of RE project through competitive bidding.

23.15. We note that the Ministry of Power, Govt. of India vide its Resolution dated 09.06.2023 has issued the 'Guidelines for Tariff Based Competitive Bidding Process for procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems'. These Guidelines have been amended from time to time, including on 17.11.2023, 02.02.2024 and 12.02.2025. Clause 2.3 of the Guidelines provides that any deviation must follow the process prescribed in Clause 17. The amended Clause 3.1.1 requires the procurer to prepare bid documents in accordance with the Guidelines and to seek approval of the Appropriate Commission for deviations, if any. Further, the Clause 17 expressly permits deviations from the Guidelines and/or Standard Bid Documents where imperative, subject to prior approval of the Appropriate Commission before initiation of the bidding process.

23.16. We note that the present Petition and IAs, are filed seeking approval of the Commission for deviations from the FDRE Guidelines dated 09.06.2023 notified by MoP, Govt. of India as amended from time to time submitting that the Petitioner is required to procure renewable energy based generation in order to comply the RPO targets stipulated by the Commission. The Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid connected Renewable Energy Power Projects with Energy Storage Systems are notified on 09.06.2023 by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 read with Tariff Policy, 2016. The said Guidelines have been amended from time to time on 17.11.2023, 02.02.2024 and lastly on 12.02.2025.

23.17. It is therefore, necessary to refer to the relevant Sections of the Act, National Tariff Policy, 2016 and Clauses of the Guidelines which are reproduced below:

(I) Section 63 of the Electricity Act, 2003 reads as under:

“Section 63 Determination of tariff by bidding process

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 the above provision, the Appropriate Commission is required to adopt the tariff discovered through transparent process of bidding.

(II) National Tariff Policy, 2016 issued by the Ministry of Power at Section 6.4 (2) records as under:

“.....

(2) States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources, above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government. However, till such notification, any such procurement of power from renewable energy sources Projects, may be done under Section 62 of the Electricity Act, 2003.

.....”

As per above provision, the procurement of power by the distribution licensee from renewable energy sources shall be done through competitive bidding from the date to be notified by the Central Government. However, till such notification, the same may be procured at the tariff determined by the Commission under Section 62 of the Electricity Act, 2003.

(III) The relevant provisions of the Guidelines dated 09.06.2023 are reproduced below:

(a) Clause 2.3 of the Guidelines dated 09.06.2023:

“2.3. Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer/Intermediary Procurer/End Procurer and the Authorised Representative of the Procurer and the same needs to be strictly followed for such bidding to be eligible under section 63 of the Electricity Act. However, in case it becomes imperative to deviate from the provisions of these Guidelines, the process to be adopted is specified in Clause 17 of these Guidelines.”

According to the above Clause, the provisions of Guidelines are binding to the Procurer/Intermediary Procurer/End Procurer and if any deviations from these Guidelines is to be proposed then the process specified in Clause 17 of the Guidelines is to be followed.

(b) Clause 3.1.1 pertaining to Bid Documentation of the Guidelines dated 09.06.2023 read as under:

“.....

(a) Prepare the bid documents in accordance with these Guidelines.

(b) Seek approval of the Government for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 17 of these Guidelines.

However, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project

agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

The above Clause was amended and modified by Ministry of Power, Govt. of India vide Notification No. 48-19/2/2024 –MNRE dated 12.02.2025 as under:

(b) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 17 of these Guidelines.

Provided that if, for a bid, the deviations are already approved by the Government prior to notification of these amendments, fresh approval by the Appropriate Commission shall not be required for that bid.

However, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

.....”

According to the above Clauses, the procurer is mandated to prepare the bid documents in accordance with the Guideline and Standard

Bid Documents notified by the Central Government. Further, it is also provided that in case of deviations in the draft RfS, draft PPA or draft PSA from the Guidelines and/or SBDs, an approval of the Appropriate Commission as provided in Clause 17 of the Guidelines is required to be obtained by the Procurer. Also, till the SBDs are notified by the Central Government, the Procurer may prepare the draft RfS, draft PPA and draft PSA and other agreements providing detailed provisions consistent with the Guidelines. It is also provided that if, for a bid, the deviations are already approved by the Government prior to notification of these amendments, fresh approval by the Appropriate Commission shall not be required for that bid.

(c) Clause 17 of the Guidelines dated 09.06.2023:

“.....

17. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

The objective of these Guidelines is to bring standardization & uniformity in processes so that there is fairness & transparency in procurement. As such, these Guidelines need to be strictly followed in the bidding process and no bid, under section 63 of the Electricity Act, for procurement of Firm and Dispatchable RE power from grid-connected Renewable Energy (RE) power projects, with Energy Storage System shall be issued in contravention to these Guidelines. However, in case it becomes imperative for the Procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission before the initiation of bidding

process itself. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days of filing such petition.”

The aforesaid Clause provides that if there is any deviation from the Guidelines and/or the SBDs, the same shall be subject to the approval of the Appropriate Commission and the Appropriate Commission shall either approve or require modification to the Bid Documents within 60 days.

23.18. We note that the Bidding Guidelines for procurement of Firm and Dispatchable co-located with RE project energy based power project have been issued by the Central Government under Section 63 of the Electricity Act, 2003. The Clause 17 of the guidelines while permitting deviations from the provisions of the Guidelines requires approval of the Appropriate Commission. Further, Section 86(1)(b) of the Electricity Act, 2003 empowered the State Commission to regulate procurement of power by the distribution licensee, including the process of procurement through competitive bidding, whereas Section 61 (d) cast the obligations on the part of the Commission to safeguard the consumers' interest while ensuring transparency and reasonableness in power purchase. We further observe that the Section 63 of the Electricity Act, 2003 provides for procurement of power through bidding process with an objective to ensure discovery of competitive tariff through a transparent and competitive process.

23.19. We note that the present matter concerns approval of deviations from the Guidelines for procurement of Firm and Dispatchable Renewable Energy

Power from Grid connected RE Power Projects with Energy Storage Systems issued by MoP, Govt. of India. The Petition was originally filed prior to issuance of Guidelines dated 09.06.2023 and, therefore, was based on then prevailing Solar, Wind and Wind-Solar Hybrid Guidelines. Subsequently, the procurement framework materially altered by the Guidelines dated 09.06.2023 and further amendments by the Govt. of India. GUVNL has accordingly from time to time sought the amendments in the deviations before the Commission.

23.20. We also note that objections were received from various stakeholders mainly in response to the original Petition and earlier draft bid documents prepared by the Petitioner GUVNL in line with MoP' Guidelines for Wind, Solar, Hybrid projects. We also note the submissions of the Petitioner GUVNL that as such no objections were received against the amendments sought by the Petitioner pursuant to the FDRE Guidelines issued by the Government of India. However, GUVNL has fairly responded to the earlier objections with consideration of the final deviation sought by the Petitioner GUVNL through IA No. 05 of 2024 along with additional submissions from time to time. Therefore, the Commission is of the considered view that only those issues which are relating to the approval sought by the Petitioner on the final deviations, are required to be dealt in the present proceedings. Further, we also note the submissions of the Petitioner that the issues raised by various stakeholders relating to detailing of bid documents, clarifications on tender clauses, or suggestions regarding commercial preferences of developers etc., are in effect seeking to enlarge the scope of the present Petition and therefore, cannot be considered.

23.21. It is noted that the Guidelines contemplate approval of the Appropriate Commission in case there is deviations to be incorporated in the bidding documents by the procurer. In case approval for deviations from bidding guidelines are sought by the Procurer, it is incumbent upon the Commission to examine whether the proposed deviations are reasonable, procurement-specific, transparent, non-discriminatory, consistent with the broad object of the Guidelines, and protective of consumers' interest and at the same time, to ensure that the procurement framework does not defeat the competition or impose unjustified burden on consumers.

23.22. The Commission further notes that public notices were issued from time to time by the Petitioner GUVNL in compliance with the directions of the Commission in its various Daily Orders and the Petition, IAs, revised bid documents and proposed deviations were also uploaded by the Petitioner GUVNL in its website for inviting comments/suggestions/objections from the stakeholders. The Commission is therefore satisfied that adequate opportunity of participation was granted to stakeholders before consideration of the proposed deviations. The Commission also notes that the Petitioner GUVNL has submitted that the deviations are required to be considered in light of the Guidelines dated 09.06.2023 as amended from time to time and that the deviations approved earlier by the Government of Gujarat have also been placed on record. The Petitioner GUVNL has further submitted the consolidated chart of deviations, reasons and justification is placed on record and the amendments required in the bid documents pursuant to the amended Guidelines dated 12.02.2025 and MNRE Memorandum dated 09.12.2024. The Commission finds that the deviations proposed by the Petitioner GUVNL are not in derogation of the fundamental objective of competitive bidding but the same is intended to

bring clarity with respect to risk allocation, avoid future disputes, preserve tariff certainty, ensure firm dispatchable supply, protect consumers' interest and align the bid documents with the specific requirements of RTC/FDRE procurement intended by the Petitioner GUVNL.

23.23. As noted above, Section 63 of the Electricity Act, 2003 enables adoption of tariff discovered through transparent competitive bidding conducted in accordance with the Guidelines issued by the Central Government. The purpose of bidding guidelines is to ensure fairness, transparency, competitive discovery of tariff and protection of consumers' interest. However, the said Guidelines themselves recognize that deviations may become necessary in a particular procurement, subject to the approval of the Commission. While allowing the approval for the deviations, it require to consider various aspects, i.e., as to (i) whether the deviation is procurement specific, (ii) whether it preserves transparency and competition, (iii) whether it balances the risk between procurer and generator, (iv) whether it protects consumers' interest etc.

23.24. With consideration of these aspects, we now proceed to examine each deviation sought by the Petitioner and relevant objections thereon, one by one.

23.25. With respect to the issue of deviations sought by the Petitioner from the provisions of Clause No. 7.6 (b) of the amended guidelines relating to Demand Fulfilment Ratio (DFR) and Supply shortfall as proposed by the Petitioner is concerned, we note the submissions of the Objector Greenko that the Objector has sought allowance for shortfall up to 10% during peak hours without compensation to which the Petitioner GUVNL has responded that the amended bid documents provide for DFR of at least

90% on monthly basis for peak hours and 80% during off-peak hours separately. Therefore, there is inherent tolerance up to 10% below demand fulfilment during peak hours before penalty is triggered. The Commission also notes that the Petitioner GUVNL has proposed to replace the provisions related to yearly minimum CUF obligation as contained in the amended guidelines with minimum DFR obligation to be maintained separately for peak and off-peak hours with penalty provisions for default. The Commission notes that the DFR is defined as scheduled power injection by RPD in time blocks to the demand specified for corresponding time blocks. We note that the submissions of the Petitioner that the DFR is block wise performance criteria with a view to ensure availability of fixed and dispatchable renewable energy from the project which is one of the main objective of the procurement in the present matter. We find merit in GUVNL's submission that DFR is a more appropriate benchmark for firm and dispatchable power, since DFR measures block-wise scheduled supply against the demand specified by GUVNL, whereas CUF is an annual energy-based parameter and does not reflect time-block dispatchability. In an RTC/FDRE procurement, the essence of procurement is not merely availability of annual generation but firm availability in specified time blocks. Therefore, the adoption of DFR is rational, procurement-specific and consistent with the objective of firm supply. The Commission further accept GUVNL's submission that permitting downward revision of minimum DFR after commissioning would materially affect the tariff discovered in the bidding process and would disturb the commercial basis on which bidders participate. Since DFR forms an essential performance obligation linked with tariff discovery, the same cannot be diluted post-commissioning without corresponding adverse impact on GUVNL and

ultimately on consumers. Moreover, the Commission finds the DFR framework appropriate because in FDRE procurement, the obligation is not merely supply of quantum of annual energy but match with time-block wise GUVNL's demand profile and therefore, DFR is a more appropriate performance parameter than minimum CUF based approach. The Commission also finds that non-revision of DFR post-commissioning is justified and if DFR is relaxed after tariff discovery, the basis of bid comparison would be disturbed. Accordingly, the deviation relating to DFR-based supply obligation as sought by the Petitioner, is approved.

23.26. With regard to the deviation sought from Clause 7.7 of Guidelines with respect of Change in Law is concerned, we note the submissions of the Objectors WIPPA and M/s Apraava Energy that amendment proposed by the Petitioner GUVNL in the provisions related to Change in Law clause in effect, narrowing its applicability and that the same is contrary to the wider formulation contemplation under the Guidelines / Change in Law Rules and therefore, the same need to be retained without any amendment. Per Contra, the Petitioner GUVNL has submitted that the proposed amendment in Change in Law clause is in line with earlier Wind and Solar tenders, wherein pass-through was restricted to additional tax, surcharge, cess or similar statutory charges imposed by competent authority on generation of electricity or sale of electricity, i.e., levies on final output in the form of energy and not on inputs. The Petitioner GUVNL has further submitted that such limited Change in Law clauses were earlier approved by the Commission in Petitions No. 1706 of 2018 and Petition No. 2069 of 2022. The Commission noted the aforesaid submissions of the GUVNL that similar deviations in the Change in Law Clause has already been approved by the Commission in the bid documents for procurement

of power from wind and solar power projects. Therefore, we are of the view that as such this issue is no more res judicata. Even otherwise also, it is necessary to consider that if every post-bid increase in input cost is allowed to be reopened as Change in Law, the discovered tariff would lose its sanctity and the burden would ultimately fall upon end consumers. The Commission is also of the view that Change in Law is essentially a matter of contractual risk allocation. So long as the clause is clearly disclosed in the bid documents, all the bidders may participate with knowledge of such risk framework. The Commission finds that such formulation provides tariff certainty, reduces avoidable litigation and is consistent with the earlier approach taken by the Commission in similar competitive bidding matters. There need to be struck balance between protection of the interest of the developers and interest of consumers. With consideration of these aspects, we deemed it appropriate to approve the proposed Change in Law deviation sought by the Petitioner GUVNL.

23.27. We note that the Objector Greenko has also raised concerns regarding delay in readiness of CTU / STU infrastructure leading to delay in commissioning of the project. The Objector has accordingly suggested to modify the Clause No. 7.4 of bid Guidelines relating to Force Majeure to include the situation of the delay in readiness of CTU / STU infrastructure as Force Majeure event. As discussed and decided above, we already approved the incorporation of the provisions of bid documents that in case delay in grant / operationalisation of GNA or readiness of interconnection point / transmission infrastructure is attributable to CTU / STU / transmission licensee and beyond the control of the RPD, the same shall be treated as delay beyond the control of the RPD and SCSD shall be revised

suitably, including 60 days subsequent to readiness / operationalisation, subject to certain conditions. Thus, the concerned raised by the objector is already addressed by incorporating the suitable provisions in the bid documents.

23.28. We note that the Petitioner GUVNL has sought the deviation in Clause No. 6.3 of the Bid Guidelines. The Clause 6.3 of the Bid Guidelines provides that a maximum of 50 percent of bid capacity can be allocated to a single bidder in a tender. Whereas the Petitioner GUVNL has proposed the said provisions stipulating that the Bidder including its Parent, Affiliate or Ultimate Parent or any Group Company shall be eligible to bid up to 100% bid capacity of the RfS. We note the justification provided by the Petitioner GUVNL in support of the aforesaid deviations sought by it stating that the condition contained in the bid guidelines may result in sub-optimal rate discovery. Further, if any bidder offers a better rate for the entire quantum, there is no reason to give some capacity to the L2 party. We have examined the submissions of the Petitioner and the provisions of Clause 6.3 of the Guidelines dated 09.06.2023 issued by Ministry of Power, as amended from time to time, which stipulates that a maximum of 50% of the bid capacity can be allocated to a single bidder. The Petitioner has sought approval to deviate from the said stipulation in respect of the proposed procurement of Firm and Dispatchable Renewable Energy Power on the ground that such restriction may not yield optimum rate discovery. We further observe that the objective of Section 63 is to ensure discovery of tariff through a transparent and competitive process. If the bidding process is conducted in a fair, transparent and non-discriminatory manner, and adequate competition is ensured at the bidding stage, allocation of capacity beyond 50% to a single bidder, per se, would not

violate the principles of competition, provided that such allocation results in the lowest discovered tariff and overall cost optimization. In view of the above and considering the provisions of Sections 61(d) and 86(1)(b) of the Electricity Act, 2003 to protect consumers' interest and to ensure procurement at reasonable rates through transparent Competitive Bidding Process, the Commission, upon due consideration of the submissions and the material placed on record, is of the view that deviation from Clause 6.3 of the MoP Guidelines, insofar as it does not restrict allocation of more than 50% of the bid capacity to a single bidder, merits approval in the facts of the present case. In the peculiar circumstances of the present procurement, strict enforcement of the 50% cap would lead to sub-optimal allocation and potentially higher procurement costs. Considering the steep Renewable Purchase Obligation (RPO) trajectory and the long-term tariff impact on consumers, acceptance of the lowest discovered tariff for a higher quantum of capacity would ensure optimization of the Petitioner's power purchase cost and thereby advance consumers' interest. Accordingly, the deviation sought by the Petitioner is hereby approved.

23.29. Now we deal with the deviations with regard to Clause No. 7.2 (c) of the bid guidelines which provides that in order to allow optimization of operation of RE, the Generator is allowed to supply power from the RE power plant in excess of contracted capacity, to any third party or power exchange without requiring any No-Objection Certificate (NOC) from the Procurer. The Generator may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer. The Petitioner GUVNL has sought deviations in the aforesaid Clause providing that the RPD is allowed to supply power in

excess of the Contracted Capacity to any third party or power exchange, subject to No Objection from GUVNL. First right of refusal for offtake of full/part quantum of excess power will be vested with the GUVNL as per PPA. GUVNL may purchase such part/full excess power at PPA tariff. In case GUVNL does not agree to purchase such excess energy, the RPD will be free to sell such energy to a third party or power exchange. Intimation regarding consent to procure excess energy supply from the project shall be provided by GUVNL within 15 days of receipt of the request being made by the RPD, beyond which it would be considered as deemed refusal. We note the submissions of the GUVNL in support of the aforesaid deviations from the bid guidelines sought by it stating that the Guideline does not mandate any maximum DC capacity for the contracted AC capacity and also provides any requirement of CUF fulfilment criteria will be on annual basis. As generator may get higher tariff during the peak period of power demand, generator may sell power to third party or power exchange. In order to avoid such instances, it is proposed for deviation to add "first right of refusal to be vested with GUVNL."

23.30. With respect to the aforesaid deviation, the Objectors ReNew Power and Greenko Energies have sought freedom to sell excess power in the market without restriction or without NOC from GUVNL. Whereas, GUVNL has proposed that excess power beyond contracted capacity may be sold to third party or power exchange subject to NOC from GUVNL, with first right of refusal vesting with GUVNL. The Petitioner GUVNL has justified this aspect on the ground that the guaranteed supply criteria proposed by the Petitioner is based on DFR approached which is different than provisions of bid guidelines providing for minimum supply criteria. Under the

proposed criteria the generator has to fulfil DFR separately for peak period and for off-peak period. It is apprehended that the peak period supply rate in the market/ third party may be higher and therefore, the generator may prompt to supply the power in the market during the peak period and depriving the GUVNL from such power at the time when it need most. We find the merits in the submissions of the GUVNL that minimum supply criteria provided in the guidelines and proposed by GUVNL which is also being approved by the Commission in the previous part of this Order, materially different and distinct. The GUVNL being procurer, must not be deprived of the first opportunity to procure such excess power at PPA tariff. In view of this, the Commission finds the proposed deviation by the Petitioner is justified. It is also to note that the aforesaid clause does not absolutely prohibit third-party sale but it only requires first offer to GUVNL and permits third-party sale upon refusal / deemed refusal. Such structure preserves the generator's ability to monetise excess energy while protecting procurer and consumers' interest. Accordingly, the deviation sought by the Petitioner GUVNL relating to excess power supply and first right of refusal is approved.

23.31. Now we deal with the deviation regarding Clause No. 10 of guidelines wherein there is no provision for issuance of letter of intent (LOI) at end of selection process. The Petitioner GUVNL has proposed to incorporate the provision for issuance of LOI at the end of selection process to the successful bidders discovered through e-RA. We note that in support of the same, the Petitioner has submitted that the signing of PPA always subject to adoption of tariff by Commission. In the event of non-adoption of tariff after the issuance of LOA, it may give rise to a litigation in future. Therefore, it is proposed to continue with the clause as per current tenders

regarding issuance of Letter of Intent (LOI) to the Successful Bidder and PPA is to be signed after the adoption of tariff by the Commission. In this regard, we note that the Petitioner while seeking to incorporate the provisions related to issuance of LOI, not seeking any material change in the bidding process. We note that as per the provision of Section 63 of the Electricity Act, 2003, the discovered tariff is subject to adoption by the Commission. Therefore, as a precautionary measure and as per the practice followed by the Petitioner GUVNL in the bidding process, it has proposed to provide for issuance of LOI after completion of selection process. We do not find any adverse implication for the deviation proposed by the Petitioner GUVNL and accordingly the same is approved.

23.32. Now we deal with the deviation sought by the Petitioner with regard to Clause 5.2 of Guidelines which states that the tariff shall be quoted at the Delivery Point at the CTU interconnection point and all charges and losses till the delivery point shall be borne by the Generator. Whereas it is proposed by the Petitioner GUVNL that Delivery Point in respect of for park and non-park based projects connected with Intra State Transmission Network of Gujarat State shall be the point at voltage level of 66 KV or above of the sub-station of Gujarat STU at which the project is inter-connected through a dedicated transmission line to deliver the energy into grid system of GETCO and in respect of for park and non-park based projects connected with Inter State Transmission Network shall be the point or points of inter-connection of Intra State Transmission Network of Gujarat with Inter State Transmission Network, at which Electricity is delivered into the Grid System of GETCO. The Objector Greenko has suggested that projects and/or storage should be allowed anywhere in India and therefore, the delivery point may be at STU or CTU

periphery. Per Contra, the Petitioner has stated that as per prevailing practice for GUVNL' tenders, the delivery point will be at STU (i.e. GETCO) periphery. It is also submitted that multiple project locations can have CTU/STU injection point at various locations. However, GUVNL has specified that delivery point shall be at GETCO periphery for both park and non-park project developers to get the power delivered at grid system of GETCO and all charges and losses up to the delivery point of GETCO shall be borne by the Developers. We considered the submissions of the Petitioner GUVNL regarding the delivery point proposed at State/GETCO' periphery inspection whether the subject is connected with network of STU or network of CTU. The Commission find force in the submissions of the Petitioner GUVNL and therefore, the same is approved.

23.33. Now we examine certain incorporation proposed by the Petitioner in relation to Clause 3.2 of the Bid guidelines dealing with the arrangement related to commencement of supply. The Clause 3.2 of the guidelines specifically provides that the RfS may specify additional milestones for the project with respect to land acquisition, connectivity etc. as well as regular reporting requirements by the Generator and shall specify penalties with respect to non-compliance with such milestones/requirements. Obtaining all clearances, permits, licenses including arrangement of land and connectivity to the Grid and access (if applicable) prior to scheduled date of commencement of supply of power shall be the responsibility of the Generator and the Procurer shall not be responsible in case of delay in obtaining such clearances, permits, licenses etc. In this context, the Petitioner GUVNL proposed to incorporate the following provisions in the bid documents:

“

In order to have proper monitoring of the project milestones it is proposed to add the following clause in performance monitoring. Arrangements related to Commencement of Supply.

RPD shall submit quarterly project report in the month of February, May, August and November showing specific status of the following milestones for performance monitoring of the Projects from the date of issuance of Lol;

- a. Application of registration of project with GEDA in case project is to be set up in the Gujarat and Representatives / Agency authorized by GUVNL in case of project is to be set up outside of Gujarat.*
- b. Connectivity application*
- c. Financial Closure*
- d. Award of EPC contract*
- e. Solar PV Module Supply Agreement*
- f. WTG Supply agreement*
- g. Land acquisition*
- h. Civil work status*
- i. Erection work status*
- j. Commissioning*

In addition to above, selected bidders shall achieve 'Financial Closure' and 'Land acquisition' as under:

Financial closure: "Financial Closure" shall mean arrangement of necessary funds by the Power Producer either by way of commitment of funds by the Company from its internal resources and / or tie up of funds through a bank / financial institution by way of sanction of a loan or letter agreeing to finance. At this stage, Power Producer shall ensure submission of documents / certificates evidencing the tie up of project cost through internal resources and /or through external Financing Agency and Implementation and Service Agreement executed with SPPD. The Power Producer shall obtain financial

closure within twelve (12) months from date of execution of PPA for Non-Park & Park based tenders. The Power Producer will have to submit the required documents to GUVNL at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, GUVNL shall not be liable for delay in verification of documents and subsequent delay in Financial Closure. An extension for the attainment of the financial closure can however be considered by GUVNL, on the sole request of the Power Producer, on advance payment of extension charges of Rs.1000/- per day per MW plus GST (As Applicable). In case of any delay in depositing this extension charge, the Power Producer has to pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI MCLR (1 Year).

Land Acquisition: "Land Acquisition" shall mean acquisition of required land to establish Solar PV Project by the Power Producer either by way of purchase of land or through lease/rent of the land. At this stage, Power Producer shall ensure submission of notarized copy of sale deed or / and lease / rent agreement evidencing the acquisition of land. The Power Producer shall acquire land for the project within eighteen (18) months from date of execution of PPA for Non-Park based tenders. The Power Producer will have to submit the required documents to GUVNL at least 14 days prior to the scheduled Land Acquisition date. In case of delay in submission of documents mentioned above, GUVNL shall not be liable for delay in verification of documents. An extension for the acquisition of land can however be considered by GUVNL, on the sole request of the Power Producer, on advance payment of extension charges of Rs. 1000/- per day per MW

plus GST(As Applicable). In case of any delay in depositing this extension charge, the Power Producer has to pay an interest on this extension charge for the days lapsed beyond due date of Land Acquisition @ SBI MCLR (1Year).

GUVNL shall not be liable for issuing any intimations/ reminders to RPDs for timely completion of milestones and/ or submission of compliance documents. Any additional documents required as per the conditions of Guidelines, RfS and PPA must be timely submitted by the RPD.

This extensions granted for “Financial Closure” and “Land Acquisition” milestones on payment of extension charges will not have any impact on the SCSD. Any extension charges paid so, shall be returned to the Power Producer without any interest on achievement of successful commissioning within the SCSD on pro-rata basis, based on the Project Capacity commissioned on SCSD. However, in case of any delay in commissioning of the project beyond the Scheduled Commissioning Date, the amount as deposited above by the Power Producer shall not be refunded by GUVNL.”

In this regard, we note that the Clause 3.2 of the guidelines provides liberty to the procurer to specify additional milestones in the RfS documents for the project with respect to land acquisition, connectivity etc. as well as other reporting requirements by the generators and specify the penalty for non-compliance with such milestones and requirements. Accordingly, we note that the Petitioner has proposed to specify various milestones to be achieved by the generators and reporting requirements for monitoring

progress of the project with penalty provision for delay in financial closure and/or delay in submissions of required land documents for the project. The Commission finds that the proposed incorporation of milestones, reporting requirements and penalty provisions etc. is reasonable and proper to ensure timely completion of the project. However, it is observed that while proposing the aforesaid provisions to be incorporated in the bid documents/PPA, the word 'SPPD' is used at various places which seems to be inadvertent error as the said word represents Solar Power Project Developer whereas the bid documents at various places referred the word 'RPD' (Renewable Project Developer) with consideration that the present bid is not limited to only solar project developers but for Firm and Dispatchable Wind-Solar Hybrid Project and therefore, the same is required to be corrected. Further, in the same Clause the Petitioner has used the word 'Land Acquisition for establishment of Solar PV Project' which seems to be inadvertent error and the same is required to be corrected. The Petitioner is accordingly directed to make necessary changes/corrections in the bid documents. The Commission hereby approves the deviation as proposed by the Petitioner GUVNL.

23.34. Now we deal with incorporation of commissioning Certification / Role of GEDA and Other Agencies as proposed by the Petitioner GUVNL is concerned, we note that the Objector Greenko Energies sought clarification as to whether GEDA would certify commissioning for STU and CTU projects, particularly projects outside Gujarat. In this regard, the Petitioner GUVNL has responded and proposed that for projects located in Gujarat, GEDA shall be the certifying authority and for projects located outside Gujarat, certification shall be by the representatives/ Agency authorized by the Petitioner GUVNL. The Commission finds this proposal

practical and reasonable as it recognizes GEDA's role within Gujarat and provides a workable mechanism for projects outside the State and also this provision avoids uncertainty in certification of commissioning. Accordingly, the proposed provision is approved.

23.35. We further note that the Petitioner GUVNL has sought incorporation of various new provisions which are not provided in the Bid Guidelines but the same are proposed by the Petitioner GUVNL in pursuant to the amendment in the FDRE Guidelines dated 12.02.2025 and MNRE Memorandum dated 09.12.2024.

23.36. The Petitioner has proposed to incorporate new Clause in relation to GPS-enabled Automatic Weather Station requirement after clause no. 37.6 of RfS and Article 4.1.1(o) of draft PPA providing that the developer shall install and maintain GPS enabled Automatic Weather Station (AWS) as per the technical Specifications and standards specified by relevant Central Government agency. Availability of the data from such AWS shall be ensured as specified by the State Load Dispatch Centre and other Central/ State Government agencies in accordance with the provisions of Indian Electricity Grid Code and instructions from the Sate Load Dispatch Centre from time to time. We note the justification provided by the Petitioner that the said provisions are required to align the bid documents with amendment Clause No. 9.2.1 – technical criteria – (ii) of the amended guidelines dated 12.02.2025. With consideration of the same, the Commission hereby approves the incorporation of the same as proposed by the Petitioner.

23.37. The Petitioner has further proposed to incorporate new Clause in relation to compliance of applicable cyber security regulations, directives, and guidelines issued by the Central Government authorities dealing with cyber security, after Clause No. 37.6 of RfS and Article 4.1.1(o) of draft PPA providing that the developer shall complies with applicable cyber security regulations, directives, and guidelines issued by the Central Government authorities dealing with cyber security. We note the justification provided by the Petitioner that the said provisions are required to align the bid documents with amendment clause 9.2.1 – technical criteria – (iii) of the amended guidelines dated 12.02.2025. With consideration of the same, the Commission hereby approves the incorporation of the same as proposed by the Petitioner.

23.38. The Petitioner has proposed to modify existing Clause No. 21.1 providing as under:

“

GUVNL shall enter into Power Purchase Agreements (PPAs) with Bidders selected based on this RfS. A copy of the standard PPA to be executed between GUVNL and the selected RPD is available on the ISN-ETS Portal and also on GUVNL's website. The PPA may be signed after the adoption of tariff by GERC. PPA(s) will be executed between GUVNL and the Selected Bidder or its SPV for the Project(s), which shall be valid for a period of 25 years from the date of SCSD as per the provisions of the PPA.

Provided that PPA signing shall be completed within 12 months period from the date of issue of LoI, beyond which the LoI will be cancelled.

Provided further that in case the order of adoption of tariff by the Commission is not received within 60 days or is delayed beyond 60 days from the date of filing the petition for adoption of tariff, either Party shall not be liable for payment of any compensation to the other Party for any loss or damage on account of such delay in approval by the Appropriate Commission.

We note that the Petitioner has incorporated additional clarification in the aforesaid clause stipulating the time period for signing of the PPA to align the said clause with the provision of guidelines dated 12.02.2025. With consideration of the same, the Commission find it appropriate to approve the same as proposed by the Petitioner.

23.39. The Petitioner has proposed to modify existing Clause No. 37.3 providing as under:

“

The provisions as contained in the O.M. dated 10.03.2021 issued by MNRE on the subject “Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirement of Compulsory Registration) Order, 2019-Implementation-Reg.” and its subsequent amendments and clarifications issued until the bid submission deadline, shall be applicable for this RfS. The modules / Solar PV Cells used in the Projects under this RfS should have been included in the List(s) under the above Order, valid as on the date of dispatch (procurement from within India) / filling of BOE with Indian Customs (procurement from outside India) of such modules.

.....”

We note the submissions of the Petitioner that the aforesaid Clause is proposed to be modified to align with the Ministry of New and Renewable Energy (MNRE)'s Memorandum dated 09.12.2024 regarding "Approved Models and Manufacturers of Solar Photovoltaic Modules (ALMM), and therefore, the same is approved as proposed by the Petitioner.

23.40. The Petitioner has proposed to modify existing Format 7.8 and format 7.8A of RfS providing as under:

“

We further understand that the Modules to be procured for this project, should have been included in the List(s) under the MNRE's Approved List of Models and Manufacturers of Solar PV Modules (Requirements for Compulsory Registration) Order, 2019 as amended from time to time, valid as on the date of dispatch (procurement from within India) / filling of BOE with Indian Customs (procurement from outside India) of such modules.

.....”

We note the submissions of the Petitioner that the aforesaid Clause is proposed to be modified in order to align the same with Ministry of New and Renewable Energy (MNRE)'s Memorandum dated 09.12.2024 regarding "Approved Models and Manufacturers of Solar Photovoltaic Modules (ALMM), and therefore, the same is approved as proposed by the Petitioner.

23.41. The Petitioner has proposed to modify existing Article 4.1.1(k) of Draft PPA providing as under:

“

*For the Solar PV and ESS components, the RPD shall fulfil the technical requirements according to criteria mentioned under Annexure A and Appendix- A1 of the RfS. For the solar PV capacity, the modules / Solar PV Cells used in the Project shall be sourced only from the models and manufacturers included in the List(s) under the “Approved List of Models and Manufacturers” as published by MNRE and valid as on the date of dispatch (procurement from within India)/filling of BOE with Indian Customs (procurement from outside India) of such modules.
.....”*

We note the submissions of the Petitioner that the aforesaid Clause is proposed to be modified in order to align the same with Ministry of New and Renewable Energy (MNRE)’s Memorandum dated 09.12.2024 regarding "Approved Models and Manufacturers of Solar Photovoltaic Modules (ALMM), and therefore, the same is approved as proposed by the Petitioner.

23.42. We note that the objections raised by the stakeholders which has direct bearing on the final deviations/modifications/incorporations in the bid documents proposed by the Petitioner GUVNL, have been considered while discussing such deviations/modifications/incorporations in the preceding part of this Order. We note that several other objections are related to deviations sought by the Petitioner prior to issuance of the Guidelines dated 09.06.2023 and prior to the subsequent amendment sought by the Petitioner GUVNL in pursuant to Bid Guidelines dated 09.06.02023 and its subsequent amendments. The Petitioner GUVNL has specifically submitted that the final deviations are now required to be considered with reference to the updated Guidelines and that no objections were received against the later amendments sought pursuant

to the amended Guidelines. The Commission, therefore, holds that objections which are having direct bearing on the final deviations sought by the Petitioner GUVNL or related to earlier versions of the bid documents are not dealt with by the Commission.

23.43. While approving the aforesaid deviations/modifications/incorporations, the Commission has given due consideration to the facts that procurement of FDRE power with ESS is now an evolving area. The excessively rigid adherence to generic provisions, without permitting justified procurement-specific modifications, may either restrict competition or result in higher discovered tariff. The Commission's duty under Sections 61, 63 and 86 of the Electricity Act, 2003 is to balance transparency in procurement with consumers' interest, grid reliability and long-term power procurement planning. Accordingly, the Commission finds that the deviations/modifications/incorporations proposed by the Petitioner GUVNL are reasonable, justified and in the interest of public at large as the proposed deviations/modifications/incorporations preserve transparent competitive bidding and do not confer any undue advantage on any bidder. The deviations/modifications/incorporations are necessary for FDRE procurement, tariff certainty, grid reliability, consumers' interest and avoidance of future disputes.

23.44. The Petitioner GUVNL is permitted to suitably modify the bid documents, RfS and draft PPA in terms of the deviations/modifications/incorporations approved by this Order and may initiate / proceed with the bidding process for procurement of Firm and Dispatchable Renewable Energy power with Energy Storage System. The approval granted herein shall

remain confined to the deviations/modifications/incorporations proposed by the Petitioner in the present matter.

24. We hold that the Petition No. 2098 of 2022 and IAs No. 02 of 2023 & 05 of 2024 in Petition No. 2098 of 2022 filed by the Applicant/Petitioner are hereby allowed, in terms of the above discussions and decisions.
25. With this Order, the present Petition and IAs stands disposed of.
26. Order accordingly.

Sd/-

[Jatin N. Thakkar]
Member

Sd/-

[Pankaj Joshi]
Chairman

Place: Gandhinagar.

Date: 08/05/2025.

