

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2283 of 2023.

In the matter of:

**Petition under Section 63 read with Section 86 (1) (b) of the Electricity Act, 2003
in regard to competitive bidding process conducted vide RfS dated
18.03.2020 (Phase IX) issued by GUVNL.**

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)
Represented by : Ld. Adv. Ms. Ranjitha Ramachandran along with Mr.
H.N. Shah and Mr. A.H. Chavda

Vs.

Respondent No. 1 : TEQ Green Power Pvt. Limited (TGPPL)
Represented by : Ld. Sr. Adv. Mr. Sanjay Sen alongwith Advocates Ms.
Mandakini Ghosh and Ms. Mazag Andrabi
Respondent No. 2 : Veena Energy Renewables Urja Pvt. Limited (VERUPL)
Represented by : Nobody was present.
Respondent No. 3 : Tata Power Company Limited (TPCL)
Represented by : Ld. Adv. Mr. Shivam Sinha and Adv. Mr. Ankit Bhandari
Respondent No. 4 : Gujarat Power Corporation Limited (GPCL)
Represented by : Ld. Mr. Anuj K. Trivedi

CORAM:

**Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 11/03/2024.

ORDER

1. This Petition has been filed by the Petitioner Gujarat Urja Vikas Nigam Limited (GUVNL), under Section 63 read with 86(1)(b) of the Electricity Act 2003 *interalia* seeking following prayers:

- (a) *To admit the present Petition.*
- (b) *To consider the present Petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003 in regard to the Competitive Bidding Process conducted by GUVNL related to Procurement of Power from the Solar Projects to be set up in Dholera Solar Park in Gujarat by Respondent Nos.1 to 3, in the light of the facts and circumstances mentioned in the Petition; and*
- (c) *Pass any other Order as the Commission may deem fit and appropriate under the circumstances of the case, to avoid further delay and in the interest of justice.*

2. The Petitioner has filed this Petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003 seeking adoption of tariff by the Commission and hence it is necessary to refer aforesaid Sections as under:

“.....

Section 63:

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

.....”

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

“.....

Section 86(1) The State Commission shall discharge the following functions, namely: -----

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.”

.....”

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

3. Thus, it is apparent from the aforesaid provisions that the Petition filed by the Petitioner is within the purview of the Commission’s jurisdiction and in terms of the powers vested by the Electricity Act, 2003 and Regulations framed thereunder, the Commission decides to admit the present Petition.
4. Facts mentioned in the Petition in brief are as under:
 - 4.1. The present Petition is being filed under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003 in regard to the competitive bidding process conducted vide Request for Selection (RfS) dated 18.03.2020 (Phase IX) issued by GUVNL related to Procurement of Power from the Solar Projects to be set up in Dholera Solar Park in Gujarat.
 - 4.2. The Petitioner had previously filed Petition No. 1906 of 2020 in respect of the said bid which was decided by the Commission vide Order dated 29.01.2021.
 - 4.3. In the Appeals filed against the said Order filed by the Respondents No. 1 to 3, the Hon’ble Tribunal vide judgement and order dated 07.08.2023 passed in Appeal Nos. 88 of 2021, 89 of 2021 and 90 of 2021 has been pleased to pass the following Order:

“As the Appellants ought to have been put on notice, and should have been given a reasonable opportunity of being heard, before queries were raised, and the afore-said observations were made by the Commission in the two orders dated 01.01.2021 and 29.01.2021, we are satisfied that the impugned orders of the Commission stand vitiated for violation of principles of natural justice. The said orders are, accordingly, set aside. It is made clear that, in case the jurisdiction of the Commission is invoked by any of the parties to these three Appeals, the said petition shall be considered by the Commission on its merits without being influenced by the observations made, or the queries raised, in the aforesaid two orders dated 01.01.2021 and 29.01.2021.”

- 4.4. The Petitioner is filing the present Petition in pursuance to the above and in the facts and circumstances contained herein.
- 4.5. Government of Gujarat notified the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003 in May 2003 for reorganization of the power sector in the State of Gujarat. Pursuant to this, the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme, 2003 had been notified under the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003, whereby, erstwhile Gujarat Electricity Board (GEB) was reorganized, and its functions have been vested in different entities.
- 4.6. The activities of Generation, Transmission, Distribution, Bulk Power Purchase and Supply undertaken by erstwhile Gujarat Electricity Board have been entrusted to separate seven functional entities. The generation activity is assigned to Gujarat State Electricity Corporation Limited (GSECL), transmission activity is assigned to Gujarat Energy Transmission Corporation Limited (GETCO) and the distribution activity is assigned to four distribution companies viz. Uttar Gujarat Vij Company Limited (UGVCL), Madhya Gujarat Vij Company Limited (MGVCL), Dakshin Gujarat Vij Company Limited (DGVCL) and Paschim Gujarat Vij Company Limited (PGVCL). Further, the function of bulk purchase and bulk sale of power is assigned to the Petitioner, Gujarat Urja Vikas Nigam Limited, as per the re-organization scheme.
- 4.7. It is stated that the Distribution companies (DISCOMs) are mandated to procure power from Renewable Energy Sources as per the provision of Section 86(1)(e) of the Electricity Act, 2003 and in terms of the GERC (Procurement of Energy from Renewable Energy Sources) Regulations, 2010 as amended from time to time.
- 4.8. The Petitioner on behalf of its four Distribution companies has been entering into Power Purchase Agreement(s) amongst others with various Renewable Energy Generators for procurement of power from time to time.
- 4.9. Section 63 of the Electricity Act, 2003 provides that the Appropriate

Commission shall adopt the tariff, if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. Section 86 (1) (b) of the Electricity Act, 2003 provides that the Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

4.10. The Ministry of Power (MoP) on 03.08.2017, has notified the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects”. However, Standard Bidding Documents are yet to be published by MoP, Government of India. Clause 3.1.1 of the said Guidelines provides following conditions to be met by procurer:

- a) *Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below.*
- b) *Inform the Appropriate Commission about the initiation of the bidding process.*
- c) *Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 18 of these Guidelines.*
 - (i). *However, till the time the SBDs are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.*
 - (ii). *Further, in case of an ongoing bidding process, if the bids have already been submitted by bidders prior to the notification of these Guidelines and/or SBDs, then if there are any deviations between these Guidelines and/or the SBDs and the proposed RfS, PPA, PSA (if applicable), the RfS, PPA and the PSA shall prevail.*

4.11. The above referred Guidelines dated 03.08.2017 issued by MoP have been amended

from time to time.

- 4.12. It is submitted that pending the issuance of the Standard Bidding Documents by the Central Government, the Petitioner is conducted the Competitive Bidding Process for Procurement of Solar Power from time to time based on the bid documents prepared by the Petitioner containing detailed provisions that are consistent with the Guidelines and the deviations approved by the Commission
- 4.13. As per the amendment vide Resolution dated 22.10.2019 in the Guidelines, various provisions relating to adoption of tariff by Appropriate Commission have been modified and relevant provisions of the same are as under:

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

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

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

- 4.14. It is stated that the Commission vide its letter dated 18.03.2017 observed that as per provisions of National Tariff Policy, procurement from Renewable Energy Projects by the Distribution Licensees is recommended through Competitive Bidding to keep the tariff low. Further, it was observed by the Commission that the Government of India and various other State Governments have initiated Competitive Bidding Process in which the discovered tariff has shown substantial reduction. It was also directed in the said letter that the Distribution Licensees to procure electricity from the Wind/Solar Power Projects through Competitive Bidding Process under Section 63

of the Electricity Act, 2003 or by following the Competitive Bidding Process followed by SECI/MNRE. It was further directed that the tariff determined by the Commission in the respective category of Renewable Energy will act as ceiling tariff and the Distribution Licensees may approach the Commission for adoption of the tariff discovered through such Competitive Bidding Process.

- 4.15. The Petitioner on behalf of its four subsidiary Distribution Companies had initiated the following tendering processes earlier for Procurement of Power from 700 MW capacity from Solar PV Projects to be set up in Dholera Solar Park. The Petitioner GUVNL had issued the Request for Selection (RfS)/ Bid Documents dated 18.03.2020 for 700 MW under intimation of the Commission vide letter dated 17.03.2020. The bid documents containing Request for Selection (RFS), Draft Power Purchase Agreement (PPA), and Addendums issued from time to time in respect of tender are filed with the Petition. In the bid, a ceiling tariff of Rs. 2.92 per unit was specified.
- 4.16. The Petitioner had issued public notice inviting tenders in two national newspapers having maximum readership regarding this Tender.
- 4.17. It is stated that the tender/bid documents were also hosted on GUVNL's website as well as on E-Bidding Portal "Electronic Tendering Engine" (ETS) developed by M/s ElectronicTender.com (India) Pvt. Limited and approved by Ministry of Electronics and Information Technology, Government of India vide Certificate dated 31.07.2018. This portal is also being used by Central Government agencies such as SECI for carrying out competitive bidding for procurement of renewable energy.
- 4.18. The last date for submission of bids in the above tender was 31.07.2020 and Technical Bid Opening was held on 04.08.2020. The Petitioner had constituted Bid Evaluation Committee consisting following members for technical evaluation of bids.

Sr. No.	Name	Designation (at the relevant time)
1.	K P Jangid	General Manager, Commerce
2.	Sailaja Vachhrajani	General Manager, IPP
3	Parthiv Bhatt	Company Secretary, GUVNL
4.	J N Pancholi	Chief Finance Manager, F&A

- 4.19. The Petitioner received online bids from 7 bidders offering aggregate capacity of

1300 MW which were technically qualified. The technical evaluation report signed by the Evaluation Committee is filed with the Petition. In accordance with the report, the Financial Bids were opened on 13.08.2020 on e-bidding portal in the present of the Bid Evaluation Committee and as per the terms and conditions of the bid, GUVNL conducted e-reverse auction. A copy of the e-report generated on the e-bidding portal for the above e-reverse auction is filed with the Petition.

4.20. Pursuant to the above, five (5) Solar Project Developers were selected as per the following details:

Sr. No.	Name of Bidder	Rs./ Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
01.	Vena Energy Renewables Urja Pvt. Limited	2.78	100	100
02.	The Tata Power Company Limited	2.78	100	100
03.	ReNew Solar Power Pvt. Limited	2.79	200	200
04.	SJVN Limited	2.80	100	100
05.	TEQ Green Power Private Limited	2.81	500	200

4.21. It is submitted that the Competitive Bid Process has followed the transparent bidding process.

4.22. The Petitioner has issued Letter of Awards on 09.10.2020 to the five bidders mentioned in the above table at the corresponding rates and allocated capacity. The Letters of Award recognised that the same is subject to the adoption of tariff by this Commission and further subject to the final PPA to be signed. The relevant portion of LOA is reproduced as under:

“.....is required to sign the Power Purchase Agreement (PPA) with GUVNL as per the Draft PPA issued... within 90 days...; and

.....the PPA will be subject to adoption of tariff by GERC under Section 63 of the Indian Electricity Act, 2003,

...This LOA is subject to compliance of all terms and conditions of RfS Documents and the Final PPA to be signed between GUVNL and Authorised Bidder.

....”

4.23. The Petitioner had then filed the Petition No. 1906 of 2020 before this Commission

on 05.11.2020 under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003 for adoption of tariff discovered. On 01.01.2021, the Commission passed an Order pursuant to the hearing held on 29.12.2020, wherein various aspects in regard to the competitive bid held and the price discovered was raised inter-alia, as under:

“(i) When the discovered tariff under earlier rounds of bidding process carried out by the Petitioner for Dholera Solar Power Park was Rs. 2.75 per unit what are the reasons for fixing ceiling tariff of Rs. 2.92 per unit?”

“(ii) Further, in light of the recent tariff discovered under the competitive bidding carried out by the Petitioner for procurement of 500 MW Solar power from project developer is Rs. 1.99 per unit and Rs. 2.00 per unit, what is course of action?”

“(iii) What is the breakup of Rs. 2.92 per unit tariff worked out by the Petitioner while deciding the ceiling tariff? What is the breakup of the tariff proposed by the SECI as per the meeting held with DIPP, GUVNL, GPCL and SECI.?”

“(iv) Ministry of Power issued a letter dated 05.03.2020 as advisory to the SECI, NTPC and DISCOMs not to specify ceiling tariff in the competitive bidding process, then why the ceiling tariff was specified by the Petitioner in the bidding documents? Is it not against the competition amongst the bidders?”

“(v) What are the charges recovered by the GPCL for allocation of land in the Dholera Solar Park to the bidders and O&M charges on year-to-year basis levied to the project developer and what is the impact of these charges on tariff?”

“(vi) Whether sample soil investigation at Dholera Park was carried out by the GPCL and if yes, a copy of the Soil Report be submitted.”

4.24. In light of the query raised by the Commission, GUVNL had consulted with the Government of Gujarat and proposed for a fresh tendering process to be undertaken and that GUVNL tie up the power at the lowest tariff discovered out of the two tenders.

4.25. On 29.01.2021, the Commission after duly considering the Affidavit dated 27.01.2021 filed by the Petitioner, has passed the Order, inter-alia, deciding as under:

“9.1. The Petitioner has now filed an affidavit dated 27.01.2021 for allowing them to initiate a separate re-tendering process for 700 MW capacity to be set up at 1000 MW Dholera Solar Park in the light of latest price trends, wherein discovered tariff is at Rs 1.99 per unit in another Non-Park based tender of the Petitioner. It appears to the Petitioner that the financial implication of higher

tariffs in range of Rs 2.78 – 2.81 per unit for 700 MW capacity if tied up for a period of 25 years would be substantial. Accordingly, the Petitioner with due consent of State Government and considering the public interest involved has proposed in the aforesaid affidavit that a separate fresh tendering process be undertaken and the Petitioner to tie up power at lowest tariff discovered out of the two tenders and thereafter approach the Commission for adoption of tariff in a consolidated manner once the fresh tendering process is completed.

9.2. We note that Petitioner desires re-tendering by way of inviting fresh bids on following reasons:

a) financial implication of higher tariffs in range of Rs 2.78 – 2.81 per unit for 700 MW capacity if tied up for a period of 25 years' capacity at Dholera Solar Park being substantial with consideration of recent price trends wherein discovered tariff is at Rs 1.99 per unit in another Non-Park based tender of the Petitioner,

b) interest of consumers at large and public interest for better tariffs.

10. We have also considered that while filing this latest affidavit dated 27.01.2021, the Petitioner has also consulted the State Government and after thorough deliberations and with due consent of the State Government for re-tendering, which clearly appears to be for public good and common good. This shows bonafide intention on the part of the Petitioner. The ultimate beneficiary is the public at large, if lowest tariffs are found.

.....

12. Thus, under the above provisions, the Commission is required to regulate the power procurement contract. Here in this case, the Petitioner has filed an affidavit dated 27.01.2021 stating that since lower rates of Rs. 1.99 per unit have been discovered under another bidding conducted by the Petitioner recently and on account of significant financial implication on the licensee as well as consumers at large with the tariff under the present bid it has requested the Commission for directing to undertake re-tendering afresh separately. In this connection it would be profitable to refer to Clause 1.1.1 of the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' issued by the Ministry of Power, which reads as under:

".....

1.1 Background

1.1.1 Promotion of competition in the electricity industry in India is one of the key objectives of the Electricity Act, 2003. Power purchase costs constitute the largest cost element for distribution licensees. Competitive procurement of electricity by the distribution licensees is expected to reduce the overall cost of procurement power and facilitate development of power markets. Internationally, competition in wholesale electricity markets has led to reduction in prices of electricity and in significant benefits for consumers.

....."

13. In view of the affidavit dated 27.01.2021, the Petitioner does not want this Commission to approve adoption of tariff as prayed for in the Petition and has requested to give necessary direction for re-tendering.

14. In view of the above, considering the facts and circumstances we decide that as the Petitioner has not pressed the original prayer filed in the present Petition and desires the relief as per affidavit dated 27.01.2021 and accordingly, without further entering into merits of the present matter we pass the following order:

ORDER

The Petition stands disposed of. The Petitioner is at liberty to approach the Commission for adoption of tariff afresh after taking appropriate actions regarding bidding in accordance with law."

4.26. The five Bidders had then filed Appeals before the Hon'ble Tribunal against the Order dated 29.01.2010 being Appeals No. 88 of 2021, 89 of 2021, 90 of 2021, 229 of 2021 and 230 of 2021. The Hon'ble Tribunal in the Application for Interim Relief by TEQ (I.A. No. 250 of 2021 in Appeal No. 88 of 2021 – then DFR No. 56 of 2021) passed the order dated 15.02.2021 as under:

"Heard Appellants as well as Respondents on interim relief. Both parties are directed to file written submissions of their concise arguments. The option of 07 days given to the Appellant by the Discom to keep the bid valid is extended by another two weeks. Meanwhile, even if the Discom proceeds to call for tenders, we make it clear that the quantum / capacity of the award pertaining to the Appellant should not be issued in favour of third party, pending decision of the Tribunal till disposal of the IA on merits."

4.27. In view of the above, the Petitioner had proceeded with a fresh RfS dated 15.03.2021 for 700 MW though with clear information about the pendency of the proceedings before the Hon'ble Tribunal. Subsequently, the Hon'ble Tribunal vide Order dated 24.03.2021 passed the order as under:

"After hearing the parties and on perusal of contents of RFS dated 15.03.2021, we are of the opinion that all the parties to the proceedings shall maintain status quo as it stands today till further Orders"

4.28. In view of the above, the Petitioner GUVNL has extended the timelines under the new tender from time to time.

4.29. Thereafter two of the bidders, namely SJVNL and Renew withdrew their Appeals as recorded in the Orders dated 07.10.2022 and 17.07.2023 respectively of the Hon'ble

Appellate Tribunal.

- 4.30. On withdrawal of the Appeal by SJVNL, GUVNL had amended the tender vide amendment dated 27.06.2023 by reducing the capacity of the tender to 600 MW from 700 MW (reducing the capacity of 100 MW related to SJVNL).
- 4.31. Pursuant to the above withdrawal by SJVNL and Renew and in view of their request for the return of the bank guarantee, the bank guarantees submitted as bid bond has been returned by GUVNL dated 03.10.2023. Therefore, as far as SJVNL and Renew are concerned, there is no further action to be taken and their bid in the bidding process is no longer valid.
- 4.32. Accordingly, GUVNL can proceed with the bid for 300 MW out of the 700 MW which were subject matter of the Phase IX bid which related to SJVNL and Renew. GUVNL would intimate the Commission of the steps taken in this regard as and when the same is done. In respect of the three bidders, Respondent Nos. 1, 2 and 3, Appeal Nos. 88 of 2021, 89 of 2021 and 90 of 2021 were heard by the Hon'ble Tribunal wherein the Order dated 07.08.2023 has been passed as under:

"It is un-necessary for us to undertake a detailed and elaborate examination of the rival submissions put-forth by the learned Senior Counsel on either side, as we are satisfied that the queries put to the 2nd Respondent by the Commission, and the observations made in the Orders dated 01.01.2021 and 29.01.2021, are in violation of the rules of natural justice, and ought not to have been made without putting the Appellants (the successful bidders in whose favour Letters of Award had been issued) on notice, and without giving them an opportunity of being heard.

It has not even been disputed before us by Mr. M. G. Ramachandran, learned Senior Counsel appearing on behalf of the 2nd Respondent, that the Commission could not, in law, have passed such an order without complying with the audi alteram partem rule. The audi alteram partem rule is one of the basic rules of natural justice, and any order passed in violation thereof necessitates being set aside, leaving it open to the concerned authority to comply with the principles of natural justice, and thereafter pass an order afresh in accordance with law.

Whatever be the nature of the appellants' rights, (irrespective of whether it had crystalized before the 2nd Respondent had filed the Petition before the Commission or it remained inchoate even thereafter), it is evident that the observations made, in both the orders of the Commission dated 01.01.2021 and 29.01.2021 has resulted in adverse civil consequences for the appellants,

as the 2nd Respondent has, consequent thereto, decided to invite bids afresh even though a Letter of Award had been issued in their favour after completion of the bid process in terms of the Request For Selection dated 18.03.2020.

As the Appellants ought to have been put on notice, and should have been given a reasonable opportunity of being heard, before queries were raised, and the afore-said observations were made by the Commission in the two orders dated 01.01.2021 and 29.01.2021, we are satisfied that the impugned orders of the Commission stand vitiated for violation of principles of natural justice. The said orders are, accordingly, set aside. It is made clear that, in case the jurisdiction of the Commission is invoked by any of the parties to these three Appeals, the said petition shall be considered by the Commission on its merits without being influenced by the observations made, or the queries raised, in the aforesaid two orders dated 01.01.2021 and 29.01.2021.

The Appeals stand disposed of accordingly. All the IAs therein shall, consequently, stand disposed of."

- 4.33. The present Petition is therefore in regard to only Respondents No. 1 to 3 totalling to 400 MW for consideration of the tariff and the bid under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003. The bid validity for these three bidders has been extended from time to time.
- 4.34. The Respondents No. 1 to 3 have quoted the following tariff in the e-RA:

Sr. No.	Name of Bidder	Rs./ Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
01.	Vena Energy Renewables Urja Pvt. Limited	2.78	100	100
02.	The Tata Power Company Limited	2.78	100	100
03.	TEQ Green Power Private Limited	2.81	500	200

- 4.35. During the pendency of the Appeals before the Hon'ble Tribunal, on 09.06.2021, the Petitioner has received a letter from Gujarat Power Corporation Limited (GPCL), who is the solar park developer, stating that there has been a change in the boundaries and area of the 1000 MW capacity being developed in 1000 MW Dholera Solar Park, as had been intimated by the owner of the land which is DICDL (Dholera Industrial City Development Limited) to GPCL. The said letter had been placed before the Hon'ble Appellate Tribunal in the Appeal vide Affidavit dated 13.07.2021.
- 4.36. GPCL vide letter dated 09.06.2021 has provided revision in the boundary of Dholera

Solar Park. It has been conveyed by GPCL that as per revised allocation of area and plot boundaries, GPCL is required to carry out all activities afresh for constructing the river training, road and drain for which the new boundary of the solar park area is required to be resurveyed for estimating the cost of civil activities to be carried out in the new proposed area. This covers area / location / co-ordinates of plots for 700 MW tendered capacity will also change as the area and boundary of the plot is proposed to be changed by DICDL. It may be noted that the land for 300 MW was already allocated to TPREL through RfS No. GUVNL/1000 MW/ Solar (Phase-V) dated 16.01.2019 and RfS No. GUVNL/750MW/Solar (Phase-VII) dated 24.06.2019 which is already commissioned on 27.03.2022. GPCL had represented that GPCL not in a position to provide the civil infrastructure facilities for river training, road and drain for TPREL also as a new tender is required to be invited by GPCL for common civil infrastructure for the revised solar park area.

- 4.37. In view of above, it is stated that 700 MW Solar Projects to be developed in 1000 MW Dholera Solar Park vide RFS dated 18.03.2020 (Phase IX) in which LoA(s) were issued earlier by GUVNL, the map showing plot demarcation was informed to the developers at the time of bidding and the allotment of plots has been made based on L1 priority principal basis. Further, UDC (Upfront development charges) informed to the developers at the time of bidding were determined by GPCL based on design of parts and plots. Therefore, if there are any changes in plot boundaries and other infrastructure planning involving changes in cost estimates, such information is required to be shared with the developers. Further, GPCL vide email dated 09.07.2021 has conveyed that the finalization of exact co-ordinates and boundary of new area of the park and plots is pending.
- 4.38. The present petition is in regard to the de novo consideration by the Commission of the approval for the bid invited by GUVNL in the year 2020.
- 4.39. The approval for selection of the bidder and implementation of the Power Purchase Agreement pursuant to a Competitive Bid Process needs to be considered by the Commission after hearing both the Petitioner and the Respondents and taking into consideration all the relevant facts and circumstances including the following:

- a. Section 61(d) of the Electricity Act, 2003 provides for safeguarding of consumer interest.
- b. Section 6.4(2) of Tariff Policy 2016 recognising that “*State shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low*”.
- c. Section 5.12 of the National Electricity Policy notes that “*...Cost of energy can also be reduced by promoting competition within such projects*”
- d. The Guidelines under Section 63 also notes that the competitive procurement is expected to reduce the overall cost of procurement of power (Clause 1.1).
- e. One of the specific objective of the Guidelines is “*to promote competitive procurement of electricity from Solar PV power plants by distribution licensee, to protect consumer interest*” (Clause 1.2(a)).

4.40. In this regard, the following relevant aspects are also required to be considered:

- a. The tariff discovered under other competitive bids initiated by the Petitioner subsequent to the bid which is the subject matter of the present petition have been as under:
 - i. Rs. 1.99 per unit discovered in the bid initiated for Procurement of 500 MW Solar Power from the Solar Power Projects in the State of Gujarat (Phase XI) opened on 19.12.2020.

As against the above, the price discovered in the present case range from Rs. 2.78 per Unit to Rs. 2.81 per unit. It is submitted that the said difference of Rs. 0.80 per unit on 700 MWs for 25 years at the CUF of 26 % works out to be Rs. 3188.64 Crores.
 - ii. Rs. 2.20 per unit discovered in another bid process in Gujarat initiated by GUVNL – Phase XII and opened on 22.03.2021.

Further Government of India vide OM dated 09.03.2021 has proposed to impose 40% custom duty on solar modules with effect from 01.04.2022. As an estimate (without admitting to actual impact), the estimated impact of BCD is minimum 40-50 paise per unit at different levels of project cost in the range of Rs. 4 –5 Crores /

MW and module portion of 50-60% in overall project cost if the project developers imports modules after 01.04.2022.

- iii. In the bid considering the above customs duty (Phase X-R wherein the last date of bid submission was 26.04.2021), the tariff of Rs 2.64/unit has been discovered. Therefore the tariff of Rs. 2.64 per unit was considering the customs duty. As compared to the present case, where it is likely to be Rs. 3.18 to 3.31 per kWh (subject to verification of actual evidence).
- iv. Further, in the bids opened subsequently (i.e. with consideration of BCD and any other change in law/costs)
 1. Phase XIII for 500 MW and considering the last bid submission date of 03.03.2022 – Rs. 2.29 per/unit
 2. Phase XIV for 500 MW with Greenshoe option of additional 500 MW and considering the last bid submission date of 25.05.2022, the tariff of Rs. 2.30/unit to Rs. 2.31/unit has been discovered.
 3. Phase XVI for 750 MW with Greenshoe option of additional 750 MW and considering the last bid submission date of 06.09.2022, the tariff of Rs. 2.49 / unit has been discovered.
 4. Phase XVII (GSECL's Khavda Solar Park Stage-1) for 600 MW with Greenshoe option of additional 600 MW and considering the last bid submission date of 24.04.2023, the tariff of Rs. 2.73/unit to Rs. 2.89 / unit has been discovered.
 5. Phase XVIII for 500 MW with Greenshoe option of additional 500 MW and considering the last bid submission date of 16.01.2023, the tariff of Rs. 2.51/unit to Rs. 2.52/unit has been discovered.
 6. Phase XIX for 500 with Greenshoe option of additional 500 MW and considering the last bid submission date of 03.04.2023, the tariff of Rs. 2.71/unit to Rs. 2.75/unit has been discovered.
 7. Phase XX (GSECL's Khavda Solar Park Stage-2) for 800 MW with Greenshoe option of additional 800 MW and considering the last

bid submission date of 23.06.2023, the tariff of Rs. 2.70 / unit to Rs. 2.71/unit has been discovered.

b. In addition, the bid tariff discovered in the bids initiated by SECI are as follows:

- i. Tranche-IV for 1785 MW and considering the last bid submission date of 01.07.2021, the tariff of Rs. 2.17/unit to Rs. 2.18/unit has been discovered.
- ii. ISTS X for 1200 MW and considering the last bid submission date of 30.11.2021, the tariff of Rs. 2.35/unit to Rs. 2.37/unit has been discovered.
- iii. ISTS XI for 2000 MW and considering the last bid submission date of 28.06.2023, the tariff of Rs. 2.60/unit to Rs. 2.61/unit has been discovered.

4.41. In this regard, the following relevant terms of the RfS etc. may also be considered.

(a) Clause 3.7.4 (vi) of the RfS reads as under::

“3.7.4 The PBGs shall be valid upto a period of 6 months from Scheduled Commercial Operation Date (SCOD) of the Project with claim period upto 7 months from SCOD. The PBGs will be returned to the Successful Bidders immediately after successful commissioning of their Project, after taking into account any penalties due to delays in commissioning as per provisions stipulated in Section 3.11.

.....

(vi) The successful bidders are required to sign PPA with GUVNL within 30 days from the date of issuance of LoA. Subsequent extension in this timeline shall be finalized and agreed by GUVNL. In case, GUVNL offers to execute the PPA with Selected Bidder and if the Selected Bidder does not submit the requisite documents or does not execute the PPA within the stipulated time period, then the Bank Guarantee submitted towards EMD shall be encashed by GUVNL and the selected Project shall stand cancelled.

(b) Clause 3.9 of the RfS:

3.9 Power Purchase Agreement

3.9.1 A copy of Standard Power Purchase Agreement, to be executed between GUVNL and the Successful Bidder or its subsidiary Special Purpose Vehicle (SPV), as defined under section 3.4 of this RfS, is provided by GUVNL along

with this RfS. The PPA shall be signed within 30 days from the date of issue of Letter of Award (LoA). PPA will be executed between GUVNL and Selected Bidders which shall be valid for a period of 25 years from the date of SCOD as per the provisions of PPA.

3.9.2 Before signing of PPA between GUVNL and the Selected Bidders, GUVNL will verify the documents furnished by the Bidders at the time of submission of response to RfS including the shareholding of the Project Company along with a copy of complete documentary evidence supported with the original documents. Bidders will also be required to furnish the documentary evidence for meeting the RfS Qualification Requirements as per Section 3.4.

.....

(c) Clause 3.22 of the RfS:

3.22. Right of GUVNL to Reject a Bid

GUVNL reserves the right to reject any or all of the responses to RfS or cancel the RfS or annul the bidding process for any project at any stage without assigning any reasons whatsoever and without thereby any liability.

(d) The Letter of Award issued by GUVNL to the Respondents, inter-alia, provides as under:

“3. M/s is required to sign Power Purchase Agreement (PPA) with GUVNL as per the draft issued as part of the Bid Documents, within 90 days from the date of issuance of this Letter of Award. However, the PPA will be subject to adoption of tariff by GERC under Section 63 of the Indian Electricity Act, 2003.

.....

This LoA is subject to compliance of all terms and conditions of RfS Documents and the Final PPA to be signed between GUVNL and Authorised Bidder.

.....”

(Emphasis Supplied)

4.42. The Ministry of Power, Government of India letter dated 05.03.2020 reads as under:

“Sub: Bidding Mechanism for Procurement of Solar & Wind Power

.....

W.r.t the subject issue, the undersigned is directed to convey the following

- i. *The issue of tariff cap & reverse bidding was discussed in a meeting dated 31.01.2020, chaired by Hon'ble Minister (Power & NRE) and attended by senior officers of the Ministry, and representatives of SECI and CMD, NTPC*
- ii. *As per the decisions taken in the aforesaid meeting, it is hereby conveyed that "cap" or upper ceiling tariff will not be prescribed in future bids SECI, NTPC. State DISCOMs and all other implementing agencies will procure RE power either through single RE source or various combinations of RE sources with or without storage as per their procurement policies.*

This issues in line with decisions approved by Hon'ble Minister (Power & NRE)."

4.43. There is a definite purpose for Section 63 having provided for the adoption of the tariff by the Appropriate Commission. In Energy Watchdog V/s. Central Electricity Regulatory Commission, (2017) 14 SCC 80, the Hon'ble Supreme Court in Paras 19 and 20, has held as under:

"19. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non obstante clause, but it is a non obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not "determine" tariff but only "adopts" tariff already determined under Section 63. Thirdly, such "adoption" is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a standalone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this section on 19-1-2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4.

20. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the

guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various sections must be harmonised. Considering the fact that the non obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways — either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used."

- 4.44. The Appropriate Commission has the power and jurisdiction to consider the facts mentioned above and determine whether it would be in the interest of the consumers to adopt the tariff which was discovered in the competition bid process in the year 2020. In terms of Section 63 read with section 86(1)(b) of the Electricity Act, 2003, the adoption of tariff by Appropriate Commission is a requirement. This statutory step needs to be completed for a valid and enforceable contract to come into existence. The adoption of tariff by the Appropriate Commission is not a procedural or a ministerial act, namely, that the Appropriate Commission should necessarily do so upon a Petition being filed before it.
- 4.45. The issuance of Letter of Award does not create any vested right in the Respondents/Selected Bidder. In regard to the above, the Hon'ble Tribunal vide judgement and Order dated 18.07.2018 in Appeal No. 22 of 2016 in SunE Solar B.V. -v- Delhi Electricity Regulatory Commission and Others ('SunE Solar Case'), has considered and decided as under:

"6. Questions of Law:

The Appellant has raised the following questions of law in the present Appeal which are as follows:

- a) Whether the Impugned Order, based on extraneous considerations and without following the principle of natural justice (i.e. without representation of the aggrieved persons including the Appellant) and in clear violation of the Act could have been passed by the State Commission?*
- b) Whether the action of Respondent Nos. 2 & 3 of withdrawal of the Petition was right in light of the fact that the Respondent Nos. 2 & 3 had filed the Petition for approval of the Tariff after completion of Case 1 Competitive Bid Process and issuance of LOI to successful bidders including the Appellant?*
- c) Whether the State Commission has any discretion in allowing withdrawal of a petition for approval of tariff filed under Section 63 of the Act?"*

.....

"11. We have heard the learned senior counsel appearing for the Appellant and the learned counsel appearing for the Respondents at considerable length of time on various issues raised in the present Appeal for our considerations are as follows:

-

b. On Question No. 6 b).....

i. The Appellant has contended that the Respondent No.s 2& 3 once submitted the Petition before the State Commission for adoption of tariff under Section 63 of the Act cannot be allowed to withdraw the same as the LOI has already been issued and accepted by the Appellant and this forms a binding contract between the parties and the Appellant has the right to supply power to the Respondent Nos. 2 & 3.

.....

iii. From the Impugned Order and perusal of the communication dated 6.11.2015 for withdrawal of the Petition it can be seen that the Respondent Nos. 2 & 3 have contended that there has been significant reduction in the cost of solar power, which will enable the cost of renewable power that is procured by the Respondent Nos. 2& 3 to come down significantly in line with the emerging market trends and favourably impacting consumer tariff.

.....

viii.....

From the above it can be seen that the LOI was to be effective only after grant of approval and adoption of tariff by the State Commission and adherence to the terms and conditions by the bidder specified in RFP & PPA documents.

.....

x. From perusal of the provisions of the RFP as discussed above it becomes clear that the bidding process cannot be said to be completed merely on issuance of

the LOI. LOI is not the process in itself. It is a one of the milestones towards completion of the bidding process. The bidding process is said to be completed only after the signing of the RFP Documents which includes the PPA and the same was before the State Commission for approval in the Petition. As per the RFP, the Respondent No. 2 has the right to modify or cancel the bidding process which was subject to the approval of the State Commission without assigning any reason and without any liability. Thus, the whole bidding process was hedged by the Respondent No. 2 in the form of this 'Disclaimer', which is legally sustainable. Further, as per the amended LOI dated 1.7.2015 issued by the Respondent No. 2, the LOI can come into effect only after the approval and adoption of the tariff by the State Commission.

xi. On the issue of the LOI being a binding contract between the parties the judgement of Hon'ble Supreme Court in case of Rishi Kiran Logistic Private Limited v. Board of Trustees of Kandla Port Trust and Ors. (2015) 13 SCC 233 has been relied by the learned counsel for the Respondents. The relevant para from the said judgement is reproduced below:

"34. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of the 'Rules and Procedure for Allotment of Plots' in question issued by Kandla Port Trust. As per clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with, specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised 'at any time without assigning any reasons thereto'. Clause 13 relates to 'approvals from statutory authorities', with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/ Competent Authority. In view of this material on record and factual position noted in earlier paras we are of the opinion that observations in the case of Dresser Rand S. A. v. M/s. Bindal Agro Chem. Ltd. & Anr.; AIR 2006 SC 871, would be squarely available in the present case, wherein the court held that a letter of intent merely indicates a parties intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention

to place an order in future or whether there is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. When the LOI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract.”

From the above what is emerged that, a hedged LOI with a condition depicts intention to enter into a contract at a later stage.

In the present case also the Appellant has accepted the amended LOI where there is a condition that LOI would be effective only after grant of approval and adoption of tariff by the State Commission. Hence, in line with the said judgement of the Hon’ble Supreme Court the LOI in present case cannot be termed as a concluded contract

....

xiii. In view of our discussions as above, we are of the considered opinion that the action of the Respondent Nos. 2 & 3 for withdrawal of the Petition was permissible in law even though the Respondent Nos. 2 & 3 had filed the Petition for adoption of the tariff after completion of Case-1 Competitive Bid Process and issuance of LOI to the Appellant. The other contentions raised by the Appellant counsel in this regard have become infructuous in view of our decision as above.”

(Emphasis Supplied)

- 4.46. In the above decision, the Hon’ble Tribunal has referred to the provisions of the RfS, the time-schedule for completion of the bidding process provided in the RfS, the contents of the LoI in Para 11 (B) (iv) to (viii) in reaching the above conclusion. Further, the Hon’ble Tribunal has referred to the decision of the Hon’ble Supreme Court in Rishi Kiran Logistic Private Limited V/s. Board of Trustees of Kandla Port Trust and Ors., (2015) 13 SCC 233, wherein the Hon’ble Supreme Court considered the status of LoI.
- 4.47. Further, in the said decision of SunE Solar B.V. Case (Supra) the Hon’ble Tribunal has distinguished the decision of Hon’ble Tribunal in case of D.B. Power Limited v. Rajasthan Electricity Regulatory Commission in Appeal No. 235 of 2015 and Lanco Kondapalli Power Private Limited V/s. Haryana Electricity Regulatory Commission

in Appeal No. 156 of 2009.

4.48. The similarity in the decision dated 18.07.2018 in SunE Solar B.V. Case (Supra) and the present case of the Respondents can be seen from the following:

Sr. No.	Sun E Solar B.V. case	Present Case
1.	<p>Re: LoI issued:</p> <p><i>viii. Now let us analyse the conditions of the amended LOI which was duly accepted by the Appellant. The relevant extract is reproduced below:</i></p> <p><i>“..... <u>May please note that, this LOI shall be to effect subject to following conditions:</u></i></p> <p><i>1. <u>Grant of approval and adoption of Tariff by Hon’ble Delhi Electricity Regulatory Commission and additional conditions, if any, imposed by DERC.</u></i></p> <p><i>ii. <u>Adherence to and fulfilment of the terms and conditions specified in RFP and PPA documents by the Bidder.</u></i></p> <p><i>2. <u>Receipt of unconditional acceptance of LOI from the Successful Bidder within 7 days of the issuance of the RFP.”</u></i></p> <p>[Ref. Para 11 (b) (viii) of SunE Solar B.V. Case (Supra)]</p>	<p>Re: LoA issued:</p> <p><i>“1. M/s Teq Green Power Private Ltd, hereinafter referred to as ‘M/s Teq’ shall furnish the Performance Bank Guarantee strictly as per format 6.3 B of the RFS, from the list of approved banks in accordance with RFS Document and Finance Department Government of Gujarat’s GRs issued from time to time.</i></p> <p><i>.....</i></p> <p><i>3. M/s Teq is required to sign Power Purchase Agreement (PPA) with GUVNL as per the draft issued as part of the Bid Documents, within 90 days from the date of issuance of this Letter of Award. <u>However, the PPA will be subject to adoption of tariff by GERC under Section 63 of the Indian Electricity Act, 2003.</u></i></p> <p><i>.....</i></p> <p><i>3. <u>The authorised representation of M/s Teq or it’s SPV shall sign PPA at GUVNL’s office Carry requisite documents including the following.....</u></i></p> <p><i>.....</i></p> <p><i>— <u>This LoA is subject to compliance of all terms and conditions of RfS Documents and the Final PPA to be signed between GUVNL and Authorised Bidder.</u></i></p>
2.	<p>The significant reduction in the cost of solar power – Substantial reduction in power generation cost in solar power plant- benefitting the interest of</p>	<p>The substantial tariff in the solar power cost from Rs.2.78 - Rs.2.81 to Rs.1.99- Rs.2.00 per unit (by about 80 paise per unit) which would be</p>

	<p>the consumer – to allow the petition for adoption of tariff to be withdrawn.</p> <p>[Ref. Para 11 I (i) of SunE Solar B.V. Case (Supra)]</p>	<p>applicable to entire period of 25 years of the PPA.</p> <p>Even compared to the subsequent tariff discovered incorporating BCD, the tariff of Rs. 2.78 to 2.81 is not economical.</p>
3.	<p>The Appellants cannot claim by issuance of LoI and the provisions of RfP, it has a right to supply electricity. The right to supply electricity accrues to the Appellant only when the PPA is signed. PPA uses the term ‘shall supply power pursuant to signing of the PPA as per the terms of PPA’. LoI issued only intent for supply of power to the procurer. LoI is even subject to certain terms and conditions.</p> <p>[Ref. Para 11 (b) (ix) of SunE Solar B.V. Case (Supra)]</p>	<p>In terms of Article 3.1 (iii) and (iv) of the Draft PPA,</p> <p>“(iii) The Power Producer shall construct, operate and maintain the project during the term of the PPA....; and</p> <p>The rights and obligations of the respective parties under the Draft PPA is from the date of the signing of the PPA. There is no provision in the Draft PPA providing for any of the obligation in regard to the period prior to the execution of PPA.</p> <p>Article 10.1 of the Draft PPA defined the term of the agreement i.e. date of execution of the PPA till 25 years from scheduled commercial operation date. The Scheduled Commercial Operation Date is identified from the date of execution of the PPA.</p> <p>The right to supply electricity is only after the execution of the PPA and only after the COD of the Project.</p>

4.49. Further, the Hon’ble Supreme Court in PSA Mumbai Investments PTE. Limited –v- Board of Trustees of the Jawaharlal Nehru Port Trust and Another, (2018) 10 SCC 525 has considered in regard to the concession agreement with reference to a letter of award. The following extracts from the said decision are relevant:

“12. On a conjoint reading of the aforesaid clauses, a few things become clear) first and foremost a disclaimer at the forefront of the RFP makes it clear that there is only a bid process that is going on between the parties and that there is no concluded contract between the same,

(ii) it is equally clear that such bid process would subsume a letter of award to be issued by Respondent 1 with two further steps under the schedule to be gone into before the draft concession agreement finally becomes an agreement

between Respondent 1 and the special purpose vehicle that is constituted by the consortium for this purpose,

(iii) that throughout the stage of the bid process, the forum for dispute resolution is exclusively with the courts at Mumbai, and

(iv) that right uptill the stage of the entering into the concession agreement, the bid process may be annulled without giving any reason whatsoever by Respondent 1.

13. In addition, it may also be pointed out, on a reading of the letter of award itself dated 26-9-2011, as acknowledged by the appellant, that:

“3. You are required to incorporate a special purpose vehicle solely for the purpose of implementing the project (“the concessionaire”) as per Clause 2.2.6 of RFQ document.

As per Clause 2.20.5 of RFP document, your bid security shall remain in force and effect till the concessionaire furnishes the performance guarantee of a sum equal to Rs 3350 million (Rupees three thousand three hundred fifty million), not later than 90 days from the date of signing of the concession agreement. Please note that the concession agreement is expected to be signed within 30 days of the issue of this letter of award.”

This would show that even after the letter of award, a special purpose vehicle solely for the purpose of implementing the project would have to be set up, and that this special purpose vehicle would be called the concessionaire. Further, the bid security given by the appellant shall remain in force till the special purpose vehicle furnishes the performance guarantee for a sum equal to Rs 3350 million, and that the concession agreement is expected to be signed within 30 days of the issue of this letter of award.

14. Under Section 7 of the Contract Act, 1872 in order to convert a proposal into a promise, the acceptance must be absolute and unqualified. It is clear on the facts of this case that there is no absolute and unqualified acceptance by the letter of award — two or three very important steps have to be undergone before there could be said to be an agreement which would be enforceable in law as a contract between the parties.

15. Mr Amit Sibal, learned Senior Advocate, is wholly correct in relying upon both Dresser Rand S.A. [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751] and BSNL [BSNL v. Telephone Cables Ltd., (2010) 5 SCC 213 : (2010) 2 SCC (Civ) 352] . In Dresser Rand S.A. [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751] it was found, on the facts, that unless a purchase order was placed, there would be no agreement between the parties. Everything that took place before such purchase order was placed would only be a prelude to a contract which cannot be confused with the contract itself. This was set out in para 32 of the judgment as follows: (SCC p. 770)

“32. Parties agreeing upon the terms subject to which a contract will be governed, when made, is not the same as entering into the contract itself. Similarly, agreeing upon the terms which will govern a purchase when a purchase order is placed, is not the same as placing a purchase order. A prelude to a contract should not be confused with the contract itself. The purpose of Revision 4 dated 10-6-1991 was that if and when a purchase order was placed by BINDAL, that would be governed by the “general conditions of purchase” of BINDAL, as modified by Revision 4. But when no purchase order was placed, neither the “general conditions of purchase” nor the arbitration clause in the “general conditions of purchase” became effective or enforceable. Therefore, initialling of “Revision 4” by DR and BINDAL on 10-6-1991 containing the modifications to the general conditions of purchase, did not bring into existence any arbitration agreement to settle disputes between the parties.”

.....

17. However, Mr Dave, strongly relied upon the judgment in Kollipara Sriramulu,. This judgment did indeed state that it is well established that a mere reference to future formal contract will not prevent a binding bargain between the parties if, in fact, there is such a bargain. The judgment then went on to state that: (AIR p. 1031, para 3)

“3.... There are, however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract is signed”

18. We are of the view that the facts of the present case would be governed by the ratio contained in the aforesaid sentence. Insofar as the judgment in UNISSI (India) (P) Ltd. [UNISSI (India) (P) Ltd. v. Post Graduate Institute of Medical Education and Research, (2009) 1 SCC 107 : (2009) 1 SCC (Civ) 41] is concerned, it is important to note that, in para 15 of the said judgment, it is stated that the tender of the appellant was accepted by PGI for supply of 41 pulse oxymeters. Since the tender document contained an arbitration clause, and since it was found on facts that a binding contract had been entered into by acceptance of the tender, the parties therein would be bound by the aforesaid clause. It was also stated that, in addition, performance by way of supply of material by the appellant and acceptance thereof by PGI had also taken place, which would show that the tender of the appellant, containing an arbitration clause, was admittedly accepted by the respondent. It is clear that this case is wholly distinguishable, and does not apply on facts as has been stated by us hereinabove. It is clear that there was no concluded contract at the letter of award stage and this judgment would, therefore, not apply.

(Emphasis Supplied)

The above decision was in the context of whether the arbitration clause contained in the concession agreement can be invoked at a stage where the letter of award is issued but the concession agreement has not been signed. The above decision has also been referred to by the Hon'ble Supreme Court in a subsequent decision of the

Hon'ble Supreme Court in National Highway and Infrastructure Development Corporation Ltd. -v- BSCPL Infrastructure Ltd., (2019) 15 SCC 25.

4.50. Similar to the above, in the present case also:

- a. The Letter of Award was not an unconditional acceptance;
- b. The Letter of Award in the said case referred to execution of Concessionary Agreement after completion of various formalities (Para 13). In the present case also, it is envisaged PPA to be executed after completion of various formalities and in addition, the approval and adoption of tariff by Hon'ble Commission was a condition for implementation of PPA;
- c. The Hon'ble Court noted that two further steps under the schedule after the letter of award is issued before the draft concession agreement finally becomes an agreement between the Respondent No. 1 and the Special Purpose Vehicle to be constituted [Para 12(ii) and 14 at Page 543 and 544 of Judgment]. Similarly in the present case, there were multiple steps to be done before there could be an agreement, including the execution of PPA and approval of the State Commission.
- d. The Hon'ble Court in the said case had held that the right to annul the bid process extends until the execution of Concession Agreement. The clause in the said case (at Page 541 Clause 2.6.1 of judgment) is similar to the Clause 3.22 in the present case; and
- e. The time line given in the Hon'ble Supreme Court (Clause 1.3 Page 540 of Judgment) is similar to the time line in the present case (Ref. Guidelines).

4.51. It is stated that without prejudice to the above and even assuming for the sake of arguments but not admitting that the LoA is to be treated as the PPA (or even in the eventuality of the PPA itself being signed) the situation will not be different, as the same will be subject to the approval and adoption of tariff by the Appropriate Commission (in this case, the Hon'ble Commission). The status of such LoA or the executed PPA is of a Contingent Contract within the scope of Section 31, 32 etc. of the Indian Contract Act, 1872. The contingency is for the PPA to come into effectiveness and operation. If the contingency does not happen, the PPA will not come into operation. In this regard, the following judgements are relevant

- a) *M.V. Shankar Bhat v. Claude Pinto*, (2003) 4 SCC 86 at page 97

“31. When an agreement is entered into subject to ratification by others, a concluded contract is not arrived at. Whenever ratification by some other persons, who are not parties to the agreement is required, such a clause must be held to be a condition precedent for coming into force of a concluded contract.

32. The word “subject to” has been defined in Black’s Law Dictionary 5th Edn., at p. 1278, inter alia, as: “subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for”. In Collins’ English Dictionary the words “subject to” have been stated to mean as: “under the condition that: we accept, subject to her agreement”.

33. The said agreement for sale, therefore, was not enforceable in a court of law.”

- b) *Baij Nath v. Ansal & Saigal Properties Pvt. Ltd.*, 1992 SCC OnLine Del 221 : AIR 1993 Del 2856.

By reference to the above correspondence it seems clear that the initial booking of flats 3 and 4 by the plaintiff in favour of the defendant was only provisional, meaning thereby that in case additional FAR was sanctioned by the appropriate authorities the plaintiff would be offered the agreed two flats. It is also proved on record that no point of time additional FAR was sanctioned and, therefore, it is natural to infer that the defendant was never in a position to offer any constructed area to the plaintiff on the 13th floor. Section 14 of the Specific Relief Act describes contracts which are not specifically enforceable. The relevant portion of this section says that a contract, which from its nature is such that the court cannot enforce specific performance of its material terms is determinable and not capable of specific enforcement. First of all, it has not been shown as to at what rate the plaintiff agreed to purchase the flats from the defendant. There are varying versions by both sides in the witness box. Secondly, since additional FAR was not sanctioned in favour of the defendant, it can be said that the nature of the contract was such that in the absence of sanction of additional FAR the contract could not be specifically enforced and it was in a way determinable on that account. The contract between the parties was in the nature of a contingent contract which was dependant on the sanction of additional FAR in favour of the defendant by the appropriate authorities. Unless that contingency was fulfilled the contract was not capable of specific enforcement as stated in Section 31 of the Indian Contract Act, 1872.

(Emphasis Supplied)

4.52. In light of the above, the contingency contained in Section 63 of the Act, the Guidelines, RfS, LoA of the adoption of Tariff discovered by the Commission is a pre requisite for the PPA becoming effective and enforceable. In the present case the execution of the PPA and the adoption of tariff having not taken place, the threshold stage of coming into existence of a valid and enforceable PPA has not occurred.

- 4.53. It is submitted that the Commission is obliged to consider the aspects of consumer interest and whether the price discovered is aligned to market forces.
- 4.54. The Guidelines dated 03.08.2017 issued by the Central Government under Section 63 of the Electricity Act, 2003 in respect of Procurement of Power from Grid Connected Solar Power Projects is different from the Guidelines under Section 63 of the Act issued for Procurement of Power from conventional power projects. In case of the conventional projects the guidelines provide the role of the evaluation committee to certify the price discovered being aligned to market forces. For example, in the 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees' dated 19.01.2005 which was further amended by the Ministry of Power, Government of India vide Office Memorandum dated 22.07.2010 the role of the evaluation committee has been provided as under:

"5.15 The bidder who has quoted lowest levelized tariff as per evaluation procedure, shall be considered for the award. The evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

Whereas, in the Guidelines for Grid Connected Solar Projects, which is applicable in the present cases the role of evaluation committee is limited as under:

"10.2. After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS."

Further, in terms of Guidelines for procurement of power from Grid Connected Solar Power Projects dated 03.08.2017, the evaluation committee in the present case is an internal committee of GUVNL and not an independent member as in the case of Guidelines pertaining to procurement of power from conventional power.

- 4.55. It is stated that GUVNL has in pursuant to earlier orders initiated a fresh tendering process which is still pending in view of the Orders of the Hon'ble Tribunal.

- 4.56. It is stated that in the facts and circumstances mentioned above and having regard to various developments in the matter it would not be in the interest of the consumers to procure the power from the Respondents in pursuance to the competitive bidding process held in the terms RfS dated 18.03.2020 (Phase IX) in regard to 400 MW.
- 4.57. In view of the above and in accordance with Section 63 read with Section 86 (1) (b) of the Electricity Act 2003, the Commission may after considering all aspects decide on the approval / adoption of tariff of Respondents.
5. The matter was kept for hearing on 28.12.2023. After hearing the parties, the Commission has passed Daily Order dated 20.01.2024. At the request of the Respondents, the Commission while adjourning the matter had also granted two weeks' time to the Respondents and also one week' time to the Petitioner to file its rejoinder reply, if any, in the matter and posted the matter for hearing on 23.01.2024.
6. Thereafter, the matter was heard on 23.01.2024 and in the Daily Order dated 21.02.2024 the Commission recorded the submissions of the Counsel for the Respondent No. 1 that the reply has been filed recently by the Respondent No. 1 and the Respondent No. 1 has received the letter from the Respondent No. 4, GPCL stating that there has been a change in the boundaries and areas of the 1000 MW Dholera Solar project at Dholera Solar Park and that the change in land allocation leads to affect the bidding process done as change in land affect various aspects of bid issued by the Petitioner needs to consider prior to decide the matter. It was also recorded the submissions of the Petitioner that the Petitioner sought four weeks' time to file its rejoinder to the replies filed by the Respondents and that there are some changes in the plan of the Dholera Solar Park, Respondent No. 4 GPCL who is authority to allot the land to the project developers, therefore reply/submission for the implementation of the Project at Dholera Solar Park and clarity on such issues to be submitted by the Respondent No. 4 GPCL and submissions from the bidders i.e., Respondents No. 1, 2 & 3 are also required on such issues to proceed in the matter. The Commission also recorded the submissions of representatives appearing for Respondent No. 4, GPCL that the Respondent GPCL would file its reply/submission in the present matter regarding change in land for the project and other aspects in

the present Petition. Considering the submissions of the parties, the Commission while posting the matter for further hearing on 28.02.2024, also granted three weeks' time to the Respondent No. 4 to file its submissions with a copy to the other sides and also granted four weeks' time to the Petitioner GUVNL to file their rejoinder reply in the present matter, with a copy to the Respondents and liberty was also granted to the Respondents to file its submission, if any, after receipt of the rejoinder reply filed by the Petitioner within week time.

7. In response to the directives of the Commission vide above Order, the Respondent No. 1 TGPPL has filed its reply vide affidavit dated 18.01.2024 before the Commission on 29.01.2024. The gist of contentions of the Respondent No. 1 are reproduced as under:
 - 7.1. The Petitioner has filed the Petition (in continuation of Petition No. 1906 of 2020) seeking the Commission's consideration of the instant Petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003 in regard to the Competitive Bidding Process conducted by GUVNL related to Procurement of Power from Solar Projects to be set up in Dholera Solar Park in Gujarat.
 - 7.2. Respondent No. 1 TEQ Green Power Private Limited (TGPPL), a company incorporated under the provisions of the Companies Act, 2013 and a Generating Company within the meaning of Section 2(28) of the Electricity Act, 2003.
 - 7.3. On 16.01.2019, the Petitioner GUVNL had issued RFS No. GUVNL/1000 MW/Solar (Phase V), prepared in line with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Project' issued by the Ministry of Power, Government of India on 03.08.2017, as amended from time to time, for Procurement of 1000 MW solar power on long-term basis from Solar PV Power Projects to be set up in Dholera Solar Park on Build Own Operate (BOO) basis. The 1000 MW RFS specified a ceiling tariff of Rs. 2.75/unit. As against the 1000 MW RfS, GUVNL only received bids from 2 bidders for a total capacity of 300 MW. However, as per the procedure laid out in the 1000 MW RFS for under subscription of tender, GUVNL only executed Power Purchase Agreement with Tata Power Renewable Energy Limited for 250 MW capacity.

- 7.4. On 24.06.2019, due to the under-subscription resulting in failure to allocate initially planned 750 MW capacity during the 1000 MW tendering process. GUVNL launched an additional competitive bidding process and issued RfS No. GUVNL/750 MW/Solar (Phase VII), prepared in line with the GoI Bidding Guidelines, for Procurement of 750 MW Solar Power on long-term basis from Solar PV Power Projects to be set up in Dholera Solar Park on BOO basis. 750 MW RfS also specified a ceiling tariff of Rs. 2.75/unit. In this instance as well, GUVNL only received one bid from Tata Power Renewable Energy Limited for 50 MW capacity and executed a Power Purchase Agreement with Tata Power Renewable Energy Limited for the said capacity.
- 7.5. On 23.10.2029, the Commission by way of Order in Petition No. 1818 of 2019 filed by GUVNL under Section 63 of the Electricity Act 2003 *inter alia* adopted the tariff discovered pursuant to 100 MW Bid and 750 MW Bid. The relevant extracts of the Order are reproduced below:

5 We have carefully considered the submissions made by the Petitioner. The Petitioner has sought the approval of the Commission for adoption of tariff of R. 2.75 Unit discovered by the Petitioner vide RIS No. GUVNL/1000 MW/Solar (Phase V) dated 16.01.2019 and to grant consent for containing the bidding process, issuance of LoA to M/s. Tata Renewable Energy Limited for 50 MW capacity and adoption of tariff of Rs. 2.75/Unit discovered by the Petitioner vide RfS No. GUVNL/750 MW Solar (Phase VII) dated 24.06.2019 The Petitioner has sought these reliefs in terms of Clause 8.6 of the MoP Guidelines dated 3.8.2017 Clause 4.1 of the RFS Documents and Section 63 read with Section 86(1)(b) of the Electricity Act, 2003

5.5. It is observed that the Petitioner started the competitive bidding process (followed by e-reverse auction) as per Section 63 of the Electricity Act vide RIS No. GUVNL/1000 MW/Solar (Phase V) dated 16.01.2019 for procurement of 1000 MW from the Solar Power projects to be set up at Dholera Solar Park: (20 plots 50 MW) under intimation to the Commission vide letter dated 15.01.2019. The Petitioner give wide publicity to the said tender by publishing a notice in three National newspapers having maximum readership to seek

wide participation from the participating bidders. The Petitioner also hosted the Bid Documents & Addendums on its website as well as the website of TCIL. Moreover, to avoid the scenario of high tariff discovery and subsequent cancellation, the Petitioner specified ceiling tariff of Rs. 2.75/Unit in the tender with last date of bid submission as 04.05.2019.

.....

5.18. It transpires from the above that the Petitioner has been making consistent attempts to invite bids for entire 1000 MW capacity Dholera Solar Park. However, despite its best efforts, the Petitioner could get bids only for 300 MW which indicates that no other bidders are interested in developing the balance 700 MW capacity in the remaining unallocated plots in the 1000 MW Dholera Solar Park on account of challenging site conditions. The Commission is satisfied with the sincere attempts made by the Petitioner in inviting the bids for entire 1000 MW capacity multiple times through a transparent process of competitive bidding and accordingly, the Commission approves the present tendering process.

5.23 As stated earlier, the petitioner has made sincere and multiple attempts for inviting the bids for the entire 1000 MW capacity of Dholera Solar Park and despite its best efforts, the Petitioner could get bids only up to 300 MW capacity. It is obvious that the developer do not seem to be interested on account of challenging site conditions as in none of the attempts the Petitioner could get the bids in excess of 300 MW capacity against tendered capacity of 1000 MW. The Commission, therefore, accepts the Petitioner's request of continuing with the bidding process.

6. SUMMARY OF DECISIONS:

6.1 We decide to adopt the tariff discovered under the transparent competitive bidding process conducted by the Petitioner as under

6.2 We also decide to grant our consent to the Petitioner for continuing the bidding process vide RJS No. GUVNL/750 MW/Solar (Phase-VII) dated 24.06.2019.

- 7.6. A bare perusal of the Order dated 23.10.2019 makes it clear that while adopting the tariff and allowing GUVNL to continue the bid process for procurement of the balance 700 MW capacity, this Commission expressly acknowledged the following:
- i. The ceiling tariff of Rs. 2.75/Unit had been specified in both 1000 MW RfS and 750 MW RfS to avoid the scenario of high tariff discovery and subsequent cancellation.
 - ii. The site conditions of the Dholera Solar Park are so challenging that, despite GUVNL's consistent attempts to invite bids for 1000MW capacity at the Dholera Solar Park, GUVNL, could only get bids for 300 MW.
- 7.7. On 20.02.2020, GUVNL and the relevant Government Instrumentalities involved in the development of the Dholera Solar Park being Department for Promotion of Industry and Internal Trade (DPIIT), Solar Energy Corporation of India (SECI), Gujarat Power Corporation Limited (GPCL) held a meeting to identify the reasons for the poor response to the 1000 MW and 750 MW Bids and find ways to overcome the same. During the elaborate discussions held in the meeting, it emerged that the lack of interest on the part of the bidders in the 1000 MW Bid and 750 MW Bid was on account of the challenging geographical and geotechnical conditions of Dholera Solar Park which necessitate expenditure of higher capital cost on the implementation of a Solar PV Power Project within the Park as compared to the capital cost requirement for a Solar PV Power Project set up at any other place including but not limited to any other solar park. In this regard, it is essential to put before this Commission some essential information in respect of the Dholera Solar Park. Dholera Solar Park has been envisaged as a 5GW solar park by the Government of Gujarat and is being developed by GUVNL and other government agencies within the Dholera Special Investment Region. The said region is situated on 920 sq. km. of waste land along the Gulf of Cambay out of which 110 sq. km. has been earmarked for the development of Dholera Solar Park. Due to unavailability of land for setting up solar projects in the State of Gujarat, utilisation of such waste land was an important policy decision of the State. Dholera Solar Park falls in an intertidal or CRZ-1B area and as such, the development of Solar PV Projects therein is fraught with major geotechnical and

geographical challenges. Some of the key Challenges as per a study conducted by IIT Gandhinagar at the instance of Dholera Industrial City Development Limited, that will be faced by developers and their implications, as determined by the answering Respondent, are captured in the table below:

Key Challenges	Implications
During the rainy season, water logging is observed up to about 0.3 m height above the average ground level. The site will remain waterlogged for almost months during a year.	No work front will be available for approx.... 6 months from June to November. All civil work is required to be completed outside this 6-month period. During the non-rainy season there is impact of tide at the site which leads to non-working days even in this period.
The site has silty clay soil which will make it difficult to construct sustainable and strong foundations for solar modules and will require additional measures for installing structure and modules.	Due to the silty clay soil additional strengthening will be required at foundations of module. This will substantially increase the cost of execution of the Solar Project.
The water at the site has high salt content, which necessitates larger concrete cover in foundations	To avoid corrosion in structure materials, larger concrete cover will be required in structure materials. This will increase the cost of structures used for module mounting.
Water table, in general, remains high during the year, it may vary from 1.0 m to 1.5 m. This poses difficulty in boring and casting of piles.	Due to high water table, it will be difficult to cast the piles at site which is essential for module mounting. Specialized design is required to overcome the problem of high-water table.
It is expected that the site will have stream and creek formations at some locations where depth of water can be deeper than 30 cm	Due to high water table, it will be difficult to cast the piles at site which is essential for module mounting. Specialized design is required to overcome the problem of high-water table.
The ground water has high levels of chloride and sulphate, which along with the site's proximity to coastal area leads to high corrosion.	Due to high water table, it will be difficult to cast the piles at site which is essential for module mounting. Specialized design is required to overcome the problem of high-water table.
Work front for construction is available only for 6 months i.e., December to May and even during these periods high tide durations reduce the working hours.	No work front will be available for approx....6 months from June to November. All civil work is required to be completed outside this 6-months period. During the non-rainy season there is impact of tide at the site which leads to non-working days even in this period.

<p>Since the site is CRZ zone, there is a restriction on construction / use of batching plant.</p>	<p>Due to Dholera Solar Park being CRZ zone, the developers will face specific restrictions in project execution which will lead to increase in project cost. No batching plant, labour colony and material dumping is allowed within the site. Also, there are specific protected areas within the site wherein no construction is allowed which makes the execution of the project more challenging and difficult.</p>
<p>The typical solar radiation at Dholera Solar Park is 2.5% less than the best available locations in the state of Gujarat.</p>	<p>Lower solar radiation will lead to lower generation. Due to water logging at site albedo is also low which leads to lower generation gain in case of using bifacial modules.</p>

- 7.8. In view of the afforested site conditions, IIT Gandhinagar concluded in its study that the cost of piling in Dholera Solar Park is 5 to 11 times higher than the cost of piling involved in a Solar PV Project being set up in any other location, Further, special design will be required for structures, modules and other electrical components to avoid effects of salinity. The Respondent submits that the mitigation measures for the afforested challenges significantly increase the costs, risks and time involved in setting up a Solar PV Project within the Dholera Solar Park. Accordingly, the cost to set up the Solar PV Projects at Dholera Solar Park is higher than Solar PV Projects set up at any another place.
- 7.9. SECI, being aware of the afforested challenges, was of the view that the ceiling tariff of Rs. 2.75/unit was quite low and ceiling tariff of Rs. 3.06 unit would be able to attract more developers to the Dholera Solar Park. GUVNL analysed the tariff recommended by SECI and decided that the ceiling tariff of Rs. 2.92/unit would be reasonable for Dholera Solar Park. GUVNL arrived at the ceiling tariff of Rs. 2.92/unit based on project cost of Rs. 4.65 Crore/MW considering high electrical and civil costs due to the challenging geographical conditions.
- 7.10. On 18.03.2020. GUVNL in continuation of the 1000MW Bid and with a view to procure the balance 700MW solar power, initiated another competitive bidding process and issued RfS No. GUVNL/700 MW Solar (Phase IX), prepared in line with the GoI Bidding Guidelines, for Procurement of 700 MW Solar Power on long-term basis from Solar PV Power Projects to be set up in Dholera Solar Park on BOO basis.

This time the 700 MW RFS specified a ceiling tariff of Rs. 2.92/unit.

- 7.11. The Respondent TGPPL has participated in the 700 MW Bid and emerged as a successful bidder at a tariff of Rs. 2.81/kWh which is below the ceiling tariff of 2.92/unit.
- 7.12. On 09.10.2020, GUVNL, having accepted the bids of successful bidders, issued Letter of Award vide letter No. GM/IPP/Solar/Comp Bidding IX/792 to the Respondent for development of 200 MW Solar PV Project within the Dholera Solar Park for supply of solar power at a tariff of Rs. 2.81/kWh. In terms of the LoA, the Respondent was required to furnish a Performance Bank Guarantee and sign the Power Purchase Agreement with GUVNL within 90 days from the date of issuance of the LoA.
- 7.13. Pursuant to the issuance of the LoA, the Respondent immediately commenced developmental activities for setting up the Solar Project. Since the work front is only available from December to May, it was essential for the Respondent to complete all civil works at the site within this period. To this end, the Respondent had placed Orders for material for fencing and stubs for completion of casting of piles, set up office at the site to play the execution and recruited employees for the same. Further, the Respondent had hired the services of expert external consultants to finalize the civil drawings, since civil foundations are a major concern within the Dholera Solar Park. The project financing discussions with leading banks were also in advanced stages. On 15.10.2020, the Respondent has acknowledged the receipt of the LoA by returning a signed and stamped copy of the LoA to GUVNL.
- 7.14. On 05.11.2020, GUVNL filed Petition No. 1906 of 2020 before the Commission under Section 63 and Section 86(1)(b) of the Electricity Act, 2003 for adoption of tariff discovered pursuant to the 700 MW Bid. It is to point out that the successful bidders/awardees were not made parties to Adoption Petition.
- 7.15. On 19.11.2020, GPCL allotted Plot No. P16 and P18 - P20 in the Dholera Solar Bank to the Respondent for the development of its Solar Project.
- 7.16. On 29.12.2020, this Commission during the hearing, raised certain queries inter alia regarding the tariff's discovered in the 700 MW Bid. GUVNL has adequately

answered all queries of this Commission while also collaborating on the necessity for a higher tariff ceiling in the 700MW RfS.

7.17. On 30.12.2020, the Respondent has informed GUVNL that it was ready to execute the PPA and requested GUVNL to notify the Respondent of the date on which the PPA could be signed. Further, the Respondent in terms of the 700 MW RFS and LoA executed a Performance Bank Guarantee for an amount of Rs. 18,88,00,000/- and shared a copy of the same with GUVNL through email dated 07.01.2021. It is submitted that with the completion of the aforesaid actions, the Respondent had fulfilled all material obligations under the 700 MW RFP that are a pre-requisite to signing of the PPA.

7.18. On 27.01.2021, GUVNL filed additional submissions in Petition No. 1906/2020. Pertinently, while during the hearing on 29.01.2020, in response to the query of the Commission that *"In light of the recent tariff discovered under the competitive bidding carried out by the Petitioner for Procurement of 500 MW Solar power from project developer is Rs. 1.99 per unit and Rs. 2.00 per unit, what is the course of action?"*, GUVNL has responded as under:

"4.1 She while reiterating the relevant submissions stated above, submitted that the capital cost for solar projects to be set up in Dholera Solar Park is not comparable with the Solar Power Projects set up at other places in the State, Where there are no geographical & geotechnical challenges like Dholera Solar Park. She submitted that the project developers are required to pay the upfront cost of land of about Rs. 13.88 lakhs per MW and also pay O&M cost of Rs. 4 lakhs/MW/year which is escalated at the rate of 5% per year. Further, the present tender for 700 MW capacity for Dholera Solar Park was originally floated on 18.03 2020 but due to lockdown the same was extended and bidding was carried out on 13.08, 2020. At that time, the discovered tariff in the tenders of the SECI and other entities was quite above Rs. 1.99 to Rs. 2.00 per unit. However, it is recently that the discovered tariff is of Rs. 1.99 per unit and Rs. 2.00 per unit in the bidding process carried out by the Petitioner in December 2020.

Therefore, the said tariff was not discovered at the time of bidding process for 700 MW carried out by the Petitioner."

7.19. In the additional submissions, GUVNL completely ignored the recognized reason for the slightly higher tariff and instead stated as follows-

"3. Since the Hon'ble Commission has specifically considered that the latest tariffs discovered in the recent tender are at Rs 199/unit (as against the tariffs of Rs 2.78-2.81/unit discovered in the present tender) is significantly lower. It is necessary to review the necessity to look into the Consumer interest before approving the procurement. Thus, subsequent to the issued of the Letter of Award it has been revealed that the capital cost and other expenses for Solar Projects may have significantly reduced and resulting in much reduced solar power quoted tariff in a competitive bid process. Since the PPAs for 700 MW capacity out of 1000 MW are yet to be approved by the Hon'ble Commission, and the tie up same at higher tariff of Rs 2.78-2.81/unit for 25 years may have substantial financial implications, the matter has been considered by GUVNL and the State Government

3.3 In view of above, GUVNL with due consent of State Government proposes that a separate tendering process maybe initiated for Dholera Solar Park in light of latest price trends. Further, it is proposed that if the tariff discovered in such re-tendering is higher than the presently discovered tariff, GUVNL may tie up power at lowest tariff discovered out of two tenders.

7.20. Since there was considerable delay in signing of the PPA on the part of GUVNL and the 90 days period for signing of the PPA had lapsed on 07.01.2021. The Respondent filed an application on 29.01.2021 for impleadment in the Petition being a necessary party to the proceedings and sought an opportunity of being heard. It was the Respondents' intention to urge this Commission to expedite the proceedings and adopt the discovered tariff so that the PPAs could be signed, and the Respondent could immediately secure financing for undertaking developmental activities in relation to the Solar Project. It is to note that the expenses incurred on the

development of the Solar Project thus far have been financed through equity by the Respondent. Further, since the tariff was extremely competitive, any delay in execution of the project was bound to have an adverse impact on the anticipated assumed project cost based on which the bid was submitted and accepted in any event, under the terms of the GoI Bidding Guidelines and 700MW RfS. The entire process had to be completed within a defined timeline, keeping in view the interest of all stakeholders.

- 7.21. On 29.01.2023, this Commission vide its Order dated 29.01.2021 in Petition No. 1906 of 2020 disposed of the Petition without adopting the tariff and while allowing GUVNL to initiate a separate re-tendering process for Dholera Solar Park.
- 7.22. On 10.02.2021, being aggrieved by the Orders dated 01.01.2021 and 29.01.2021, the Respondent filed Appeal No. 88 of 2021 before the Hon'ble Appellate Tribunal for Electricity (APTEL).
- 7.23. On 08.02.2021, GUVNL informed the Respondent that it will be re-tendering the already awarded 700 MW solar capacity. GUVNL asked the Respondent to extend the validity period of its already accepted bid till 31.07.2021 and/or to participate in the fresh bidding process. The Respondent was further informed that if it chooses not to extend the validity period, its bid security will be returned and in such scenario, the Petitioner GUVNL proceeds to select the bidders who have extended their bid validity on the basis that the earlier price discovery is more conducive as compared to the price discovery in the fresh bidding process, the bidders who have opted not to extend the bid validity period will not be considered.
- 7.24. On 07.08.2023, the Hon'ble APTEL while setting aside the impugned Orders dated 01.01.2021 and 29.01.2021 in Appeal Nos. 88 of 2021, remanded the issues in the appeal back to this Commission for fresh determination.
- 7.25. It is contended that in regard to second para of the Petition, the Petitioner vehemently denies that Petition No. 1906 of 2020 was decided by this Commission vide Order dated 29.01.2021. This Commission in line with the relief sought by GUVNL in its affidavit, has disposed of the Petition without making a final decision

on the adoption of tariff i.e., without either adopting or rejecting the tariff. The relevant portion of the Order is reproduced below:

"4. In view of the above, considering the facts and circumstances we decide that as the Petitioner has not pressed the original prayer filed in the present Petition and desires the relief as per affidavit dated 27.01.2021 and accordingly, without further entering into merits of the present matter we pass the following order:

ORDER

The Petition stands disposal of the Petitioner is at liberty to approach the Commission for adoption of tariff afresh after taking appropriate actions regarding bidding in accordance with law."

7.26. It is contended that with regard to para 20 of Petition wherein GUVNL's submission was that "The LoA was only a prelude to a contract (PPA), the Respondent vehemently denies the assertion of the Petition and submitted that once the proposal of the bidders having quoted the lowest tariff is accepted by GUVNL by way of an LoA and also as reflected by conduct of GUVNL in having filed the Petition thereof, the parties have executed a concluded contract. The relevant portion of RfS is reproduced as under:

4.4.5 At the end of selection process, Letter of Award (LOA) will be issued to all the Successful Bidders....

In all cases, GUVNL's decision regarding selection of bidder through Reverse Auction or otherwise based on tariff or annulment of tender process shall be final and binding on all participating bidders.

7.27. In respect to para 35-37 of the Petition is concerned, it is contended that GPCL had allotted Plot No. P16 and P18-P20 in Dholera Solar Park to the Respondent in November 2020 for the development of its Solar Project. As such, if there are any changes in plot boundaries and other infrastructure planning resulting in increase in cost of the Solar Project, GUVNL must share such information with the developers at the earliest.

7.28. It is asserted by Respondent that this Commission is duty-bound to harmonize the

interests of consumers and generators. This obligation is delineated by the Electricity Act, the National Electricity Policy, the National Tariff Policy 2016, and the Solar Bidding Guidelines. It is to note that GUVNL undertook three competitive bidding processes being 1000 MW Bid, 750 MW Bid and 700 MW Bid for the same capacity with the sole objective of procuring renewable power at the most competitive tariff, ultimately safeguarding consumers' interest. In the realm of competitive bidding, this Commission's ability to strike a balance between generator and consumers' interests hinges on ensuring transparency of bidding process and regulatory certainty during the tariff adoption phase. The decision of GUVNL to withdraw its Petition and initiated a fresh bidding process for a capacity already awarded to the Respondents and Other generators by way of Letters of Award, particularly when GUVNL itself acknowledged the reasons for a slightly higher tariff, is unethical to principle of regulatory certainty. In addition to this, the Respondent submitted as under:

- (i) While Section 61(d) of the Electricity Act, 2003 provides for safeguarding of consumers' interest, it also protects the interest of the generator by mandating the State Commission to ensure recovery of cost of electricity in a reasonable manner.
- (ii) The competitive bidding processes being 1000 MW Bid, 750 MW Bid and 700 MW Bid were initiate undertaken by GUVNL, with the objective of discovering and maintaining low tariffs, in line with the stipulations of Clause 6.4(2) of the Tariff Policy, 2016.
- (iii) Clause 5.8.4 of the National Electricity Policy notes that Capital is scarce. Private sector will have multiple options for investments: Return on investment will, therefore, need to be provided in a manner that the sector is able to attract adequate investments at par with, if not in preference to investment opportunities in other sectors. This would obviously be based on a clear understanding and evaluation of opportunities and risks An appropriate balance will have to be maintained between the interests of consumer and the need for investments Further, Clause 5.8.8 of the National Electricity Policy notes that "5.8.8 Steps would also be taken to

address the need for regulatory certainty based on independence of the regulatory commissions and transparency in their functioning to generate investor's confidence."

- (iv) One of the specific objectives of the Solar Bidding Guidelines is to provide standardization and uniformity in processes and a risk-sharing framework between various stakeholders, involved in the Solar PV Power procurement thereby encouraging investments, enhanced bankability of the Projects and profitability for the investors.
- 7.29. With regard to the Para 40 of the Petition, it is contended that given the unique attributes of the Dholera Solar Park duly acknowledged by GUVNL, DPIIT, SECI and GPCL, any direct comparisons with tariffs from other Projects, such as those discovered in Phase XI, XII, X-R, XIII, XIV, XVI, XVII, XVIII, XIX, XX. Tranche IV, ISTS X or ISTS XI, are inappropriate. The unique terrain and weather conditions at the Dholera Solar Park significantly contribute to variations in project costs and operational efficiency. It is imperative to recognize that the tariffs for Dholera Solar Park were determined after careful consideration of the challenges that would be faced by generators while setting up solar power projects within Dholera Solar Park. Attempting a direct comparison with tariffs from projects in different geographical and environmental contexts oversimplifies the complexities involved and does not accurately reflect the true cost implications. Accordingly, any evaluation of the tariffs for Solar Power Projects to be set up within Dholera Solar Park must take into account the project-specific challenges and need for specialized solutions ensuring a fair and accurate assessment of the economic viability of the undertaking.
- 7.30. In respect to the letter dated 05.03.2020 of the Ministry of Power, GoI, it is contended that the said letter was within the knowledge of GUVNL at the time of issuance of the 700 MW RFP. In this regard, reliance is placed on the following portion of the Order dated 29.01.2021 of this Commission-

"...85. In response to the letter dated 05.03.2020 issued by Ministry of Power to Central PSUs, it is submitted by the Petitioner that the said letter was only an advisory in nature and not as part of the Competitive Bidding Guidelines

issued by the Ministry of Power Further GUVNL proceeded with the issuance of tender on 18.03.2020 with ceiling tariff in line with discussions with DPIIT and SECI prior to receipt of aforesaid letter issued by MoP to CPSU's Accordingly and with a view to safeguard the interest of consumers against discovery of higher tariff the ceiling tariff of Rs 2.92 per unit was stipulated by GUVNL It was also felt that since the ceiling tariff of Rs 2.92 per unit is higher than Rs 25 per unit specified previously, it will encourage better participation and competition in the tender. However, in case of re-tendering process as proposed at above para, no ceiling tariff may be specified".

- 7.31. With regard to Judgement of the Hon'ble Supreme Court in Energy Watchdog Vs. Central Electricity Regulatory Commission [(2017) 14 SCC 80, it is contended that the argument the Petitioner is attempting to establish by relying on the said Judgement is vague and inconclusive and the Respondent denies that the Judgment supports the case of the Petitioner.
- 7.32. It is contended that this Commission has the power or jurisdiction to consider the subsequent developments/ tariffs discovered in other bids at different points in time and for projects to be set up in locations less hostile/difficult than Dholera Solar Park to determine whether it would be in the interest of the consumers to adopt the tariff which was discovered in the 700 MW Bid. What needs to be ascertained by this Commission in the instant proceedings is whether (i) the 700 MW Bid was transparent; and (iii) the 700 MW Bid was held in accordance with the Solar Bidding Guidelines issued by the Central Government. It is settled law that under Section 63 of the Electricity Act, the Appropriate Commission does not determine tariff but only adopts tariff already determined through a transparent process of bidding, conducted in accordance with the guidelines issued by the Central Government. It is only when the guidelines themselves empower the Appropriate Commission to intervene in any aspect of the bidding processor such guidelines have not been framed, that the Commission's general regulates powers under Section 79(1)(b) can then be used. In the instant case, the solar Bidding Guidelines do not confer any such power on this Commission. As such, if the answers to the afforested issues are affirmative, this Commission must adopt the tariff.

7.33. It is denied that the issuance of the LoA does not create any vested right in the Respondent/selected Bidder. It is settled law that if the Letter of Intent/Letter of Award is a clear and unequivocal final acceptance/confirmation of the bid submitted by the bidder, the same is tantamount to a concluded contract. It is also settled law that once there is an unequivocal acceptance of the bid in question, there can be no occasion for the bidding authority to reject the bid as sought to be done.

7.34. It is contended that the judgment of the Hon'ble APTEL in SunE Solar B.V. vs. Delhi Electricity Regulatory Commission & Ors. Appeal No. 22 of 2016 has no application to the present case for the following reasons:

- (a) The SunE Solar Judgment deals with the period prior to the issuance of MoP Bidding Guidelines dated 03.08.2017 for procurement of power from renewable energy sources. Once the MoP/ Central Government Guidelines have been issued under Section 63, they have statutory force as has been held at para 20 of the Energy Watchdog case reported as 2017 14 SCC 80.
- (b) In the SunE Solar Case, the distribution company withdrew from the bid in order to conduct reverse bidding which was proposed by the Central Government in the draft guidelines that were in circulation awaiting notification. The distribution company wanted to align the bid to the draft guidelines of the Central Government which was in circulation and awaiting notification. In the present case, the bids were in accordance with the Solar Bidding Guidelines of the MoP Central Government.
- (c) There was no ceiling price in the SunE Solar Case. The distribution licensee therein felt that the bids were high as the market conditions had drastically changed and therefore, re-tendering on the basis of reverse auction as proposed in the then draft guidelines would be in public interest. In the present case, the bids were conducted in terms of the Solar bidding Guidelines based on a ceiling price with a reverse auction. The present bid was preceded by two earlier rounds on the same principle with a lower ceiling price. The lower ceiling price did not permit greater market participation and result the offered quantity/capacity was undersubscribed. The

procedure followed in Gujarat was strictly in terms of the statutory mandate, and as such, has to be taken to its logical end, in terms of the statutory guidelines and RFS.

- (d) Another important distinguishing feature between SunE Solar Case and the instant case are the terms of the Letter of Intent (LoI) that was issued in favour of SunE Solar B.V. The LoI was conditional and would not come into effect till the State Commission had approved the same. This was an amended LoI accepted by the bidder. The Hon'ble APTEL has taken judicial notice of the terms of the LoI in para 11 (b) (viii), (xi) and (xii) of the judgment of SunE Solar. Further, in paragraph 11 (b)(viii) of the SunE Solar Judgment, the Hon'ble APTEL set out the opening portion of the LoI issued in that case, wherein it was stated as follows.

"11 (b) (viii) Now let us analyse the conditions of the amended LO! which was duly accepted by the Appellant. The relevant extract is reproduced below:

May please note that this LOI shall be to effect subject to following conditions.

- i. 1 Grant of approval and adoption of Tariff by Hon'ble Delhi Electricity Regulatory Commission and additional conditions, if any, imposed by DERC*
- ii. Receipt of unconditional acceptance of LO! from the Successful Bidder within 7 days of the issuance of the RFP Adherence to and fulfilment of the terms and conditions specified in RFP and PPA documents by the Bidder."*

A bare perusal of the aforesaid quoted extracts of the Sun Solar Judgment makes it clear that the LoI was to be effective only after grant of approval and adoption of tariff by the State Commission and adherence by the bidder to the terms and conditions specified in RFP & PPA documents. Accordingly, the LOI had not come into effect and

did not have trappings of a contract. In the present case, GUVNL has issued a Letter of Award and not a Letter of Intent. Further, the Letter of Award is not conditional upon approval of this Commission or otherwise and is a final acceptance of the offer made by the Answering Respondent. Therefore, to argue that SunE Solar Judgment binds or covers the present case facts is wrong. SunE Solar Judgment was based on special facts, which have been set out herein before and as such, the said Judgment has no application to the present case and is completely distinguishable. The LoA in the present case clearly states in the introductory paragraph that the offer made by the Appellant is accepted by the GUVNL. It is not a conditional acceptance as is being presently alleged. It was also not the case of GUVNL before this Commission that LOA was conditional or that they are renegeing from the same at their own will.

- 7.35. As regards the contents of Paras 49 and 50 of the Petition, it is submitted that the Petitioner has reproduced the Judgment of the Hon'ble Supreme Court in PSA Mumbai Investments PTE. Limited V/s. Board of Trustees of the Jawaharlal Nehru Port Trust and Another, [(2018) 10 SCC 525] and also placed reliance on the Judgment of the Hon'ble Supreme Court in National Highway and Infrastructure Development Corporation Limited V/s. BSCPL Infrastructure Limited [(2019) 15 SCC 251 and in paragraph 50, alleged similarities between the said Judgments and the instant case. It is denied that the Judgments support the case of the Petitioner or that there are any similarities between the said Judgments and the instant case.
- 7.36. It is contended by the Respondent that GUVNL has already entered into concluded contracts with the Respondent and other successful bidders for the 700 MW capacity and in terms of the LoA, it is mandated to secure adoption of the discovered tariff under Section 63. The Respondent submits that once GUVNL has accepted its bid and issued the LoA and filed the Petition before this Commission, the contract for supply of 200 MW power by the Respondent to GUVNL, stands concluded. Pursuant to such acceptance by GUVNL, the Respondent in terms of the LoA executed a Performance Bank Guarantee and started developmental activities for setting up the Solar Project at the plot allotted to it by GUVNL. The execution of the PPA thereafter is a mere formality.
- 7.37. It is submitted that this Commission is obligated to safeguard not only the interests

of the consumer but also the interest of the generator. In so far as the alignment of the discovered tariff with the market is concerned, the Respondent submitted that the object and purpose of the Solar Bidding Guidelines is to enable and ensure the discovery of market aligned tariffs and once a bidding authority has undertaken a competitive bid process in line with the Solar Bidding Guidelines while providing a ceiling tariff, finally accepted the offer of the bidder by way of an LoA and filed an Petition under Section 63 of the Electricity Act, there is no occasion for this Commission to question the competitiveness of the tariff. It is for this reason the Solar Bidding Guidelines do not provide for rejection/cancellation/annulment of the bid process on the ground that the discovered tariff is not aligned with the prevalent market prices.

- 7.38. It is also submitted that notwithstanding the argument that 700MW capacity cannot be re-tendered, in re-tendering the already allotted capacity of 700MW, GUVNL will effectively be creating a ceiling through the backdrop by calling for a re-tender, whose selection will be bench marked with the tariff discovered in the present tender process. The question that arises is whether the Solar Bidding Guidelines and RfS can be used as a tool for price discovery against which a future tender will be called invited. Can the tariff which has been discovered through a transparent competitive bidding process be at all the basis for a future tariff bidding process? Is that the purpose of the MoP Bidding Guidelines and the RFS process? These are questions that places for consideration of this Commission.
- 7.39. It is contended that by remanding the issues back to this Commission, the Hon'ble APTEL, has relegated the parties to their original position on which they stood before the passing of the Order dated 29.01.2021 and reiterates that albeit the quoted tariff of the Respondent was and is still market aligned, this Commission cannot take into consideration developments or facts subsequent to the conclusion of 700 MW Bid to determine whether or not the tariff's discovered in the 700 MW bid should be adopted or not. This would be a clear violation of Section 63 of the Electricity Act and the Solar Bidding Guidelines.
- 7.40. It is submitted that as regard to the relief sought by the Petitioner, the Respondent submitted that the present Petition is in continuation of Petition No. 1906 of 2020 being the original petition for adoption of tariff and any decision taken

determination of the issues at hand must be based on the submissions made in both Petitions and other pleadings filed by the parties.

7.41. Re-tendering of the already awarded 700 MW capacity is and will be in complete contravention and deviation of the statutory Solar Bidding Guidelines which have been issued by the Central Government under Section 63 to interalia facilitate transparency and fairness in the procurement process. Such deviations will do violence to and frustrate the objectives of the statutory guidelines. This Commission is bound by the Solar Bidding Guidelines once a competitive bid process has been concluded and tariff has been discovered. While exercising powers under Section 63, this Commission must do so only in accordance with the Solar Bidding Guidelines. The RfS once issued cannot then be tinkered with.

7.42. This Commission cannot simpliciter dispose of the Petition without adopting or rejecting the tariff discovered by GUVNL under the 700 MW Bid. It is settled law that while discharging its duties under Section 63, the State Commission's powers are limited to verifying whether the competitive bid process has been conducted in a transparent manner and in accordance with the bidding guidelines of the GoI. Once such determination has been made, the State Commission has the option of following only one of the two below mentioned courses:

- (a) if the State Commission's determination of the transparency and/or compliance with the guidelines of the GoI is in the negative, then the State Commission shall reject the petition for adoption of tariff, and
- (b) If the State Commission is satisfied that the tariff sought to be adopted has been discovered through a transparent process of bidding in accordance with the guidelines of the GoI, then the State Commission shall adopt the tariff

7.43. The Solar Bidding Guidelines do not provide for re-tendering, much less retendering after award of the capacity or without cancellation of the earlier bid process. It only provides for a scenario wherein if the number of qualified bidders is less than two even after three attempts of bidding, the Procurer will have the right to continue the bid process with the consent of the State Commission.

- 7.44. The rules and guidelines for tendering provide that retendering should be undertaken with utmost caution. It would be apt to take reference to the guidelines of the Central Vigilance Commission, GoI which only allow retendering in case of unreasonableness of quoted rates or when L1 backs out of the tender process. It is submitted that in the instant case when the tariff has been discovered pursuant to a concluded transparent competitive bid process which provided a ceiling tariff and the quoted tariffs of the bidders are much below in ceiling provided by the procurer, retendering cannot and should not be allowed. Allowing GUVNL to do so will vitiate the sanctity of the competitive bid process. GUVNL has already entered into concluded contracts with the Respondent and other successful bidders for the 700 MW capacity and in terms of the LoA, it is mandated to secure adoption of the discovered tariff under Section 63. The Respondent submitted that once GUVNL has accepted its bid and issued the LoA and filed the Petition before the GERC, the contract for supply of 200 MW power by the Respondent to GUVNL stands concluded. Pursuant to such acceptance by GUVNL, the Respondent in terms of the LoA executed a Performance Bank Guarantee and started developmental activities for setting up the Solar Project at the plot allotted to it by GUVNL. The execution of the PPA thereafter is a mere ministerial formality.
- 7.45. It is settled law that even the possibility of bringing more money to the public exchequer does not by itself offer a valid justification for forgoing contractual obligation. While the Respondent has fulfilled all of its obligations under the 700 MW RfS and the LoA, GUVNL has failed to fulfil the only obligation cast upon it by the LoA i.e., securing adoption of discovered tariff by this Commission. The Respondent submitted that GUVNL is mandated by Section 63, the GoI Bidding Guidelines and the LoA to get the discovered tariff adopted by this Commission and in failing to do so, GUVNL is intentionally and arbitrarily subverting the statutory mandate and the contractual obligations.
- 7.46. Upon the conclusion of the 700 MW Bid, the Respondent legitimately expects that GUVNL will honour its acceptance of the Respondent's bid and proceed to procure power. The stand of GUVNL violates legitimate and sound expectations of the Respondent legitimately expects that GUVNL will honour its acceptance of the Respondent's bid and proceed to procure power. The stand of GUVNL violates

legitimate and lawful expectations of the Respondent.

- 7.47. GUVNL is 'State' within the ambit of Article 12 of the Constitution, being a wholly owned Government Company performing functions of public utility (distribution of electricity). Consequently, GUVNL must be guided by principles of fairness and transparency and must not act in an arbitrary manner. The conduct and actions of the State and/or its instrumentalities have to be exemplary, and decisions have to be free from arbitrariness, bias and unreasonableness. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses power only to use them for public good and this imposes the duty to act fairly and to adopt a procedure which is fair play in action'. Due observation of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in its interaction with the state and its instrumentalities, with this element forming a necessary component of the decision-making process in all state action. To satisfy this requirement of non-arbitrariness in a state action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bone fides of the decision in a given case.
- 7.48. The adoption of tariff discovered pursuant to a competitive bid process is the prerogative of the State Commission which is an independent statutory body constituted under the Electricity Act to inter alia ensure that tariffs are discovered through a transparent process and in accordance the guidelines of the GoI. The GoI has framed Solar Bidding Guidelines under Section 63 of the Electricity Act and in compliance with the principles enunciated in Section 61 of the Electricity Act. The stated objectives of the Solar Bidding Guidelines are inter alia protection of consumers interest and to provide standardization and uniformity in processes and a risk-sharing framework between various stakeholders, involved in the Solar PV Power Procurement, thereby encouraging investments, enhanced bankability the Projects and profitability for the investors. A competitive bid process adopted under the Electricity Act must, therefore, inter alia meet the statutory requirements of

protecting consumer interest while also encouraging profitability for the investors. If the State Commission allows such deviations from the Guidelines which have the effect of invalidating the afore-stated objectives, it will destroy the basic structure of the guidelines. In the instant case, allowing retendering of the 700 MW capacity which has already been awarded pursuant to a transparent competitive bid process and in accordance with the Solar Bidding Guidelines only on the unfounded ground that consumer interest will be harmed if solar power is procured at the discovered tariff is tantamount to a deviation from the Solar Bidding Guidelines. It is submitted that the conduct of GUVNL vitiates long term interest of consumers and bidders, both domestic and international. Potential investors and bidders will shy away from participating in future tenders for development of projects, when the rules of the game are changed midway, and a new regime is introduced which is outside the statutory Guidelines. This is not a bid or government tender for a normal or ordinary commodity, which allows the procurer complete freedom subject of course to the principles laid down by the Apex Court on tender matters. In a regulated sector like electricity, the procurer is bound to follow the mandate of the statute. If the Procurer can reverse the bid process at its will after the bid process has been concluded, LoAs have been issued and the State Commission has been approached for adoption of tariff under Section 63, then there is no need for the Solar Bidding Guidelines. In fact, the Guidelines are so detailed and elaborate that they take care of the interest of all the stakeholders of the sector and if consumers' interest alone is taken as the criteria by this Commission for allowing deviations, then the Solar Bidding Guidelines framed by the Central Government would become redundant. In fact, to deviate from the Guidelines at such a late stage, after discovery of tariff and issuance/acceptance of LoA, is against public/consumer interest.

- 7.49. It is in fact in the public's interest to get clean energy at market driven prices, especially when such generating plants are set up on waste land which ensures availability of agricultural and revenue land having significant social and economic value for the public. To maintain the sanctity of bidding process in terms formulated under the statutory Guidelines is also in public interest.
- 7.50. Considering the submissions made, the Respondent prayed that this Commission to adopt the tariff discovered under the transparent competitive bidding process

conducted by the Petitioner through RFS No. GUVNL/700MW/Solar (Phase IX) dated 18.03.2020 and direct GUVNL to execute Power Purchase Agreement with the Respondent No.1 pursuant to the Letter of Award dated 09.10.2020.

8. Rejoinders dated 28.02.2024 of the Petitioner GUVNL to the Reply of Respondent No. 1 TGPPL

- 8.1. The Petitioner vide affidavit dated 27.02.2024 submitted rejoinder to the reply of Respondent No. 1 TGPPL reiterating the submissions as stated in Para 4 above. The gist of submissions of the Petitioner are reproduced as under:
- 8.2. The matter in issue relates to the tariff based competitive bidding process initiated and held by GUVNL as per Section 63 of the Electricity Act, 2003 for Procurement of power from Solar PV Projects to be set-up in Dholera Solar Park in the State of Gujarat. The approval for selection of the bidder and implementation of the Power Purchase Agreement pursuant to a Competitive Bid Process needs to be considered by the Commission after hearing the parties and taking into consideration all the relevant facts and circumstances and there cannot be a mandatory adoption of tariff as sought to be contended by the Respondent No. 1.
- 8.3. It is submitted that Section 63 refers to determination of tariff by bidding process and for adoption of tariff by the Appropriate Commission. In addition Section 86(1)(b) provides for the State Commission to regulate the electricity purchase and procurement process including the price at which the electricity shall be procured from the generating companies. It is submitted that unlike purchase of power by consumers directly from generating company which is covered under Section 49 and for which the Hon'ble Commission plays no role for determination of tariff of such purchase of power and the same is to be bilaterally agreed, the purchase by the distribution licensee from the generating company requires specific approval of the Hon'ble Commission. This is because the distribution licensee procures power for supply to consumers at large and the cost of such power purchase is passed on to the consumers. The intent for Regulation of such power purchase is therefore clear to protect the interests of the consumers at large.

8.4. Further, the intent of introduction of tariff based competitive bidding under Section 63 is to reduce the cost of energy which includes the following:

- (a) Section 61(d) of the Electricity Act, 2003 provides for safeguarding of consumer interest.
- (b) Section 6.4(2) of Tariff Policy 2016 recognising that “*State shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low*”.
- (c) Section 5.12 of the National Electricity Policy notes that “*efforts need to be made to reduce the capital cost of projects*” and specifically notes that “*...Cost of energy can also be reduced by promoting competition within such projects*”:

“5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES

5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

5.12.2Such purchase by distribution companies shall be through competitive bidding process Considering the fact that it will take some time before non- conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.”

- (d) The Guidelines under Section 63 also notes that the competitive procurement is expected to reduce the overall cost of procurement of power (Clause 1.1):

“1.1.1.Power purchase costs constitute the largest cost element for distribution licensees. Competitive procurement of electricity by the distribution licensees is expected to reduce overall cost of procurement of power and facilitate development of power markets. Internationally, competition in wholesale electricity markets has led to reduction in prices of electricity and in significant benefits for consumers.”

(e) One of the specific objective of the Guidelines is *“to promote competitive procurement of electricity from Solar PV power plants by distribution licensee, to protect consumer interest”* (Clause 1.2(a)).

(f) The Guidelines specifically refers to the Clause 6.4(2) of the Tariff Policy 2016 (Clause 1.1.4)

8.5. The requirements of adoption of tariff provided for in Section 63 and approval to be given to the PPA including the price under section 86(1)(b) of the Electricity Act, 2003 cannot be made redundant and meaningless exercise or an empty formality having no bearing. There is a definite purpose for Section 63 having provided for the adoption of the tariff by the Appropriate Commission.

8.6. The Appropriate Commission has to necessarily go into and examine various aspects, viz., the verification as to whether the competitive bid process was in accordance with the Guidelines, the price discovered is conducive and aligned to market trends and the bidding is done in a transparent manner consistent with the directions, clarifications etc. issued by Ministry of Power and Ministry of New and Renewable Energy. It cannot be that the Commission will be necessarily be required to approve and adopt the tariff irrespective of any tariff that may be discovered. Such a claim would also be contrary to the purpose and intent of promotion of competition through Tariff Based Competitive Bidding Process for procurement of power.

8.7. In regard to the above it is well settled that any agreement for procurement of power by or on behalf of the distribution licensee is not effective till the approval is granted by the Appropriate Commission. In this regard, GUVNL relied upon the following decisions:

(a) Tata Power Company Limited v. Reliance Energy Limited, (2009) 16 SCC 659.

(b) Rithwik Energy Generation Pvt Limited v. Karnataka Power Transmission Corp. Limited and others, 2011 ELR (APTEL) 1651

- 8.8. Section 86(1)(b) is equally applicable in cases of Section 63 and there is a requirement of approval of the State Commission of the price at which the power procurement is being proposed. The Hon'ble Supreme Court has rejected the contention that Section 63 is a standalone position and the general regulatory power of the Commission under Section 86(1)(b) is still the source of power for determination and adoption of tariff.
- 8.9. The Appropriate Commission has the power and jurisdiction to consider all aspects and determine whether it would be in the interest of the consumers to adopt the tariff which was discovered in the competition bid process in the year 2020. In terms of Section 63 read with Section 86(1)(b) of the Electricity Act, 2003, the adoption of tariff by Appropriate Commission is a requirement. This statutory step needs to be completed for a valid and enforceable contract to come into existence. The adoption of tariff by the Appropriate Commission is not a procedural or a ministerial act, namely, it cannot be that the Appropriate Commission should necessarily do so upon a Petition being filed before it.
- 8.10. It cannot be anybody's case that the Appropriate Commission is required to approve the bid/adopt tariff even if the Appropriate Commission consider the tariff discovered is substantially higher than the prevalent market price. This would be completely contrary to the specific provisions of Guidelines and Tariff Policy for competitive bidding leading to reduction in prices and contrary to consumer interest which is recognized objective under Section 61(d) as well as in the Guidelines and above all the regulatory power of the Hon'ble Commission to safeguard the consumer interest.
- 8.11. The Petitioner in the Petition has submitted the important aspects to be considered in regard to the competitive bid process in the present case including the tariff discovered in other competitive bids initiated by GUVNL and SECI as against the above, the price discovered in the present case range from Rs. 2.78 per unit to Rs.

2.81 per unit. The Commission, therefore, has to take a considered view on whether to approve and adopt the tariff of Rs. 2.78 per unit to Rs. 2.81 per unit in light of the tariff discovered in other competitive bids.

8.12. Even if various factors are to be considered for tariff in renewable energy, it cannot be that there would be no examination of whether the tariff is in consumer interest. The State Commission cannot ignore the significant price advantage available for Procurement of power as discovered in the related other competitive bid processes and still proceed to approve an higher tariff without exploring the possibilities of reduction in prices in Dholera Solar Park.

8.13. The Appropriate Commission, whose approval is required for the tariff is entitled to consider the relevant aspects including the price discovery being competitive, economical and conducive to consumer interest as provided in the National Policies notified under Section 3 of the Act, the terms of the Guidelines etc. and if not satisfied on such aspects to refuse to adopt the tariff. The safeguarding of consumers' interest as envisaged in Section 61(d) of Electricity Act, 2003, the National Tariff Policy etc. is the paramount aspect and in case, the Commission considers that after the Letter of Award and pending the adoption of tariff the solar power prices have reduced considerably, it is entitled to refuse to adopt the tariff or even allow GUVNL to adopt the course of re-tendering or to adopt other avenues before deciding on the adoption order at a tariff in the range of Rs. 2.78-2.81 per unit, which results in higher financial payment at the cost of the consumers.

8.14. It is submitted that the price/tariff is an important consideration for approval by the Commission and the Hon'ble Courts have rejected the bids on the basis of the price not being considered appropriate.

8.15. In *SunE Solar B.V. v. Delhi Electricity Regulatory Commission and Others*, the Hon'ble Tribunal vide Judgement and Order dated 18.07.2018 in Appeal No. 22 of 2016, upheld the decision of the State Commission which was based on consideration of "significant reduction in the cost of solar power pursuant to this bidding process making it competitive with power from conventional sources and eventually benefitting the interest of the consumers of the State." (Para 11(c)(ii) and (x)) Thus

the Hon'ble Tribunal had upheld the consideration of reduction in cost and comparison of other tariff. The Hon'ble Tribunal in the said case upheld the withdrawal and annulment of the process.

8.16. Further the recent decision of the Hon'ble Supreme Court in *Jaipur Vidyut Vitran Nigam Limited and Others v. MB Power (Madhya Pradesh) Limited and Others* dated 08.01.2024 in Civil Appeal No. 6503 of 2022 and batch, wherein the Hon'ble Supreme has set aside the mandate to adopt the tariff at high rates on the basis that the same is contrary to the larger consumers' interest and consequential public interest and if the power/electricity is to be procured by the procurers at the rates quoted by the Bidder therein, the State would have been required to bear the financial burden which in turn would have been passed to the consumers. It is relevant that the consumer interest was an important consideration for the decision arrived at by the Hon'ble Supreme Court. The Hon'ble Supreme Court rejected the contention that bids quoted by the bidders are to be accepted without going into the question of price and further rejected the contention that under Section 63 only Bidding Guidelines has to be considered and the State Commission has no power to reject the tariff of a bidder. The Hon'ble Court recognized that the earlier orders of the Court specifically clarified that the State Commission was to decide the tariff under Section 63 having regard to the law laid down statutorily and by the Court. The Hon'ble Supreme Court has considered not only Clause 5.15 of the Guidelines, but Section 63, 79(1)(b), 86(1)(b), Objectives of Guidelines, Clauses 2.15 for rejection of the bids without assigning reasons, Clause 3.5 for selection of the successful bidders and definition of Successful Bidders of RFP also.

8.17. The power under Section 86(1)(b) was noted wherein the State Commission can regulate the matters including the price at which the electricity shall be procured from the generating companies etc. It was also noted that if all bids are bound to be accepted, the DISCOMs would be compelled to purchase electricity at a much higher rate as compared to the other suppliers and the higher rate would be passed on to the consumers which would result in adversely affecting the interests of the consumers and in turn, would be against the larger public interest. Further, the Hon'ble Court recognised the power under Section 86(1)(b) of the Electricity Act,

2003. The above position would remain even in absence of a specific Clause 5.15. Even otherwise, it is submitted that the Guidelines in case of Solar are wider:

“8.9. The detail procedure for evaluation of the bid and selection of the bidder shall be provided for in the RfS.

.....

10.2 After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS.”

8.18. There can be no contention that the decision of the Evaluation Committee is binding on the State Commission. Further in the present case, when the Guidelines have left the procedure/mechanism for evaluation open, this would be a situation not covered by the Guidelines. In such a case, the State Commission’s power to regulate including the price cannot be restricted or done away with as held in the Energy Watchdog Case.

8.19. Even otherwise, the RfS recognizes that the right to reject any or all bids and to annul the bidding process:

“3.22 Right of GUVNL to Reject a Bid

GUVNL reserves the right to reject any or all of the responses to RfS or cancel the RfS or annul the bidding process for any project at any stage without assigning any reasons whatsoever and without thereby any liability.”

8.20. The Hon’ble Tribunal has in the case of Sun E. Solar upheld the annulment based on consideration of price whereby there was significant reduction in the tariff.

8.21. Further Clause 4.4.5 of the RfS provides as under:

“4.4.5 At the end of selection process, GUVNL will have the right to decide on the issue of letter of award to the Selected Bidder or any of them based on the consideration of the price discovered. Further, subject to the outcome of the legal proceedings as mentioned at Section 1.1, GUVNL will consider the issuance of Letter of Award (LOA) to the Successful Bidders. In case of Consortium being selected as Successful Bidder, the LOA shall be issued to the Lead Member of the Consortium.

In all cases, GUVNL’s decision regarding selection of bidder through Reverse Auction or otherwise based on tariff or annulment of tender process shall be final and binding on all participating bidders.

Also, GUVNL shall reserve the right to short close the capacity lower than 700 MW at its discretion, if the prices are abruptly high.”

- 8.22. In particular there is a recognition that there can be a right to short close on the basis of prices. It is submitted that GUVNL has provided the details of the comparison of tariff which show that the prices in the present bid are in fact abruptly high.
- 8.23. Therefore even as per the Guidelines and further as per the terms of the RFS, the Commission has the power to consider the prices while considering the Petition under Section 63. This is in addition to the power under Section 86(1)(b) and the consideration of consumer interest. The Respondent No. 1 has raised contentions on the prices being market aligned which is not admitted. In this regard, GUVNL has already placed the various tariff discovered in the bids by GUVNL and SECI and the Commission may consider all aspects.
- 8.24. There is also no reason for resisting a fresh bidding process. As had been earlier proposed by GUVNL, the Respondent No. 2 has the option of keeping its present bid or participating as a new.
- 8.25. It is stated that there is no basis for the Respondent No. 2 to insist on the present bid being adopted even when there are other considerations. There is no right available to the Respondent No. 2. As already submitted in the Petition, there is no vested right in the Respondent No. 2.

- 8.26. It is submitted that it is not entirely correct to claim that the present Petition is in continuation to the Petition No. 1906 of 2020. The said Petition had been decided by this Commission. In the Appeal filed against the said Petition, the Orders of the Commission was set aside. However, there was no remand and it was only noted that in case parties approach, the Commission may hear the matter uninfluenced by the earlier observations. It is to be noted that the earlier Petition was in regard to 5 bidders whereas the present is only for 3 bidders in whose appeals orders had been passed by the Hon'ble Tribunal.
- 8.27. It is submitted that the said bids and Orders were in the year 2019 whereas the present bid was in 2020 and is being considered in 2024. Further the bids in 2019 were before the communication dated 05.03.2020 of Government of India related to ceiling tariff. With regard to ceiling tariff, it is submitted that the Government of India has on 05.03.2020 clarified that there should not be any ceiling tariff. The bid process issued in 2020 has considered a ceiling tariff.
- 8.28. The Respondent No. 1 has also referred to issues related to Dholera Solar Park which was not relevant. The intent and purpose of Competitive Bid Guidelines is to discover low tariff and if there is a view that the tariff discovered is comparatively higher, then the same cannot be accepted irrespective of the challenges in the area. The aspect of tariff and market trends is to be considered. Therefore, the issue has to be considered as to whether the present bid tariff is acceptable in light of the circumstances highlighted in the Petition.
- 8.29. Further, the attempt of the Respondent No. 1 to refer to the aspects and intents of the Dholera Solar Park or the alleged policy decision of the Government of Gujarat is misconceived. The alleged issue of value of the Solar Park cannot be raised by the Respondent No. 1 as the same is the prerogative of the State Government who has also approved the retendering for the Dholera Solar Park. When the State Government itself had approved the re-tendering, there is no cause for the Respondent No. 1 to rely on alleged Government policy to insist that the earlier tender be taken to fruition.

8.30. The submissions made by the Respondent No. 1 in regard to the alleged issues in Dholera Solar Park is not admitted and in any case, the same is not a subject matter of the present petition. Further, even if there are issues in solar park, this does not reason against the consideration of a fresh tendering and discovery of price. The alleged challenges therefore cannot be considered at this stage.

8.31. It is submitted that the Letter of Award and timeline are a matter of record. It is reiterated that the Letter of Award was not an unconditional acceptance and there were several steps to be undertaken including but not limited to the adoption of tariff by the Commission. The Letter of Award specifically provides as under:

*“.....is required to sign the Power Purchase Agreement (PPA) with GUVNL as per the Draft PPA issued... within 90 days...; and
.....the PPA will be subject to adoption of tariff by GERC under Section 63 of the Indian Electricity Act, 2003,
...This LOA is subject to compliance of all terms and conditions of RfS Documents and the Final PPA to be signed between GUVNL and Authorised Bidder.
....”*

8.32. Further even as per the timeline in the Guidelines, the signing of the PPA as a separate and independent step, besides the approval of the Commission which is also recognized in the RfS.

8.33. It is not admitted that the Respondent No. 1 had commenced any activities etc. and in any case, the Respondent No. 1 was well aware that the PPA was yet to be executed and the approval of the Commission had yet to be received. There was no effective contract till such approval by the Commission. In any case, the timelines for the implementation for the project including investment/financial closure were to be considered as per the PPA. The Respondent No. 1 cannot claim any equity in this regard.

8.34. It is submitted that email dated 15.10.2020 is a matter of record and there is no unconditional acceptance by GUVNL.

- 8.35. It is submitted that GUVNL had filed the Petition before the State Commission on 05.11.2020 without any delay and the hearing was held on 29.12.2020. It is submitted that the Respondent No. 1 had also not written to GUVNL to enquire about the impleadment of Respondent No. 1 in the said proceedings. Even as per the Respondent No. 1, the application for impleadment was filed only on 29.01.2021 when the Order dated 29.01.2021 deciding the Petition No. 1906 of 2020 had been passed. The Commission passed the Order dated 01.01.2021 wherein various aspects in regard to the competitive bid held and the price discovered was raised by the Commission.
- 8.36. The Commission had raised various concerns and aspects and while GUVNL had made submissions during the hearing, when the Commission had raised concerns, the same were to be considered by GUVNL and was done by GUVNL. Otherwise the entire purpose of requirement of approval of the State Commission under Section 63 and 86 read with Guidelines would be rendered redundant. There cannot be any issue raised on the stand taken by GUVNL particularly when the same is with the consent of Government of Gujarat. On 29.01.2021, the Commission after considering the affidavit filed by GUVNL dated 27.01.2021 passed the Order dated 29.01.2021 noting that the proposed action of GUVNL is bonafide and for public good and common good and ultimate beneficiary is the public at large.
- 8.37. It is denied that there is any unlawful relief sought by GUVNL. In fact the Hon'ble Tribunal in case of SunE Solar has upheld similar action taken by the Distribution Companies and State Commission. The Respondent No. 1 cannot claim that consideration of recent price trends and interest of consumers and public interest is untenable which is also contrary to the decision by the Hon'ble Supreme Court in the MB Power Case (Supra). GUVNL was awaiting the Order for signing of the PPA as the approval of the Commission. The PPA was subject to the approval of the Commission was also specified in the Letter of Award. Before 90 days had expired from the Letter of Award dated 09.10.2020, the issues had been raised by the Commission in the Petition No. 1906 of 2020 and the same had to be considered by GUVNL. It is submitted that when the issue had been raised by the Commission and there was no approval, GUVNL could not have executed the PPA.

- 8.38. The Respondent No. 1 was aware that the approval of Commission was required and if the Respondent No. 1 chose to incur expenditure without such approval, the same cannot be the basis to claim any relief. In any case, the timelines for the project were to be considered from the PPA. It is denied that the tariff was competitive as can be seen from the tariff discovered, including the tariff of Rs. 1.99 per unit which has been subject matter of consideration in Order dated 01.01.2021. Further, it is clear that the tariff is higher since even today, the Respondent No. 1 is claiming to continue with the said price even though it is claiming that any delay in execution of project would have adverse impact on the anticipated project cost. The fact that the Respondent No. 1 is willing to continue with the same tariff despite this alleged adverse impact demonstrates that the tariff was not competitive but was higher tariff that the Respondent No. 1 wants to take advantage of at the cost of consumers in the State.
- 8.39. It is denied that there is a concluded contract and the LOA was only a prelude to the contract. The Respondent No. 1 cannot look at selective conduct of GUVNL. The very fact that the Petition 1906 of 2020 was filed shows that the approval of the Commission was a requirement and without which the contract cannot come into existence. Further, contents of Letter of Award dated 09.10.2020 make it clear that it is a conditional Letter. In similar circumstances, the Hon'ble Tribunal in *SunE Solar B.V. -v- Delhi Electricity Regulatory Commission and Others*, order dated 18.07.2018 in Appeal No.22 of 2016 and the Hon'ble Supreme Court in *PSA Mumbai Investments PTE. Limited -v- Board of Trustees of the Jawaharlal Nehru Port Trust and Another, (2018) 10 SCC 525* has held that such letters do not form a concluded contract.
- 8.40. Clause 4.4.5 of the RFS refers to the decision of GUVNL being binding on participating bidders but does not in any manner refer to there being a concluded contract. It only means that the bidders cannot challenge the decision of GUVNL. Further there is no provision that such decision is binding on GUVNL particularly when Section 63, 86(1)(b) and Guidelines specifically recognize the requirement of approval of the PPA. Similarly the Letter of Award also recognized that the same is subject to the approval of the Hon'ble Commission.
- 8.41. It is submitted that there is no duty to harmonise the interests of consumers and generators. The adoption of tariff under Section 63 as well as approval of

Procurement of Power including the price under Section 86(1)(b) by the State Commission is provided to protect the interests of consumers. When the generators sell directly to non-distribution licensee, the aspect is covered under Section 49 and for which the Commission plays no role for determination of tariff nor is any approval required. The approval is only in case of procurement by distribution licensee. The Respondent No. 1 cannot that the bid has to be adopted in the interest of generators and contrary to interest of consumers. The interest of generators is relevant at the time of determination of the tariff in the form of reasonable costs to be allowed. However, this would not apply in the case of a competitive bid, where the generators submit a bid. If there are other generators who may bid lower tariff, there is no reason why the higher tariff of Respondent No. 1 should be accepted. The standardization or uniformity is in relation to the framework and does not require the State Commissions to approve and adopt the tariff if it is not in consumers' interest. Further Clause 5.8.4 refers to return on investment which is again an issue for determination of tariff under Section 62. GUVNL craves reference to the provisions referred in Para 4.13 for their true interpretation and scope at the time of hearing.

8.42. The transparency or regulatory certainty does not require that the Commission has to adopt the tariff even if the tariff is higher than the market trends. The RfS itself notes that GUVNL can reject all bids or short close. As recognized by the Hon'ble Supreme Court in similar clause, the bids can be annulled at any stage till signing of the agreement (PPA in this case) and further in this case approval of the Commission. There is no impact on regulatory certainty for conduct of another tendering process. The Respondent No. 1 is free to keep its bid alive or not and participate in the new tender or not. In this regard, reliance is placed upon the Hon'ble Supreme Court in case of Gujarat Urja Vikas Nigam limited v. Solar Semi-Conductor Power Company India Private Limited (2017) 16 SCC 498.

8.43. It is submitted that the Respondent No. 1 has not disputed the comparative tariffs and the impact computed in the Para 40 of the Petition. The only response of the Respondent No. 1 is on the alleged issues in the Dholera Solar Park which has already submitted by GUVNL is not relevant. The intent and purpose of Competitive Bid Guidelines is to discover low tariff and if there is a view that the tariff discovered

is comparatively higher, then the same cannot be accepted irrespective of the challenges in the area. There is a valid concern as to why the higher tariff should be proceeded with when there are cheaper options available, even within the State of Gujarat. In any case, if there are issues in the Solar Park, there is no justification to avoid a fresh tendering and discovery of price. The purpose and intent of competitive bid is to discover lower tariffs and if the lower tariff is not discovered, neither GUVNL nor the Commission can be compelled to accept such higher tariff or be prevented from carrying out a fresh tendering.

8.44. The geographical location of the Dholera Solar Park and the development of the area cannot be the overarching consideration for conclusion of the PPA at the price discovered when the relevant materials available provides for the possibilities of the contract being arrived at much lower price. The bidders have no vested right to demand that the bid submitted by them at the price of Rs. 2.78 to 2.81 per KWh should be mandatorily approved by the State Commission without adopting the alternate avenues. The Commission is required to safeguard the interest of the Consumers at large and the same cannot be ignored for other considerations or peculiar features of the location of Dholera Solar Park. The State Commission cannot ignore the significant price advantage available for Procurement of power as discovered in the related other competitive bid processes and still proceed to approve an higher tariff without exploring the possibilities of reduction in prices in Dholera Solar Park. Even if there are issues in the Solar Park, there is no justification to avoid a fresh tendering and discovery of price.

8.45. Further, the contention that the tariff discovered in other bids cannot be compared to the tariff in the present bid is frivolous. The chart provided by the Respondent No. 1 is not admitted. GUVNL has provided the details of tariff discovered both in bids initiated by GUVNL and by SECI and GUVNL reiterates the same. Further, the Respondent No. 1 itself accepts that the rise in tariff also relates to the fact that customs duty etc is included in the same. Even with consideration of customs duty, the tariff discovered is lower than the tariff bid by the Respondents. It is denied that the tariff is likely to be higher in any future bid. If the Respondent No. 1 is confident about the bid being higher, then there is no harm in the re-tendering with Respondent No. 1 keeping its bid alive. However the claim of the Respondent No. 1

is to adopt the higher tariff today without the benefit of the re-tender which only suggests that the Respondent No. 1 anticipates that the new bids may be lower. It is denied that the tariff bid by Respondent No. 1 is market aligned either in 2020 or today.

8.46. It is submitted that the aspect of Communication dated 05.03.2020 and its impact on the bid is a legal issue and has to be considered by the Commission. The Government of India has on 05.03.2020 clarified that there should not be any ceiling tariff. The bid process has considered a ceiling tariff.

8.47. The Respondent No. 1 is seeking to limit and restrict the powers of the State Commissions which cannot be accepted. The adoption of tariff necessarily requires the consideration of whether the tariff is in interest of consumers. It cannot be that exorbitantly high tariffs are adopted because there cannot be any comparison with tariffs discovered contemporaneously or even subsequent to the bid. There is no bar in considering subsequent developments/tariffs. It would mean that even if the tariff of Rs. 10 per unit is discovered, the same is bound to be accepted and adopted by the Commission because there is no provision for consideration of price at the time of adoption of tariff. This would be absurd. Such a claim is contrary to the purpose and intent of promotion of competition and protection of consumer interest through Tariff Based Competitive Bidding Process for procurement of power. In the present case, the Guidelines have left the evaluation open and therefore in any case, the Appropriate Commission would have the power to go into the aspect. Even otherwise, the State Commissions have powers under Section 86(1)(b) to consider the aspect of price while considering the power procurements.

8.48. It is denied that the LOA is a final or clear or unequivocal acceptance or confirmation. This is patently contrary to the Letter of Award itself which is highlighted in Para 20 of the Petition. Further when the approval of the Commission is a necessary requirement under the law, then there can be no issue of any final acceptance without such approval. GUVNL has in the Petition also provided the similarity of the present case with the case of Sun E Solar.

8.49. The Respondent No. 1 has sought to distinguish the judgment on irrelevant and frivolous basis. The facts and aspects on the basis of which the Hon'ble Tribunal had

rendered the judgment are similar to the present case and therefore the judgment is applicable. It is stated that the issue of competitive bidding guidelines makes no difference to the aspect of whether the LoI/LoA is concluded contract or not. Even the Guidelines envisage the signing of the PPA and approaching the Hon'ble Commission for adoption of tariff. Thus, there is a stronger case for the LOA not to be considered a concluded contract in view of the Guidelines.

8.50. The Respondent No. 1 is making an artificial distinction which has no relevance to the ratio decendi of the Decision of the Hon'ble Tribunal. The aspect on which the Hon'ble Tribunal considered the withdrawal was reduction in the price. There is no reference to any draft Guidelines and there was no bar in the bid process being conducted in absence of the Guidelines and in fact the same has been approved by the Hon'ble Courts. Further even in the present case, the proposal was for re-tendering and without ceiling tariff as per Communication dated 05.03.2020. Further, it is submitted that the present bid were conducted with ceiling tariff which was directed not to be considered in Communication dated 05.03.2020 by the Government of India. Further, the issue considered by the Hon'ble Tribunal was the reduction in prices which is also the case in the present case. There is no statutory mandate to approve the tariff when the same is high and there is evidence of reduced tariff being available. The issue of earlier rounds is not relevant when the GUVNL has proposed a re-tendering with the consent of Government. There is no reason why there cannot be a re-tender.

8.51. The attempt of the Respondent No. 1 to distinguish or differentiate the said judgment on the basis that there is a letter of award in the present case as against a Letter of Intent is misconceived. The nature of the LoI in said case and the LoA in the present case being similar, the mere nomenclature as LoI or LoA will not make a difference. The present LoA is also conditional and was subject to various conditions including adoption of tariff by the Commission. The Respondent No. 1 is selectively reading the LoA. In fact, in the present case, the LoA has been made subject to signing of the PPA. The LoA is also subject to the terms and conditions which were brought out in the Letter of Award which are points 1 to 5. Further the LoA states *"This LoA is subject to compliance of all terms and conditions of RFS Documents and the Final PPA to be signed between GUVNL and Authorised Bidder"*.

Therefore the claim that the LoA is not conditional is patently incorrect. It is the specific case of GUVNL that the LoA is conditional and GUVNL has placed all facts before the Commission to demonstrate that the adoption of tariff is not in interests of consumers.

- 8.52. It is denied that there is any concluded contract. As already recognized in Sun E Solar and PSA Mumbai Investments, there is no concluded contract and it is open to GUVNL to annul the bids and withdraw at this stage. While it is denied that execution of the PPA is a ministerial act but even otherwise, even if the PPA was signed, it would still be a contingent contract. Since the requirement of approval and adoption by the Commission has not yet occurred, the contract is not concluded and is contingent on the approval of the Commission. It cannot be the case of the Respondent No. 1 that there is an enforceable contract and the PPA (assuming but not admitting that it is signed) would become effective even without the approval of the Commission. The Respondent No. 1 is in effect contending that there is no role of the Commissions which cannot be accepted.
- 8.53. It is absurd that while recognizing the requirement of protection of consumers' interest, the Respondent No. 1 is contending that the Commission cannot look into it merely because there is a competitive bid. This would render the requirement of approval of Commission under Section 63 and 86(1)(b) otiose. It cannot be that the Commission will be necessarily be required to approve and adopt the tariff irrespective of any tariff that may be discovered merely because it is solar power. If the contention of the Respondent No. 1 is accepted, it would mean that even if the tariff of Rs. 10 per unit is discovered, the same is bound to be accepted and adopted by the Commission Thus such a claim would also be contrary to the purpose and intent of promotion of competition through Tariff Based Competitive Bidding Process for procurement of power. Further, the Solar Bidding Guidelines leave the issue of evaluation open and therefore the Commission has powers under Section 86(1)(b) to consider the issue. Even otherwise, the powers under Section 86(1)(b) is not excluded.
- 8.54. It is denied that there is any backdoor ceiling. It is entirely open for the Respondents to keep their bid alive or participate afresh if there is any concern. Even if the tender is rejected on the basis of high price, it is clear that the said tariff is not acceptable

and may serve as an indication to the future bidders. Further, even assuming but not admitting the contention of the Respondent No. 1, it may be in consumer interest to ensure discovery of lower tariff. Further the Respondent No. 1 on one hand argues that the future tenders are likely to result in higher tariff but now contends that there is a ceiling and therefore lower tariff.

8.55. It is denied that the Commission cannot take into consideration subsequent developments. There is no such finding of the Hon'ble Tribunal. Further, the Hon'ble Tribunal had not remanded the matter back to the Commission. The Hon'ble Tribunal has only set aside the orders on violation of principles of natural justice and referred to the invocation of jurisdiction of the Commission by the parties. Any approach by the party would be after the said order and would have to be considered as such. There is no freezing of the situation on any previous date. Even in remand, subsequent developments can be considered, particularly when it is an open remand.

8.56. There is no provision barring the re-tendering. When there is a requirement of approval of the Appropriate Commission, it cannot be considered a deviation for the Appropriate Commission to reject the bid. Even otherwise, there is no deviation or frustration of objective of the Guideline. There is no tinkering of RFS either. It is denied that the role of the Commission is limited as sought to be alleged/contended by the Respondent No. 1. The safeguarding of consumers' interest as envisaged in Section 61(d) of Electricity Act, 2003, the National Tariff Policy etc. is the paramount aspect and in case, the Commission considers that, after the Letter of Award and pending the adoption of tariff the solar power prices have reduced considerably, it is entitled to refuse to adopt the tariff or even allow GUVNL to adopt the course of re-tendering or to adopt other avenues before deciding on the adoption order at a tariff in the range of Rs. 2.78-2.81 per unit, which results in higher financial payment at the cost of the consumers. Further enabling provision to continue with the bid process in case of lesser number of bidders with consent of Commission does not mean that there is a mandate to continue the bid process. It is always open to the Commission/GUVNL to adopt the process appropriate to consumer interest and there is no compulsion on the bidders to accept such course by keeping its bid alive. The option was given to the Respondents and they can exercise the option as they

wish. However, what the Respondents cannot do is insist that their bid is accepted and PPA signed even if the tariff is not conducive.

8.57. The Respondent No. 1 has made vague references to the CVC Guidelines; however admittedly even in the said case, the re-tendering can be done for unreasonable of tariff as in the present case. Merely because the tariff is lower than ceiling tariff does not mean that the tariff has to be accepted. Further in regard to the ceiling tariff, there is also the aspect of the communication dated 05.03.2020 from Government of India in regard to the not having ceiling tariff. If the contention of the Respondent No. 2 is accepted that merely because the bid tariff is within the ceiling tariff of Rs. 2.92, it is not high, then there would be no case of exercise of power under Clause 4.4.5 to short close and there will never be a situation to reject the bids. All bids higher than ceiling tariff are non-responsive and therefore it would mean that all responsive bids are bound to be accepted and there is no need for any approval or consideration of the Commission. It is submitted that whether the bid tariff are high or not has to be considered in view of the prevailing facts and circumstances including the tariffs discovered in other recent bids. There is no question of vitiation of the sanctity of the bid process. GUVNL has the right to annul the bid process at any stage prior to signing of the PPA and approval of the Commission as recognised by the Hon'ble Supreme Court and Hon'ble Tribunal. There is no mandate for GUVNL to accept the bid. In fact the sanctity of the bidding process would mean that the bid conditions including the rights of GUVNL as well as the requirement of approval is to be recognized.

8.58. It is denied that there is any contractual obligation of GUVNL which is being foregone. Further, when there is a specific requirement of approval of the Commission recognized in the law and the objective is to protect consumer interest by reducing the tariff, the Respondent No. 1 cannot now contend that public interest be ignored. The issue is not bringing more money to public exchequer but to ensure that the procurement of power is at economical rates to benefit the consumers at large. The consumers' interest has been recognized by the Hon'ble Supreme Court.

8.59. It is further denied that there can be any expectation of the Respondent No. 1, legitimate or otherwise. There cannot be any legitimate expectation that GUVNL would not act in consumer interest or place all relevant facts to the Commission or

consider aspects raised by the Commission. The Respondent No. 1 was well aware that the approval of Commission is required. The Respondent No. 1 cannot expect that this approval would be mandatorily given without any consideration on tariff.

8.60. The Respondent No. 1 has sought to raise concepts which have no relevance to the present case. It is submitted that no issue of Article 12 or Article 14 can be raised in the present proceedings. Even as per the Respondent No. 1, the issue is contractual/commercial contracts and the Respondent No. 1 cannot raise any issue of fairness and reasonableness in such scenario. The Hon'ble Courts have recognised that there cannot be any duty to act reasonably or fairly in commercial contracts. Further, it is fair and reasonable to place all relevant facts to the Commission.

8.61. The Respondent No. 1 is seeking to claim the fairness and reasonableness towards itself while ignoring the fairness and reasonableness for the consumers at large. The only relevant aspect for procurement of power as a distribution licensee is that the approval of the Commission is required which is to protect interest of consumers. The public good herein is not the interests of the Respondents but the interest of consumers. The attempt of the Respondent No. 1 to place itself and its interest over and above the interest of consumers and that too by relying on alleged status of GUVNL as "State" is frivolous and misconceived. The reasonable and legitimate expectation would be that the procurement of power should be at reasonable rates and this is why the approval of the Commission is required.

8.62. There is no reason for the Respondents to avoid consideration by the Commission of the appropriateness of the tariff discovered in the bid. There cannot be any expectation of any bidder that its bid would be accepted without any analysis of whether the bid is commensurate with the market trends. In fact as a State, it is all the more reason to ensure that the procurement is at economical rates, particularly when the burden of procurement cost is passed on to the consumers in the State.

8.63. It is submitted that the role of the Commission is to protect the interests of the consumers. Contracts of generator with non licensees are not subject matter of regulatory control of the Commissions. The objective of the competitive bid/Guidelines was also to protect consumer interest and seeking reduced tariff.

The Respondent No. 1 is selectively reading the provisions. Further, the standardization and uniformity of process has no relevance to the present case. There is no mandate on the Appropriate Commission to adopt the tariff irrespective of the tariff discovered. There is no consideration by the Commission of profitability of the investors. The bid is given by the Generators and the only issue to be considered is whether the bid is acceptable or not based on consumer interest. If there is a possibility of lower bids/tariff, there is no reason why higher tariff/bids should be accepted. The regulation of power procurement is to protect interest of consumers. It is also not clear why the consumer interest cannot be the basis of consideration.

8.64. There is no deviation of the Guidelines and even otherwise, the deviations can be approved by the Commission. There is no unfounded ground that consumer interest would be harmed. The objective of the Guidelines cannot be that whatever tariff is discovered has to be adopted; otherwise, the requirement of approval of the Commission would become redundant. The Guidelines also recognize the requirement of adoption of tariff by the Appropriate Commission and therefore there is no deviation when Commission decides on such aspects, including rejecting the bid or other avenues. This does not mean that the Guidelines have not been followed or that the Guidelines serve no purpose. There is no vitiation of any long term interest. There is no changing of rules mid-way. Every bidder is well aware that the bid process may be annulled or tariff rejected. This is part of the process. The Hon'ble Tribunal has in the case of Sun E Solar also allowed the distribution licensee to withdraw the process.

8.65. It is submitted that there is an element of market driven prices. However, when the prices discovered in one bid are higher than the bids discovered otherwise, then there is every reason to reconsider the aspect. The bidders have no vested right to demand that the bid submitted by them at the price of Rs. 2.78 to 2.81 per KWh should be mandatorily approved by the State Commission without adopting the alternate avenues. The Commission is required to safeguard the interest of the Consumers at large and the same cannot be ignored for other considerations or peculiar features of the location of Dholera Solar Park. The alleged issue of social and economic value for the public cannot be raised by the Respondent No. 1 as the

same is the prerogative of the State Government who has also approved the retendering for the Dholera Solar Park. There is no issue of sanctity of the bidding process. The annulment of the bid process or otherwise rejection of the bid by the Commission or consideration of alternate avenues is not contrary to the Guidelines or bid process.

9. Thereafter, the matter was heard on 28.02.2024. After hearing the parties, the Commission has passed the Daily Order dated 01.03.2024 wherein while recording the submissions of the parties, the Commission had decided that an appropriate Order will be passed by the Commission with regard to discovered tariff under bidding process for RfS dated 18.03.2020 for the Respondent No. 1. The relevant portion of the aforesaid Order is reproduced as under:

“.....

1. *The matter was kept for hearing on 28.02.2024.*
2. *When the matter was called out, neither the Respondent No. 2 VERUPL nor any representative on behalf of the Respondent No. 2 was present. However, Office of the Commission received an email dated 28.02.2024 from Ms. Archita Kashyap of PLA Advocates regarding inability of Mr. Aniket Prasoon to remain present for today's hearing on account of his personal exigency and accordingly requesting to adjourn the matter for a few days.*
3. *Ld. Adv. Ms. Ranjitha Ramachandran, appearing on behalf of the Petitioner submitted that the Petitioner GUVNL has sent a letters to all bidders selected under competitive bidding process conducted vide RfS dated 18.03.2020 (Phase IX) issued by GUVNL for procurement of 700 MW Solar power to be set up in the Dholera Solar Park, Gujarat. It is submitted that without prejudice the rights and remedies available under law, the Petitioner has made an offer to all bidders regarding Procurement of Power from the Power Project to be set up by developers at the discovered tariff inclusive of the impact of BCD and all other taxes upto date of signing of PPA. In response to the said letter, the Respondent No. 1 TGPPL has not unconditionally but by and large accepted offer of the Petitioner stating that they have agreed to terms of the Petitioner that the Respondent No. 1 accepted all Change in Law pertaining to BCD, GST and other taxes upto the date of signing of the PPA or 15.03.2024 whichever is earlier. Thereafter, if any change in law occurred in terms of the PPA, the Respondent No. 1 is eligible to claim for it. It is also submitted that the Petitioner GUVNL has not received any response from the Respondent No. 2 (VERUPL) whereas the Respondent No. 3 TPCL has sought time for consideration. It is submitted that the Petitioner GUVNL has accepted the discovered tariff of Rs. 2.81 per unit for Respondent No. 1 TGPPL which shall be inclusive of Basic Custom Duty (BCD) & all other taxes up to the date of signing of the PPA instead of 05.02.2024 as suggested by TGPPL. It is*

further submitted that such tariff of Rs. 2.81 per unit shall be subject to adoption by the Commission and that the PPA to be signed in accordance with the final Order of the Commission in the present matter.

4. *Ld. Sr. Adv. Mr. Sanjay Sen, appearing on behalf of the Respondent No. 1, referred the Petitioner GUVNL's letter dated 08.02.2024 and submitted that in response to the said letter, the Respondent TGPPL vide its letter dated 15.02.2024 has given confirmation and accepted the tariff of Rs. 2.81 per unit inclusive of BCD & all other taxes applicable up to the date of signing of the PPA or until 15.03.2024 whichever is earlier, subject to adoption of such tariff by the Commission. It is submitted that if the Change in Law based concession is given, the same cannot be provided open ended. He further submitted that after signing of the PPA or 15.03.2024 any Change in Law occur other than above Change in Law, as agreed by the Respondent, the same can be qualify for relief under the Change in law by the Respondent. It is submitted that the Commission may secures the present bid of 200 MW capacity as the present tender is of 2019 floated for 1000 MW by the Petitioner. It is further submitted that the Commission may approve the discovered tariff of Rs. 2.81 per unit of the Respondent TGPPL otherwise the allocated capacity of 200 MW of the Respondent will go away in terms of applicability of new taxes or new tariff discovered under competitive bidding process. It is requested that the Commission while considering the adjournment request of other party, may also approve and adopt the tariff of Rs. 2.81 per unit for 200 MW allocated capacity of Respondent No. 1.*
- 4.1. *Ld. Sr. Adv. for the Respondent No. 1 strongly argued that the RfS dated 18.03.2020 is very old and at present, financial year is nearer to its end and therefore keeping the rest part of the matter pending, the present matter is required to be decided with regard to adoption of allocated capacity of 200 MW of Respondent No. 1 as successful bidder which is also agreed upon by the counsel of the Petitioner GUVNL and further no objections have been raised by the counsels appearing for other Respondents.*
5. *In response to the above contentions of the Respondent No. 1, the counsel appearing for the Petitioner GUVNL submitted that in regard to the adjournment sought by the Respondent No. 2 is concerned, there is no objection to the same by the Petitioner. However, the Commission may consider and adopt the discovered tariff of Rs. 2.81 per unit for 200 MW allocated capacity for Respondent No. 1 who have participated and became the successful bidder in the aforesaid bidding process conducted by the Petitioner vide RfS dated 18.03.2020 (Phase IX).*
6. *Ld. Adv. Mr. Shivam Sinha, appearing on behalf of the Respondent No. 3 TPCL, submitted that the Commission may give two weeks' time to file reply in the matter and thereafter post the matter for hearing on any date subject to the convenience of the Commission.*
7. *Ld. Adv. Ld. Mr. Anuj K. Trivedi, appearing on behalf of the Respondent No. 4, submitted that the Commission may permit filing Vakalatnama on behalf of the Respondent in the present matter and also requested the Commission to*

give two weeks' time to file reply in the matter and thereafter post the matter for hearing on any date subject to the convenience of the Commission.

8. *We have considered the submissions made by the parties. We note that the counsel of the Petitioner submitted that without prejudice the rights and remedies available under law, the Petitioner GUVNL has offered to all bidders regarding procurement of power from the power project to be set up by developers at the discovered tariff inclusive of the impact of BCD and all other taxes upto date of signing of PPA and in response to the same, the Respondent No. 1 TGPPL has accepted offer of the Petitioner whereas the Respondent No. 2 (VERUPL) has not made any response and the Respondent No. 3 TPCL has sought time for consideration. We also note that the Petitioner GUVNL has accepted the discovered tariff of Rs. 2.81 per unit for Respondent No. 1 TGPPL which shall be inclusive of Basic Custom Duty (BCD) & all other taxes up to the date of signing of the PPA instead of 05.02.2024 as suggested by TGPPL. It is further submitted that such tariff of Rs. 2.81 per unit shall be subject to adoption by the Commission and that the PPA to be signed in accordance with the final Order of the Commission in the present matter. Moreover, the counsel for the Respondent No. 1, submitted that the Respondent TGPPL vide its letter dated 15.02.2024 has given confirmation and accepted the tariff of Rs. 2.81 per unit inclusive of BCD & all other taxes applicable up to the date of signing of the PPA or until 15.03.2024 whichever is earlier, subject to adoption of such tariff by the Commission and also requested the Commission that while considering the adjournment request of other party, also to approve and adopt the tariff of Rs. 2.81 per unit for 200 MW allocated capacity of Respondent No. 1. It appears to us that it is expediate to pass an Order in the present matter in so far as adoption of discovered tariff for allocated capacity of 200 MW of Respondent No. 1 is concerned, more particularly, in view of current financial year which is nearer to be completed by keeping the rest part of the matter pending for the Respondents No. 2 to 4. We also note that the Petitioner GUVNL has agreed to adoption of tariff by the Commission for Respondent No. 1 for 200 MW capacity as successful bidder whereas the counsels of other Respondents do not raise any objection to such contention of the Respondent No. 1. We also note that in so far as adoption of tariff in respect of 200 MW capacity of Respondent No. 1 is concerned, both the Petitioner and the Respondent No. 1 have made their submissions and completed the arguments in the matter. Hence, we decide to pass an appropriate Order with regard to discovered tariff under bidding process for RfS dated 18.03.2020 for the Respondent No. 1.*
- 8.1. *We also note that the counsels appearing for the Respondents No. 3 & 4 have requested and sought time to file their responses in the present matter. Accordingly, the Respondents No. 3 & 4 are directed to file their responses, if any, on or before 02.03.2024 with a copy to the Petitioner. The Commission will decide and pass an appropriate Order with regard to the bids submitted by the Respondents No. 2 & 3 separately, after filing of their responses and hearing the parties concerned in the present matter.*
- 8.2. *Having considered the request of counsel of the Respondent No. 2 to adjourn the matter due to personal difficulty and the Petitioner has no objection to the*

same, the matter is adjourned. In so far as adoption of tariff by the Commission for Respondent No.'s 2 & 3 is concerned, an appropriate Order will be passed by the Commission separately.

.....”

10. The Commission in the said Order also directed the Respondents No. 3 & 4 to file their responses, if any, with a copy to the Petitioner and also decided that the Commission will pass an appropriate Order with regard to the bids submitted by the Respondents No. 2 & 3 separately, after filing of their responses and hearing the parties concerned in the present matter.
11. We have gone through the present Petition, reply of Respondent No. 1, rejoinder reply of the Petitioner and additional affidavit filed by Respondent TGPPL and accordingly considered the same as made by both the parties in the present matter. The Petitioner has filed the present Petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003. The Petitioner has sought the approval of the Commission for adoption of discovered tariff quoted by successful bidders under competitive bidding process followed by e-reverse auction of bid No. RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2023 and addendums thereto, as stated in para above.
 - 11.1. We note that the Petitioner GUVNL issued RFS No. GUVNL/1000 MW/Solar (Phase V) dated 16.01.2019, prepared in line with the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Project' issued by the Ministry of Power, Government of India on 03.08.2017, as amended from time to time, for procurement of 1000 MW Solar power on long-term basis from Solar PV Power Projects to be set up in Dholera Solar Park on Build Own Operate (BOO) basis. The 1000 MW RFS specified a ceiling tariff of Rs. 2.75/unit. As against the 1000 MW RFS, the Petitioner only received bids from 2 bidders for a total capacity of 300 MW. However, as per the procedure laid out in the 1000 MW RFS for under-subscription of tender, the Petitioner only executed Power Purchase Agreement with Tata Power Renewable Energy Limited for 250MW capacity.
 - 11.2. The Petitioner launched another competitive bidding process and issued RfS No. GUVNL/750 MW/ Solar (Phase VII) on 24.06.2019 prepared in line with the GoI

Bidding Guidelines, for procurement of balance 750 MW Solar Power on long-term basis from Solar PV Power Projects to be set up in Dholera Solar Park on BOO basis. The 750 MW RFS also specified a ceiling tariff of Rs. 2.75/unit. In this instance as well, the Petitioner only received one bid from Tata Power Renewable Energy Limited for 50 MW capacity and executed a Power Purchase Agreement with Tata Power Renewable Energy Limited for the said capacity.

- 11.3. The Commission by way of Order dated 23.10.2019 in Petition No. 1818 of 2019 filed by the Petitioner under Section 63 of the Electricity Act, 2003, adopted the tariff discovered pursuant to 1000 MW Bid and 750 MW Bid. The Commission has observed that 'the Petitioner has made sincere and multiple attempts for inviting the bids for the entire 1000 MW capacity of Dholera Solar Park and despite its best efforts, the Petitioner could get bids only up to 300 MW capacity. It is obvious that the developers do not seem to be interested on account of challenging site conditions as in none of the attempts the Petitioner could get the bids in excess of 300 MW capacity against tendered capacity of 1000 MW and granted consent to the Petitioner for continuing the bidding process vide RfS No. GUVNL/750 MW/Solar (Phase-VII) dated 24.06.2019.
- 11.4. We note that the Petitioner Gujarat Urja Vikas Nigam Limited, Department for Promotion of Industry and Internal Trade, Solar Energy Corporation of India, Gujarat Power Corporation Limited held a meeting on 20.02.2020 to identify the reasons for the poor response to the 1000 MW and 750 MW Bids and find ways to overcome the same. During the elaborate discussions held in the meeting, it emerged that the lack of interest on the part of the bidders in the 1000 MW Bid and 750 MW Bid was on account of the challenging geographical and geotechnical conditions of Dholera Solar Park which necessitate expenditure of higher capital cost on the implementation of a Solar PV Power Project within the Park as compared to the capital cost requirement for a Solar PV Power Project set up at any other place. Dholera Solar Park has been envisaged as a 5 GW solar park by the Government of Gujarat and is being developed by the Petitioner and other Government agencies within the Dholera Special Investment Region. The said region is situated on 920 Sq. Km. of waste land along the Gulf of Cambay out of which 110 Sq. Km. has been earmarked for the development of Dholera Solar Park. Due to unavailability of land for setting up solar

projects in the State of Gujarat, utilisation of such waste land is an important policy decision of the State. SECI, being aware of the afore-stated challenges, was of the view that the ceiling tariff of Rs. 2.75/unit was quite low and ceiling tariff of Rs. 3.06/unit would be able to attract more developers to the Dholera Solar Park. The Petitioner analysed the tariff recommended by SECI and decided that the ceiling tariff of Rs. 2.92/unit would be reasonable for Dholera Solar Park. The Petitioner arrived at the ceiling tariff of Rs. 2.92/unit based on project cost of Rs 4.65 Crore/MW considering high electrical and civil costs due to the challenging geographical conditions.

- 11.5. The Petitioner, in continuation of the 1000 MW Bid, initiated another competitive bidding process and issued RfS No. GUVNL/ 700 MW/ Solar (Phase IX) dated 18.03.2020, prepared in line with the GoI Bidding Guidelines, for Procurement of 700 MW Solar Power on long-term basis from Solar PV Power Projects to be set up in Dholera Solar Park on BOO basis.
- 11.6. The Petitioner had also published the 'Notice Inviting Tender' in two national newspapers having maximum readership regarding this tender. The tender documents were also hosted on the website of the Petitioner as well as on E-Bidding Portal "Electronic Tendering Engine" (ETS) developed by M/s Electronic Tender.com (India) Pvt. Limited who is approved by Ministry of Electronics and Information Technology, GoI vide certificate dated 31.07.2018.
- 11.7. The Petitioner received online bids from 7 (seven) bidders offering aggregate capacity of 1300 MW, which were technically qualified. In accordance with the Technical Evaluation report, as recommended by the Bid Evaluation Committee, the Financial Bids of all the 7 bidders were opened on 13.08.2020 on e-bidding portal in the presence of Bid Evaluation Committee. As per the terms and conditions of tender, the Petitioner conducted e - reverse auction for allocating the tendered capacity of 700 MW.
- 11.8. The Petitioner had specified the ceiling tariff of Rs. 2.92 per unit in the bidding documents against which the following prices were discovered at the closure of the e-reverse auction that was held on the e-bidding portal:

Sr. No.	Name of Bidder	Rs. /Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
1.	Vena Energy Renewables Urja Pvt. Limited	2.78	100	100
2.	The Tata Power Company Limited	2.78	100	100
3.	ReNew Solar Power Private Limited	2.79	200	200
4.	SJVN Limited	2.80	100	100
5.	TEQ Green Power Private Limited	2.81	500	200

- 11.9. The Petitioner has issued Letter of Awards (LoAs) on 09.10.2020 to the bidders mentioned in the above table at the corresponding rates quoted by them and allocated capacity. In case of M/s TEQ Green Power Pvt. Limited, there was a partial capacity allocation of 200 MW as against their quoted capacity of 500 MW. Moreover, as per the terms and conditions of tender, the PPAs were to be signed with above successful bidders within 90 days from issuance of LOA.
- 11.10. Thereafter, the Petitioner filed Petition No. 1906 of 2020 under Section 63 and Section 86(1)(b) of the Electricity Act, 2003 seeking adoption of tariff discovered pursuant to the 700 MW Bid before this Commission on 05.11.2020. The Petitioner filed additional submissions on 27.01.2021 in Petition No. 1906/2020 stating that it does not want this Commission to approve adoption of tariff as prayed for in the Petition and requested for direction for re-tendering.
- 11.11. This Commission vide its Final Order dated 29.01.2021 in the Petition No. 1906 of 2020 disposed of the Petition without adopting the tariff and allowing the Petitioner to initiate a separate re-tendering process for Dholera Solar Park if the Petitioner desires to do so. Thereafter, the successful bidders had filed Appeals against the said Order before the Hon'ble APTEL.
- 11.12. The Hon'ble APTEL while setting aside the Orders dated 01.01.2021 and 29.01.2021, remanded the matter in the appeal back to this Commission for fresh determination.
- 11.13. Thereafter, pursuant to the Hon'ble APTEL's Order, the Petitioner has filed the present Petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003 in regard to the Competitive Bidding Process conducted vide RfS dated 18.03.2020 (Phase IX) issued by GUVNL related to the Procurement of Power from the Solar Power Projects to be set up in Dholera Solar Park in Gujarat.

11.14. The matter was heard on 28.12.2023, 23.01.2024, and 28.02.2024.

11.15. During the hearing, Ld. Adv. Ms. Ranjitha Ramachandran, appearing on behalf of the Petitioner submitted that the Petitioner GUVNL has sent a letters to all bidders selected under competitive bidding process conducted vide RfS dated 18.03.2020 (Phase IX) issued by GUVNL for procurement of 700 MW Solar power to be set up in the Dholera Solar Park, Gujarat. It is submitted that without prejudice the rights and remedies available under law, the Petitioner has made an offer to all bidders regarding Procurement of Power from the Power Project to be set up by developers at the discovered tariff inclusive of the impact of BCD and all other taxes upto date of signing of PPA. In response to the said letter, the Respondent No. 1 TGPPL has not unconditionally but by and large accepted offer of the Petitioner stating that they have agreed to terms of the Petitioner that the Respondent No. 1 accepted all Change in Law pertaining to BCD, GST and other taxes upto the date of signing of the PPA or 15.03.2024 whichever is earlier. Thereafter, if any change in law occurred in terms of the PPA, the Respondent No. 1 is eligible to claim for it. It is also submitted that the Petitioner GUVNL has not received any response from the Respondent No. 2 (VERUPL) whereas the Respondent No. 3 TPCL has sought time for consideration. It is submitted that the Petitioner GUVNL has accepted the discovered tariff of Rs. 2.81 per unit for Respondent No. 1 TGPPL which shall be inclusive of Basic Custom Duty (BCD) & all other taxes up to the date of signing of the PPA instead of 05.02.2024 as suggested by TGPPL. It is further submitted that such tariff of Rs. 2.81 per unit shall be subject to adoption by the Commission and that the PPA to be signed in accordance with the final Order of the Commission in the present matter.

11.16. Ld. Sr. Adv. Mr. Sanjay Sen, appearing on behalf of the Respondent No. 1, referred the Petitioner GUVNL's letter dated 08.02.2024 and submitted that in response to the said letter, the Respondent TGPPL vide its letter dated 15.02.2024 has given confirmation and accepted the tariff of Rs. 2.81 per unit inclusive of BCD & all other taxes applicable up to the date of signing of the PPA or until 15.03.2024 whichever is

earlier, subject to adoption of such tariff by the Commission. It is submitted that if the Change in Law based concession is given, the same cannot be provided open ended. He further submitted that after signing of the PPA or 15.03.2024 any Change in Law occur other than above Change in Law, as agreed by the Respondent, the same can be qualify for relief under the Change in law by the Respondent. It is submitted that the Commission may secures the present bid of 200 MW capacity as the present tender is of 2019 floated for 1000 MW by the Petitioner. It is further submitted that the Commission may approve the discovered tariff of Rs. 2.81 per unit of the Respondent TGPPL otherwise the allocated capacity of 200 MW of the Respondent will go away in terms of applicability of new taxes or new tariff discovered under competitive bidding process. It is requested that the Commission while considering the adjournment request of other party, may also approve and adopt the tariff of Rs. 2.81 per unit for 200 MW allocated capacity of Respondent No. 1.

11.17. Ld. Sr. Adv. for the Respondent No. 1 strongly argued that the RfS dated 18.03.2020 is very old and at present, financial year is nearer to its end and therefore keeping the rest part of the matter pending, the present matter is required to be decided with regard to adoption of allocated capacity of 200 MW of Respondent No. 1 as successful bidder which is also agreed upon by the counsel of the Petitioner GUVNL and further no objections have been raised by the counsels appearing for other Respondents.

11.18. In response to the above contentions of the Respondent No. 1, the counsel appearing for the Petitioner GUVNL submitted that in regard to the adjournment sought by the Respondent No. 2 is concerned, there is no objection to the same by the Petitioner. However, the Commission may consider and adopt the discovered tariff of Rs. 2.81 per unit for 200 MW allocated capacity for Respondent No. 1 who have participated and became the successful bidder in the aforesaid bidding process conducted by the Petitioner vide RfS dated 18.03.2020 (Phase IX).

11.19. We note that the Petitioner is purchasing power in bulk for and on behalf of four Distribution Licensees, viz., DGVCL, MGVCL, PGVCL and UGVCL. The Petitioner also procures the renewable power by entering into agreements with the developers for its four Distribution Licensees towards fulfilment of their RPO as specified by the

Commission in the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 as amended from time to time including the GERC (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2022. In the said Regulations, the Commission has stipulated the RPO requirement of Distribution Licensees till FY 2024-25 as under:

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

From the above table it is apparent that the Petitioner is required to procure substantial quantum of Solar power, since the Commission has increased the Solar RPO in view of the requirement stipulated by the Government of India. Accordingly, in order to meet the Solar RPO target, the Petitioner had initiated the Competitive Bidding Process followed by e-reverse auction for procurement of 700 MW power from the Solar PV Power Projects to be set up in Dholera Solar Park on BOO Basis through RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 and addendums thereto.

11.20. It is observed that the Petitioner initiated the competitive bidding process (followed by e-reverse auction) as per Section 63 of the Electricity Act vide RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 and addendums thereto. The Petitioner had issued public notice inviting tenders in two national newspapers having maximum readership regarding this Tender. Further, the tender/bid documents were also hosted on GUVNL's website as well as on E-Bidding Portal "Electronic Tendering Engine" (ETS) developed by M/s ElectronicTender.com (India) Pvt. Limited and approved by Ministry of Electronics and Information Technology, Government of India vide Certificate dated 31.07.2018 which is also being used by Central

Government agencies such as SECI for carrying out competitive bidding for procurement of renewable energy.

11.21. We note that the last date for submission of bids in the above tender was 31.07.2020 and Technical Bid Opening was held on 04.08.2020. The Petitioner had constituted Bid Evaluation Committee consisting following members for technical evaluation of bids.

Sr. No.	Name	Designation (at the relevant time)
1.	K P Jangid	General Manager, Commerce
2.	Sailaja Vachhrajani	General Manager, IPP
3	Parthiv Bhatt	Company Secretary, GUVNL
4.	J N Pancholi	Chief Finance Manager, F&A

11.22. We note that the Petitioner received online bids from 7 bidders offering aggregate capacity of 1300 MW which were technically qualified. The technical evaluation report signed by the Evaluation Committee is filed with the Petition. In accordance with the report, the Financial Bids were opened on 13.08.2020 on e-bidding portal in the present of the Bid Evaluation Committee and as per the terms and conditions of the bid, GUVNL conducted e-reverse auction. A copy of the e-report generated on the e-bidding portal for the above e-reverse auction is filed with the Petition.

11.23. We note that in pursuant to the above, five (5) Solar Project Developers were selected as per the following details:

Sr. No.	Name of Bidder	Rs./ Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
01.	Vena Energy Renewables Urja Pvt. Limited	2.78	100	100
02.	The Tata Power Company Limited	2.78	100	100
03.	ReNew Solar Power Pvt. Limited	2.79	200	200
04.	SJVN Limited	2.80	100	100
05.	TEQ Green Power Private Limited	2.81	500	200

11.24. We note that the Competitive Bid Process has followed the transparent bidding process. The Petitioner has issued Letter of Awards on 09.10.2020 to the five bidders mentioned in the above table at the corresponding rates and allocated capacity. The Letters of Award recognised that the same is subject to the adoption of tariff by this

Commission and further subject to the final PPA to be signed. The relevant portion of LOA is reproduced as under:

“.....is required to sign the Power Purchase Agreement (PPA) with GUVNL as per the Draft PPA issued... within 90 days...; and

.....the PPA will be subject to adoption of tariff by GERC under Section 63 of the Indian Electricity Act, 2003,

...This LOA is subject to compliance of all terms and conditions of RfS Documents and the Final PPA to be signed between GUVNL and Authorised Bidder.

....”

11.25. We note that in the respect of the query raised by the Commission in its Daily Order dated 01.01.2021 in Petition No. 1906 of 2020, the Petitioner GUVNL had consulted with the Government of Gujarat and proposed for a fresh tendering process to be undertaken and that GUVNL tie up the power at the lowest tariff discovered out of the two tenders. The Petitioner GUVNL has also filed affidavit dated 27.01.2021 before the Commission and after the said affidavit, the Commission has passed an Order dated 29.01.2021 and given liberty to the Petitioner GUVNL approach the Commission for adoption of tariff afresh after taking appropriate actions regarding bidding in accordance with law.”

11.26. Thereafter, five Bidders had filed Appeals before the Hon’ble Tribunal against the Order dated 29.01.2010 being Appeals No. 88 of 2021, 89 of 2021, 90 of 2021, 229 of 2021 and 230 of 2021. The Hon’ble Tribunal in the Application for Interim Relief by TEQ (I.A. No. 250 of 2021 in Appeal No. 88 of 2021 – then DFR No. 56 of 2021) passed the order dated 15.02.2021 as under:

“Heard Appellants as well as Respondents on interim relief. Both parties are directed to file written submissions of their concise arguments. The op on of 07 days given to the Appellant by the Discom to keep the bid valid is extended by another two weeks. Meanwhile, even if the Discom proceeds to call for tenders, we make it clear that the quantum / capacity of the award pertaining to the Appellant should not be issued in favour of third party, pending decision of the Tribunal till disposal of the IA on merits.”

11.27. In view of the above, the Petitioner had proceeded with a fresh RfS dated 15.03.2021 for 700 MW though with clear information about the pendency of the proceedings

before the Hon'ble Tribunal. Subsequently, the Hon'ble Tribunal vide Order dated 24.03.2021 passed the order as under:

"After hearing the parties and on perusal of contents of RFS dated 15.03.2021, we are of the opinion that all the parties to the proceedings shall maintain status quo as it stands today till further Orders."

11.28. In view of the above, the Petitioner GUVNL has submitted that the Petitioner GUVNL has extended the timelines under the new tender from time to time. Thereafter two of the bidders, viz., SJVNL and Renew withdrew their Appeals as recorded in the Orders dated 07.10.2022 and 17.07.2023 respectively of the Hon'ble Appellate Tribunal. Upon withdrawal of the Appeal by SJVNL, GUVNL had amended the tender vide amendment dated 27.06.2023 by reducing the capacity of the tender to 600 MW from 700 MW (reducing the capacity of 100 MW related to SJVNL). Pursuant to the above withdrawal by SJVNL and Renew and upon their request, the Petitioner has returned the bank guarantees to SJVNL and Renew on 03.10.2023. Therefore, as far as SJVNL and Renew are concerned, there is no further action to be taken and their bid in the bidding process is no longer valid.

11.29. Thereafter, the Petitioner GUVNL can proceed with the bid for 300 MW out of the 700 MW which were subject matter of the Phase IX bid which related to SJVNL and Renew. In respect of the three bidders, Respondent Nos. 1, 2 and 3, Appeal Nos. 88 of 2021, 89 of 2021 and 90 of 2021 were heard by the Hon'ble Tribunal and the Order dated 07.08.2023 has been passed by the Hon'ble APTEL.

11.30. The present Petition No. 2283 of 2023 is filed by the Petitioner with regard to only the Respondents No. 1 to 3 totalling to 400 MW for consideration of the tariff and the bid under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003. The bid validity for these three bidders has been extended from time to time.

11.31. We also note that the Respondents No. 1 to 3 have quoted the following tariff in the e-RA:

Sr. No.	Name of Bidder	Rs./ Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
01.	Vena Energy Renewables Urja Pvt. Limited	2.78	100	100
02.	The Tata Power Company Limited	2.78	100	100
03.	TEQ Green Power Private Limited	2.81	500	200

11.32. The Petitioner has submitted that during the pendency of the Appeals before the Hon'ble Tribunal on 09.06.2021, the Petitioner has received a letter from GPCL, who is the solar park developer, stating that there has been a change in the boundaries and area of the 1000 MW capacity being developed in 1000 MW Dholera Solar Park, as had been intimated by the owner of the land which is Dholera Industrial City Development Limited to GPCL. GPCL vide letter dated 09.06.2021 has provided revision in the boundary of Dholera Solar Park. It has been conveyed that as per revised allocation of area and plot boundaries, GPCL is required to carry out all activities afresh for constructing the river training, road and drain for which the new boundary of the solar park area is required to be resurveyed for estimating the cost of civil activities to be carried out in the new proposed area. This covers area / location / co-ordinates of plots for 700 MW tendered capacity will also change as the area and boundary of the plot is proposed to be changed by DICDL. It may be noted that the land for 300 MW was already allocated to TPREL through RfS No. GUVNL/1000 MW/ Solar (Phase-V) dated 16.01.2019 and RfS No. GUVNL/750MW/Solar (Phase-VII) dated 24.06.2019 which is already commissioned on 27.03.2022. GPCL had represented that GPCL not in a position to provide the civil infrastructure facilities for river training, road and drain for TPREL also as a new tender is required to be invited by GPCL for common civil infrastructure for the revised solar park area. In view of above, 700 MW Solar Projects to be developed in 1000 MW Dholera Solar Park vide RFS dated 18.03.2020 (Phase IX) in which LoA(s) were issued earlier by GUVNL, the map showing plot demarcation was informed to the developers at the time of bidding and the allotment of plots has been made based on L1 priority principal basis. Further, Upfront development charges also informed to the developers at the time of bidding were determined by GPCL based on design of parts and plots. Therefore, if there are any changes in plot boundaries and other infrastructure planning involving changes in cost estimates, such information is required to be shared with the developers. Further, GPCL vide email dated 09.07.2021 has conveyed that the finalization of exact co-ordinates and boundary of new area of the park and plots is pending.

11.33. It is also submitted by the Petitioner that aforesaid bids received from the bidders were opened in presence of Bid Evaluation Committee and also evaluated by said

Committee. We also note that the bids submitted by the Bidders were scrutinized by the Bid Evaluation Committee and the issues were also deliberated in detail about responsiveness of the bids. With regard to observation of discrepancies, the Petitioner had raised queries on e-bidding portal of M/s Electronic Tendering Engine (ETS) against the responsiveness issues and queries raised by the Committee and the compliance / clarification / additional documents submitted by Bidders were duly examined by the Committee to evaluate their qualification. As per technical evaluation report of the said Committee it is observed that all the 7 bids received were technically qualified and technical evaluation report signed by the Members of the Bid Evaluation Committee is filed by the Petitioner, which is reproduced below:

“TECHNICAL BID EVALUATION REPORT

**RFS NO. GUVNL / 700 MW / SOLAR (PHASE IX) DATED 18.03.2020
TENDER FOR PROCUREMENT OF 700 MW SOLAR PROJECTS TO BE DEVELOPED IN 1000 MW
DHOLERA SOLAR PARK**

06TH August, 2023

.....

1. Background

Gujarat Urja Vikas Nigam Limited (GUVNL) intends to procure 700 MW Solar Power from projects to be developed in 1000 MW Dholera Solar Park through competitive bidding process (conducted through electronically facilitated online web based portal followed by reverse auction) as notified via RS No. GUVNL / 700 MW / Solar (Phase IX) dated 18.03.2020. The RfS was floated on 18.03.2020. The last date for submission of bids in the above tender was 31.07.2020 (1700 Hrs.).

GUVNL had constituted a committee for evaluation of the bids (Evaluation Committee), consisting of the following members:

<i>Sr. No.</i>	<i>Name</i>	<i>Designation</i>
<i>1</i>	<i>Shri K P Jangid</i>	<i>General Manager, Commerce</i>
<i>2</i>	<i>Smt. Sailaja Vachhrajani</i>	<i>General Manager, IIP</i>
<i>3</i>	<i>Shri Parthiv Bhatt</i>	<i>Company Secretary, GUVNL</i>
<i>4</i>	<i>Shri J N Pancholi</i>	<i>Chief Finance Manager (F&A)</i>

This report outlines the responses of all the bidders in respect of Non-Financial (technical) bid evaluation and recommendations of the committee.

2. Details of Tender

<i>RfS Reference No.</i>	<i>No. GUVNL / 700 MW / Solar (Phase IX) dated 18.03.2020.</i>
<i>Capacity</i>	<i>Total 700 MW Solar Projects to be developed in 1000 MW Dholera Solar Park</i>
<i>Minimum Bid Capacity</i>	<i>50 MW</i>
<i>Term of PPA</i>	<i>25 Years from S.C.O.D.</i>
<i>Technology</i>	<i>Commercially established Solar Photovoltaic technology</i>

3. Response to RFS

The technical bid opening event was convened on 04.08.2020. A total of 7 (seven) responses for aggregate capacity of 1300 MW received by GUVNL were opened. The list of the bidders and the capacity offered is as below.

SN	Bidder	MW
1	<i>SJVN Ltd</i>	100
2	<i>Torrent Power Ltd</i>	100
3	<i>TEQ Green Power Pvt Ltd</i>	500
4	<i>Renew Solar Power Private Ltd</i>	200
5	<i>Tata Power Company Ltd</i>	100
6	<i>Vena Energy Renewables Urja Pvt Ltd</i>	100
7	<i>Juniper Green Energy Pvt Ltd</i>	200
	Total	1300

4. Principles of Evaluation

The approach to evaluation has been that all the bidders who qualify under the terms specified in the bidding documents, the financial bit of such qualified bidders shall be opened. Also, in case of a perceived non-responsiveness, clarifications are to be sought from the concerned bidders.

Following conditions relating to qualification requirements have been specified in the RFS documents-

Net worth:

The Net Worth of the Bidder of its Affiliate or Parent / Ultimate Parent as on date of financial year ending 31.03.2019 or 31.12.2019 or as on latest available date as the case may be, shall not be less than INR 0.80 Crores per MW (of the capacity quoted)

1) The net worth to be consisted for the above purpose will be the cumulative net worth of the bidding company or consortium together with the networth of those Affiliates of the bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so in accordance with the RIS

ii) For avoidance of doubt, 'net worth' as per section 2 (57) of the Companies Act 2013 means the aggregate value of the paid up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created cut of revaluation of assets, write-back of depreciation and amalgamation

iv) For meeting the above financial eligibility criteria, if data is provided by the Bidder in USD, equivalent rupees of Net Worth and other financial parameters will be calculated by Bidder using Reserve Bank of India's reference rates prevailing on the date of closing of accounts for the respective financial year.

v) Pursuant to evaluation of Net Worth Criteria as part of technical bid, if it is found by GUVNL that the Bidder is eligible for lesser quantum than the quantum for which bid has been submitted, then the Bidder shall be qualified for such lesser quantum, provided that such quantum is not less than minimum bid capacity

vi) GUVNL shall accept the Provisional Accounts which are duly certified by a practicing Chartered Accountant of India provided that an undertaking is submitted by the bidder confirming that Final Audited Annual Accounts for the last financial year are not available as on date of bid submission. Such financial accounts shall have to be certified by at least two Directors or Company Secretary instead of one Director.

vii) The companies which have recently raised funds and are not able to meet net-worth as per the Clause 3.4.4 (i) i.e. as on 31.03.2019 or 31.12.2019, then the certificate issued by a Chartered Accountant certifying net worth as on latest available date based on certified copy of Balance Sheet, Profit & Loss account Schedules and cash flow statement supported with bank statement shall be required to be submitted. The financial accounts shall have to be certified by at least two Directors or Company Secretary instead of one Director.

5. Technical Bid Opening

The bid opening event was convened on 04.08.2020 at 11:00 hours before the Bid Evaluation Committee at GUVNL, Vadodara, where following members / their nominee(s) were present:

<i>Sr. No.</i>	<i>Name</i>	<i>Designation</i>
1	Shri K P Jangid	General Manager, Commerce
2	Smt. Sailaja Vachhrajani	General Manager, IIP
3	Shri Parthiv Bhatt	Company Secretary, GUVNL
4	Shri J N Pancholi	Chief Finance Manager (F&A)

The Bid Evaluation Committee deliberated the issues in detail about responsiveness of the submitted bids.

6. Responsiveness Issues

On scrutiny of the bid documents submitted by participating bidders, responsiveness issues were observed in respect of bids submitted by M/s Juniper Green Energy Pvt Ltd and M/s SJVN Ltd on which queries were raised by GUVNL on E-bidding portal. The responsiveness issues raised by GUVNL, and the responses / compliance submitted by bidders is discussed in the subsequent section.

7. Specific Issues

(1) Juniper Green Energy Pvt Ltd

As per terms & conditions of RFS, the bidder can submit the Net-worth as per latest available annual accounts if it is not able to meet Net-worth criteria as per annual account finalized on 31.03.2019. Further, the bidder can also submit Net-worth as per provisional annual accounts if the final audited accounts of the latest financial year are not available as on date of bid submission provided that an undertaking is submitted by bidder confirming that final audited annual accounts for the last financial year are not available as on date of bid submission.

Upon scrutiny of documents submitted, it was observed that the Net-worth credentials submitted by bidder is based on provisional unaudited annual accounts of the bidder as on 31.12.2019. However, the undertaking confirming that final audited annual accounts for the last financial year are not available as on date of bid submission, has not been submitted by the bidder.

In this regard, GUVNL had raised a query on E-bidding portal and requested the bidder to submit the required undertaking and the bidder has submitted the same on E-bidding portal.

(2) SJVN Ltd

As per terms & conditions of RFS, the validity of bids is required to be kept till 180 days from bid deadline i.e., at least up to 27.01.2021. Upon scrutiny of the documents submitted by M/s SJVN, it was observed that the validity of bid was kept till 31.07.2020.

In this regard, GUVNL had raised a query on E-bidding portal and requested the bidder to extend the validity of bids at least up to 27.01.2021. In response, M/s SJVN has extended the validity of bids till 31.01.2021 vide letter dated 06.08.2020 uploaded on E-bidding portal.

8. Evaluation of Responses

The Status in brief is indicated in the following table:-

SN	Bidder	MW	Status
1	SJVN Ltd	100	Qualified
2	Torrent Power Ltd	100	Qualified
3	TEQ Green Power Pvt Ltd	500	Qualified
4	Renew Solar Power Private Ltd	200	Qualified

5	Tata Power Company Ltd	100	Qualified
6	Vena Energy Renewables Urja Pvt Ltd	100	Qualified
7	Juniper Green Energy Pvt Ltd	200	Qualified
	Total	1300	

9. Way Forward

Based on the above results, the financial bids of above 7 (seven) bidders may be opened.

Sr. No.	Name	Designation	Signature
1	Shri K P Jangid	General Manager, Commerce	Sd/-
2	Smt. Sailaja Vachhrajani	General Manager, IIP	Sd/-
3	Shri Parthiv Bhatt	Company Secretary, GUVNL	Sd/-
4	Shri J N Pancholi	Chief Finance Manager (F&A)	Sd/-

.....”

From the Technical Evaluation Report, it is apparent that all the 7 bidders offering total capacity of 1300 MW were found to be responsive and hence were deemed qualified for opening of their financial bids. Accordingly, the financial bids of all 4 bidders were opened on 13.08.2020 on the ETS web-portal in presence of the Bid Evaluation Committee.

11.34. The financial evaluation report signed by the Members of the Bid Evaluation Committee is filed by the Petitioner, which is reproduced below:

“.....

Financial Bids received in GUVNL's 700 MW RfS dated 18.03.2020 for Dholera Solar Park

SN	Company	MW	Tariff (Rs./KWH)	
1	Vena Energy Renewables Urja Pvt. Limited	100	2.78	Total 5 bidders (1000 MW) Qualified for E-RA
2	TEQ Green Power Pvt. Limited	500	2.83	
3	SJVN Limited	100	2.84	
4	The Tata Power Company Limited	100	2.85	
5	Renew Solar Power Private Limited	200	2.88	
6	Torrent Power Limited	100	2.9	
7	Juniper Green Energy Pvt. Limited	200	2.92	
	Total	1300		

.....”

11.35. As per terms and conditions of the bid, the Petitioner GUVNL conducted e-reverse

auction. In the E-Reverse auction of 13.08.2022 a 'Electronic Tender System' report generated on the E-bidding portal of M/s Electronic Tender.com (India) Pvt. Limited is reproduced below:

S#	Bidder's Name	Quoted Value	Loaded Value	Date / Time of Bidding	Bidder's Quantity	Difference in % (Bid-Value vs Start Price)
1	Vena Energy Renewables Urja Pvt Ltd (ETS-IN-2020-RS0000216)	2.78	2.78	13-Aug-2020 13:26:54 RTZ	100.00	0%
2	The Tata Power Company Ltd (ETS-IN-2020-RS0000141)	2.78	2.78	13-Aug-2020 15:32:09 RTZ	100.00	0%
3	Renew Solar Power Private Ltd (ETS-IN-2019-RS0000087)	2.79	2.79	13-Aug-2020 15:31:16 RTZ	200.00	-0.36%
4	SJVN Ltd (ETS-IN-2020-RS0000202)	2.80	2.80	13-Aug-2020 15:29:41 RTZ	100.00	-0.72%
5	TEQ Green Power Pvt Ltd (ETS-IN-2020-RS0000185)	2.81	2.81	13-Aug-2020 15:29:16 RTZ	500.00	-1.08%

11.36. It can be observed from the above that at the end of E-Reverse auction, the quoted tariff value and quantum in MW of five bidders i.e., (i) Vena Energy Renewables Urja Pvt. Limited, (ii) Tata Power Company Limited (iii) Renew Solar Power Pvt. Limited, (iv) SJVN Limited and (v) TEQ Green Power Pvt. Limited as per result generated at the closure of E-Reverse Auction on ETS portal for 1000 MW. Moreover, as per above ranking, the total offered/bidder capacity by (i) Vena Energy Renewables Urja Pvt. Limited of 100 MW at the tariff of Rs. 2.78 per unit, (ii) Tata Power Company Limited of 100 MW at the tariff of Rs. 2.78 per unit, (iii) Renew Solar Power Pvt. Limited of 200 MW at tariff of Rs. 2.79 per unit, (iv) SJVN Limited of 100 MW at the tariff of Rs. 2.80 per unit, and (v) TEQ Green Power Pvt. Limited of 500 MW at the tariff of Rs. 2.81 per unit works out to 1000 MW. Since, two of the bidders, viz. SJVNL and Renew withdrew their Appeals as recorded in the Orders dated 07.10.2022 and 17.07.2023 respectively before the Hon'ble Appellate Tribunal, GUVNL had amended the tender vide amendment dated 27.06.2023 by reducing the capacity of the tender to 600 MW from 700 MW (reducing the capacity of 100 MW related to SJVNL) and upon the request of SJVNL and Renew, the Petitioner GUVNL also returned the bank guarantees submitted as bid bond by them on 03.10.2023. Therefore, as far as SJVNL and Renew are concerned, no further action are required to be taken and accordingly

their bid in the bidding process is no longer valid. In view of the above, the Petitioner GUVNL is proceeded with the bid for 400 MW out of 700 MW which were subject matter of the Phase IX bid which related to SJVNL and Renew for which the Petitioner GUVNL would intimate the Commission regarding the steps taken in this regard as and when the same is done. Accordingly, the Petitioner has stated in para 34 which is stated under:

Sr. No.	Name of Bidder	Rs./ Unit	Quoted Capacity (MW)	Allocated Capacity (MW)
01.	Vena Energy Renewables Urja Pvt. Limited	2.78	100	100
02.	The Tata Power Company Limited	2.78	100	100
03.	TEQ Green Power Private Limited	2.81	500	200

11.37. During the hearing, Sr. Counsel appearing for the Respondent No. 1 referred the letters No. (i) GUVNL/TEQ/DHOLERA/200 MW/25012024/I dated 25.01.2024 and (ii) GUVNL/TEQ/DHOLERA/200 MW/31012024/I dated 31.01.2024 and submitted that the Respondent No. 1 has proposed to impact of basic custom duty and/or GST prevailing as on date and also undertake that the Respondent TGPPL will not claim it as a relief for Change in law on account of BCD and/or GST which may have arisen prior to the date of this letter. This offer is valid and subsisting until February 5/15, 2024. In response to the said letters, the Petitioner GUVNL vide its letter No. GUVNL/COM/2024/RE(GM)/Solar/182 dated 08.02.2024 has made proposal and requested the Respondent to submit the unconditional acceptance to the said proposal. The relevant portion of the said letter dated 08.02.2024 is reproduced as under:

“.....

No. GUVNL/COM/2024/RE(GM)/Solar/182

Date: 08.02.2024

To,
 Shri Rakesh Garg,
 Chief Executive Officer,
 TEQ Green Power Private Limited
 8th Floor, DLF Square, Jacaranda Marg,
 DLF Phase – 2, Sector 25, Gurugram,
 Haryana – 122002.

Subject: Tender for procurement of power under competitive bidding process conducted vide RfS dated 18.03.2020 (Phase IX) by GUVNL

for procurement of 700 MW Solar Power to be set up in the Dholera Solar Park, Gujarat.

*Ref: (1) RFS dated 18.03.2020 (Phase IX)
(2) LOA issued by GUVNL to successful Bidders on dated 09.10.2020
(3) M/s TEQ Green Power Private Limited vide letter dated 15.01.2024
(4) M/s TEQ Green Power Private Limited vide letter dated 31.01.2024*

Dear Sir,

This is in reference to subject tender and your officers under ref. (3) & (4). In this regard, without any prejudice to the rights and contentions of GUVNL, GUVNL offers to procure 200 MW power from the project proposed to be set up by M/s TEQ in the Dholera Solar Park at the discovered tariff of Rs. 2.81 per unit under Phase – IX Competitive bidding process inclusive of the impact of Basic Custom Duty & all other taxes up to the date of signing of PPA, subject to the following conditions:

- Tariff of Rs. 2.81 per unit shall be inclusive of Basic Custom Duty & all other taxes up to the date of signing of the PPA instead of 05.02.2024 as mentioned in your letter dated 31.01.2024.*
- The above tariff shall be subject to adoption of GERC in the Petition No. 2283/2023 filed by GUVNL.*
- PPA shall be signed in accordance with the final order of Hon'ble GERC in the Petition no. 2283/2023.*

It is requested to submit the unconditional acceptance to the proposal of GUVNL within a week, i.e., by 16.02.2023.

On the acceptance of proposal, GUVNL shall inform Hon'ble GERC in the Petition no. 2283/2023. Accordingly, M/s TEQ shall also be required to file their reply before the GERC in the Petition no. 2283/2023.

Thanking you,

Yours Sincerely

*(H.N. Shah)
General Manager (RE)
GUVNL, Vadodara.
.....”*

11.38. Referring the Petitioner's GUVNL's letter dated 08.02.2024, it is submitted that in response to the said letter, the Respondent TGPPL vide its letter dated 15.02.2024 has given confirmation and accepted the tariff of Rs. 2.81 per unit inclusive of BCD & all other taxes applicable up to the date of signing of the PPA or until 15.03.2024

whichever is earlier, subject to adoption of such tariff by the Commission. The relevant portion of the said letter is reproduced as under:

“.....

Ref. No. GUVNL/TEQ/Dholera/200 MW/1502.2024

15-Feb-24

To,

General Manager,

Gujarat Urja Vikas Nigam Limited

Sardar Patel Vidyut Bhawan, Race Course,

Vadodara – 390007 Tel No. 0265-2334751.

Subject: Response to GUVNL letter dated February 08, 2024, for acceptance of proposed tariff and Hon'ble GERC's final order for petition no. 2283/2023.

Reference: 1. RFS No. GUVNL / 700MW / Solar (Phase IX) dated 18.03.2020 (Tender Process)

2. Our proposal submitted in e-reverse auction conducted on 13.08.2020

3. LOA No. GM/IPP / Solar / Comp Bidding IX / 762 dated 09.10.2020

4. APTEL Order dated August 07,2023

5. M/s TEQ Green Power Private Limited vide letter dated 31.01.2024

6. GUVNL proposal vide Letter No. GUVNL/COM/2024/RE (GM)/Solar /182 dated February 08, 2024

Dear Sir,

Greetings from Teq Green Power Private Limited (TGPPL), a fully owned subsidiary of O2 Power SG PTE. LTD.

We are writing in response to your recent correspondence regarding the subject tender and your Letter No. GUVNL / COM/2024/ RE(GM) / Solar/ 182 dated February 08, 2024.

TGPPL hereby confirms acceptance of the following:

a) we accept the proposed tariff of Rs. 2.81 per unit, inclusive of Basic Custom Duty and all other taxes, applicable up to the date of signing the Power Purchase Agreement (PPA) or until March 15, 2024, whichever is earlier.

b) We acknowledge that the above tariff shall be subject to adoption of GERC in the Petition no. 2283/2023.

We request you to expedite the process of execution of the PPA and consequent tariff adoption.

Please note that this acceptance is provided without prejudice to our rights, contentions, and remedies, all of which are expressly reserved.

.....”

11.39. Referring the additional affidavit dated 23.02.2024 filed by the Respondent No. 1, Sr. Counsel appearing for Respondent No. 1 submitted that the said affidavit has filed before the Commission on 26.02.2024 and based on it, the Commission may approve and adopt the tariff of Rs. 2.81 per unit for 200 MW allocated capacity of Respondent No. 1. The relevant portion of the said affidavit dated 23.02.2024 is reproduced as under:

“

2. *That Respondent No.1 is filing the instant Affidavit to place before this Ld. Commission subsequent developments and additional documents which are necessary for a just determination of the captioned Petition which has been filed by the Petitioner under Section 63 r/w Section 86(1)(b) of the Electricity Act, 2003 in regard to the competitive bidding process conducted by GUVNL for procurement of 700 MW solar power from Solar PV Power Projects to be set up in 1000 MW Dholera Solar Park in Gujarat ("Dholera Solar Park") through RFS No. GUVNL/700MW/Solar (Phase IX) dated 18.03.2020 (RFS) (700MW Bid)*
3. *That in view of the unavoidable ongoing delay in the adoption of tariff discovered by GUVNL through the 700MW Bid/ execution of the power purchase agreement ("PPA") with GUVNL and the cascading effect thereof on the viability of the Solar Project to be set up by Respondent No.1, Respondent No. 1 has been striving for an amicable resolution of the dispute to balance the interests of both parties. Further thereto, Respondent No.1 by way of letters dated 25.01.2024 and 31.01.2024, without prejudice to the rights and remedies available to it under law, offered to adhere to its quoted tariff of Rs. 2.81/Kwh and absorb any impact of Basic Customs Duty ("BCD") imposed by the Government of India by way of Office Memorandum dated 09.03.2021 and/or GST, prevailing as on the date of the said letter.*

Respondent No. 1 submits that it can make the said offer at this stage on account of having commenced work on the Solar Project immediately after the issuance of the Letter of Award which allows Respondent No.1 to absorb the financial impact of levy of BCD.

Pertinently, the imposition of BCD on solar PV cells and solar PV modules and hike in GST rate for specified renewable energy devices and parts for manufacture are to be treated as Change in Law events in line with Notification dated 27.09.2021 of the Ministry of New and Renewable Energy, Government of India.

Copy of Respondent No. 1's letters dated 25.01.2024 and 31.01.2024 is attached hereto and marked as ANNEXURE AI (COLLY).

4. *GUVNL by way of letter dated 08.02.2024, without prejudice, accepted the offer made by Respondent No. 1 and subject to the following conditions -*
 - “(i) Tariff of Rs. 2.81 per unit shall be inclusive of Basic Customs Duty & all other taxes up to the date of signing of PPA instead of 05.02.2024 as mentioned in your letter dated 31.04.2024.*

(ii) *The above TARIFF shall be subject to adoption of GERC int the Petition No. 2283/2023 filed by GUVNL.*

(iii) *PPA shall be signed in accordance with the final order of Hon'ble GERC in the petition no 2283/2023."*

Copy of letter dated 08.02.2024 issued by GUVNL is attached hereto and marked as ANNEXURE A2.

5. *On 15.02.2024, Respondent No.1 accepted the offer of GUVNL, without prejudice and subject to the PPA being signed on or before March 15, 2024.*

Copy of the Respondent No.1's letter dated 15.02 2024 is attached hereto and marked as ANNEXURE A3.

6. *All annexures produced along with the instant Affidavit are true copy of the respective originals.*

....."

11.40. We also note the submissions of the Respondent No. 1 that if the Change in Law based concession by absorbing BCD and all other taxes is given, the same cannot be provided open ended and after signing of the PPA or 15.03.2024 any Change in Law occur, as agreed by the Respondent No. 1, the same can be qualify for relief under the Change in law by the Respondent. We also note the request of the Respondent No. 1 regarding to secure the bid of 200 MW capacity as the present tender is of 2019 floated for 1000 MW by the Petitioner by approving the discovered tariff of Rs. 2.81 per unit of the Respondent TGPPL otherwise the allocated capacity of 200 MW of the Respondent will go away in terms of applicability of new taxes or new tariff discovered under competitive bidding process. Ld. Sr. Adv. for the Respondent No. 1 strongly argued that the RfS dated 18.03.2020 is very old and at present, financial year is nearer to its end and therefore keeping the rest part of the matter pending, the present matter is required to be decided with regard to adoption of allocated capacity of 200 MW of Respondent No. 1 as successful bidder which is also agreed upon by the counsel of the Petitioner GUVNL and further no objections have been raised by the counsels appearing for other Respondents.

11.41. We also note that in response to the above contentions of the Respondent No. 1, the counsel appearing for the Petitioner GUVNL submitted that the Commission may consider and adopt the discovered tariff of Rs. 2.81 per unit for 200 MW allocated

capacity for Respondent No. 1 who have participated and became the successful bidder in the aforesaid bidding process conducted by the Petitioner vide RfS dated 18.03.2020 (Phase IX) with consideration of correspondence between the Petitioner GUVNL and the Respondent No. 1 and affidavit dated 23.02.2024 of the Respondent No. 1 wherein there are certain conditions proposed by the Respondent No. 1. She further submitted that the tariff of Rs. 2.81 per unit which includes all 'Change in Law' effect of BCD and other taxes upto 15.03.2024 or PPA signing date whichever is earlier, is competitive with present market price. Hence, the same may be adopted and allow the signing of the PPA with the Respondent No. 1

11.42. We further note that the counsel appearing for the Respondent No. 3 and the counsel for the Respondent No. 4 requested the Commission to give two weeks' time to file reply in the matter and thereafter post the matter for hearing on any date subject to the convenience of the Commission. In response to the aforesaid contentions, counsels for the Petitioner and Respondent No. 1 submitted that the Commission while considering the adjournment request of other parties, may also approve and adopt the tariff of Rs. 2.81 per unit for 200 MW allocated capacity of the Respondent No. 1 TGPPL.

11.43. We note that there is no adverse remarks of Bid Evaluation Committee with regard to bid submitted by the Respondent No. 1. The Petitioner has agreed for adoption of tariff of Rs. 2.81 per unit for the Respondent No. 1 by the Commission. Hence, we decide to adopt the discovered and agreed tariff for the Respondent No. 1 TGPPL only in this Order with regard to the respective quoted capacity and allocated capacity under RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 and addendums thereto issued by the Petitioner GUVNL at discovered tariff of Rs. 2.81 per unit with affidavit dated 23.02.2024 of the Respondent No. 1.

11.44. In view of the foregoing, the Commission has taken on record the contents of an affidavit dated 23.02.2024 and offers made by GUVNL vide its letter dated 08.02.2024 and acceptance of such offer by the Respondent No. 1 thereof vide its letter dated 15.02.2024 that the Respondent No. 1 TGPPL has accepted the tariff of Rs. 2.81 per unit inclusive of Basic Custom duty and all other taxes applicable upto the date of signing of the PPA or until March 15, 2024 which is earlier and accordingly the Commission is satisfied with the tendering process including the e-reverse

bidding conducted by the Petitioner in a transparent manner and discovered tariff of successful bidder (i.e., Respondent No. 1) with quoted capacity and allocated capacity to them as stated below:

Sr. No.	Bidder's Name	Quoted Capacity (MW)	Allocated Capacity (MW)	Tariff (Rs. / Unit)
1	TEQ Green Power Pvt. Limited	500	200	2.81*

*(*inclusive of Basic Custom duty and all other taxes applicable upto the date of signing of the PPA or until March 15, 2024 which is earlier)*

11.45. The Commission, therefore, decides to adopt the above discovered tariff quoted by above mentioned bidder, i.e., TEQ Green Power Pvt. Limited for the allocated capacity at tariff as sought and prayed by them alongwith the affidavit dated 23.02.2024.

11.46. We note that the Petitioner has initiated and conducted the competitive bidding process through RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 and addendums thereto, by issuing the 'Notice Inviting Tender'. It is stated in the said Rules, 2022 that the Central Government in exercise of powers conferred by Section 176 (1) of the Electricity Act, 2003 and in supersession of the Electricity (Late Payment Surcharge) Rules, 2021 except as respects things done or omitted to be done before the supersession has notified Electricity (Late Payment Surcharge) Rules, 2022 which has to come in force on the date of its publication in the Official Gazette. i.e., from 03.06.2022 onwards. In this regard, as per Clause 12.4 of bidding guidelines, the distribution licensee or intermediary procurer has to approach the Commission for adoption of tariff discovered under competitive bidding process in terms of Section 63 of Electricity Act, 2003 and the Commission has to decide and adopt the discovered tariff by the distribution licensee or intermediary procurer. In the present case, the Petitioner has approached the Commission for adoption of tariff discovered through competitive bidding process conducted vide RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 and addendums thereto which is an ongoing process. We also note that as per the submissions, though the LoAs have been issued to the successful bidders but the PPA is yet to be signed by the Petitioner with the successful bidder although the Petitioner has filed Draft PPA with the Petition to be executed with the successful bidders. Therefore, we are of view that the aforesaid Rules which are notified under the Electricity Act, 2003 and therefore, it need to be given effect, if any, in the power procurement by the distribution licensee. Hence, we

direct the Petitioner GUVNL to incorporate and align the Clauses of the Electricity (Late Payment Surcharge) Rules appropriately in the PPA to be signed with the successful bidder, if already not incorporated.

11.47. We note that the Petitioner has issued the LoA to all the successful bidder but PPA is yet to be executed with such successful bidder. We also note that the Petitioner GUVNL has agreed to terms of the affidavit dated 23.02.2024 of the Respondent No. 1 and requested the Commission to adopt the tariff. We, therefore, decide to adopt the tariff for the Respondent No. 1. Accordingly, the Petitioner is directed to execute the PPAs with the successful bidder (Respondent No. 1 TGPPL) as per decision in this Order. We note that the Petitioner is required to submit the copy of the signed PPA and therefore, the Petitioner is directed to submit copy of duly executed PPA to the Commission alongwith an affidavit stating that the Articles/provisions of the PPAs executed are as per the directions as stated above, provisions of Act, Rules, bidding guidelines and deviations approved by the Commission from time to time and that there are no other deviations taken by the Petitioner in the bidding documents other than those earlier approved by the Commission. We also direct the Petitioner that for the purpose of transparency, after execution of the PPAs, to publicly disclose the name (s) of the successful bidder(s) and the tariff quoted by them together with the breakup with the component, for 30 days on its website in terms of Clause 10.3 of the bidding guidelines as amended for knowledge and information of the stakeholders.

11.48. We also note that so far as Respondents No. 2 & 3 are concerned, the Commission require to hear the parties which is not occurred due to adjournment sought by the Respondents No. 2 to 4 and not objected by the Petitioner. Hence, we decide that the Commission will pass necessary appropriate Order in respect of bid submitted by Respondents No. 2 & 3 after hearing the parties concerned.

12. **SUMMARY OF DECISIONS:**

In view of the above discussion, at this juncture we decide to pass following Order only in respect to one bidder (i.e., Respondent No. 1) keeping the petition pending:

12.1. We decide to adopt the tariff discovered under the transparent competitive bidding process conducted by the Petitioner for Respondent No. 1 TGPPL, through RfS No. GUVNL/700 MW/Solar (Phase IX) dated 18.03.2020 and addendums thereto as

under:

Sr. No.	Bidder's Name	Quoted Capacity (MW)	Allocated Capacity (MW)	Tariff (Rs. / Unit)
1	TEQ Green Power Pvt. Limited	500	200	2.81*

*(*inclusive of Basic Custom duty and all other taxes applicable upto the date of signing of the PPA or until March 15, 2024 which is earlier)*

- 12.2. The Commission, therefore, decides to adopt the above discovered tariff quoted by above mentioned bidder, i.e., TEQ Green Power Pvt. Limited for the allocated capacity at tariff as sought and prayed by them.
- 12.3. Apart from the directives of the Commission in this Order, the Petitioner to sign the Power Purchase Agreement(s) with the successful bidder, i.e., Respondent No. 1 TGPPL with allocated capacity of 200 MW and tariff as per above table.
- 12.4. We direct the Petitioner to submit the copy of duly executed PPA with the successful bidder, i.e., Respondent No. 1 to the Commission alongwith an affidavit stating that the Articles/provisions of the PPA executed are as per the directions as stated above, provisions of Act, Rules, bidding guidelines and deviations approved by the Commission from time to time and that there are no other deviations taken by the Petitioner in the bidding documents other than those earlier approved by the Commission. We also direct the Petitioner that for the purpose of transparency, after execution of the PPA, publicly disclosed the name (s) of the successful bidder(s) and the tariff quoted by them together with the break up with the component, for 30 days on its website in terms of Clause 10.3 of the bidding guidelines as amended for knowledge and information of the stakeholders.
- 12.5. The Commission will pass appropriate Order in respect of bid submitted by Respondents No. 2 & 3 after hearing the parties concerned.
13. Order accordingly.

Sd/-
[S.R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 11/03/2024.