

**BEFORE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR**

Petition No. 2038 of 2021.

In the Matter of:

Petition for approval of Short Term Power Purchase arrangement for sourcing of power to cater to the demand of Ahmedabad, Gandhinagar and Surat license area under the provisions of the Guidelines for Power Procurement by Distribution licensee issued by the Commission read with Section 86 (1) (b) of the Electricity Act, 2003.

Petitioner : Torrent Power Limited

Represented by : Mr. Chetan Bundela along with Mr. Jignesh Langalia, Ms. Luna Pal, Mr. Mihir Thakkar and Ms. Ankita Dikshit

CORAM:

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

Date: 07/02/2022

ORDER

1. This Petition has been filed by the Petitioner M/s Torrent Power Limited in its capacity as distribution licensee of Ahmedabad, Gandhinagar, and Surat license areas seeking approval of Short Term Power Purchase arrangement for sourcing of power to cater to the demand of Ahmedabad, Gandhinagar and Surat license areas under the provisions of the Guidelines for Power Procurement by Distribution licensee issued by the Commission read with Section 86 (1) (b) of the Electricity Act, 2003.
2. The facts mentioned in the Petition, in brief, are as under:
 - 2.1. The Petitioner Torrent Power Limited (TPL) is a company incorporated under the provisions of the Companies Act, 1956 and has long term power purchase arrangement with AMGEN, SUGEN, UNOSUGEN and Renewables, to cater to the

demand of its consumers for Ahmedabad / Gandhinagar and Surat license area and balance power is being procured from power exchange/ other bilateral arrangements.

- 2.2. The demand and shortfall in power purchase for the period from 16.11.2021 to 31.03.2022 was accordingly estimated by the Petitioner and in order to cater to the demand of its consumers, the Petitioner has planned to procure day power (i.e. from 0600 hours to 2200 hours) and Round-the-Clock (RTC) power during the above period through short term bidding process.
- 2.3. It is submitted that power exchange has recently witnessed sharp increase in prices, *inter alia*, due to deficit in generation alongwith uncertainty in clearance of volume and with the onset of winter, thermal power stations are required to undergo annual shutdown for various maintenance activities, which further aggravate the deficit of generation. Additionally, the coal-based stations are already facing domestic coal shortage and cost of imported coal is still higher and expected to remain higher. Regarding gas based generating stations, the Petitioner has not tied up gas due to current abnormally high prices in Domestic/ International Markets.
- 2.4. The Petitioner has made following deviations from the MoP bidding guidelines in the bidding documents filed i.e. RFP & PPA for availing better terms and flexibility to reduce the overall cost of power procurement which have been approved by the Commission vide its Order dated 24.04.2017 in Petition No. 1636 of 2017:
- Take or Pay Penalty: The penalty for “take or pay” and “supply or pay” shall be Rs. 2 per unit.
 - Take or Pay Quantum: The minimum quantity for “take or pay” and “supply or pay” shall be 80%.
- 2.5. The Petitioner published a tender notice on 30.09.2021 which is filed with the Petition for procurement of power on short term basis through e-tendering and on Reverse Auction basis in the following newspapers:
- Business Standard (All India Edition)
 - Mint (All India Edition)

2.6. The bidders were required to bid on website of MSTC www.mstcecommerce.com (DEEP Portal) and last date for submission of offers was 05.10.2021. Bids from seven (7) bidders were received at IPO stage and e-reverse auction was conducted on MSTC's portal on 08.10.2021. Since the rates discovered in e-Reverse Auction were on higher side, the Petitioner TPL asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum. Based on final offers received from bidders, the Petitioner approached the Committee with all the details and in turn the Committee recommended to issue "Letter of Award" (LOA) to certain bidders.

2.7. As the Petitioner did not tie up entire requirement of power in the aforementioned tender due to higher rates, the Petitioner issued another tender notice on 28.10.2021 for procurement of power on short term basis through e-tendering and on Reverse Auction basis in the following newspapers:

- Business Standard (All India Edition)
- Mint (All India Edition)

2.8. The bidders were required to bid on website of MSTC www.mstcecommerce.com (DEEP Portal) and last date for submission of offers was 01.11.2021. Bids from seven (7) bidders were received at IPO stage and e-reverse auction was conducted on MSTC's portal on 12.11.2021. As the rates discovered in e-Reverse Auction were on higher side, the Petitioner TPL asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum and based on final offers received from bidders, the Petitioner approached the Committee with all the details and in turn the Committee recommended to issue "Letter of Award" (LOA) to certain bidders.

2.9. The details of bidders to whom LOA are issued by the Petitioner are as under:

Month	Time Slot	Bidder/Ref. No.	Source	Revised volume and rate	
				Quantity (MW)	Price (Rs. / unit)
16-11-2021 to 30-11-2021	00 hours to 2400 hours	PTC India Limited/74476	DB Power	100	6.00

Month	Time Slot	Bidder/Ref. No.	Source	Revised volume and rate	
				Quantity (MW)	Price (Rs. / unit)
01-12-2021 to 31-12-2021	00 hours to 2400 hours	Tata Power Trading Company Ltd/74185	Jindal Power Limited	50	4.48
		PTC India Limited/74476	DB Power	100	6.00
01-01-2022 to 31-01-2022	00 hours to 2400 hours	Tata Power Trading Company/74176	Tata Power Haldia	80	4.60
13-01-2022 to 31-01-2022				55	
18-01-2022 to 31-01-2022	00 hours to 2400 hours	PTC India Limited/74489	DB Power Limited	50	4.98
		PTC India Limited/74489	DB Power Limited	50	4.98
01-02-2022 to 28-02-2022	00 hours to 2400 hours	PTC India Limited/74491	SKS Power	50	4.90
		Tata Power Trading Company Limited/74187	Tata Power Haldia	80	5.06
01-03-2022 to 31-03-2022	00 hours to 2400 hours	Tata Power Trading Company Limited/74185	Jindal Power Limited	100	4.48
		PTC India Limited/74489	DB Power Limited	50	4.98
		Tata Power Trading Company Limited/74187	Tata Power Haldia	80	5.06
		PTC India Limited/74491	SKS Power	50	5.50

2.10. It is submitted that the Standing Committee Certificate for compliance of MoP guidelines is filed and the LOA issued by the Petitioner to the successful bidders and the bidders have accepted the same which is also filed. Accordingly, the Petitioner has requested the Commission to approve the power purchase arrangement as above for supply of Round-the-Clock (RTC) power (i.e. from 0000 hours to 2400 hours) during the period 16.11.2021 to 31.03.2022, through short term bidding process.

3. The matter was listed for virtual hearing on 27.12.2021 and Mr. Chetan Bundela on behalf of the Petitioner while reiterating the facts stated in para 2 above submitted that after the Reverse Auction conducted on MSTC's portal on 08.10.2021, the rates discovered were on higher side and therefore, the Petitioner asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum. Based on final offers received from bidders, the Petitioner approached the Standing Committee for bid evaluation with all the documents and as recommended by the said Committee to issue "Letter of Award" (LOA) to certain bidders and not to all bidders because of higher rate. Accordingly, the Petitioner could not tie up the entire requirement in the said tender due to higher rate and hence, another tender notice was issued on 28.10.2021 wherein bids from 7 (Seven) bidders were received and e-Reverse Auction was conducted on MSTC's Portal on 12.11.2021. It is submitted that since the rate discovered in e-Reverse Auction were on higher side, TPL-D asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum and based on final offers received from bidders the Bid Committee was approached with all the details, which in turn recommended to issue "Letter of Award" (LOA) to certain bidders and accordingly, the Petitioner has provided the details of bidders to whom LOA are issued in tabular form in the Petition.
- 3.1. It is submitted that the Standing Committee Certificate for compliance of MoP guidelines and copies of LOAs issued to the successful bidders and acceptance by the bidders is filed by the Petitioner and requested the Commission to admit the Petition and approve the power purchase arrangement.
- 3.2. In response to query regarding higher rate of the power discovered in the aforementioned bidding processes by the Commission, Mr. Bundela mentioned that the bidding process was carried out on 08.10.2021 and subsequently on 12.11.2021. At that point of time no one was aware about how the situation will unfold and based on that, the decision was to be taken. It is further submitted that TPL-D was aware about the concerned higher rate and instead of tying up the entire power in the first round of bidding, only part of the required quantum is tied up. That apart despite requirement of RTC power as well as day power, total tied up

power by the Petitioner is on RTC basis. Thereafter, TPL-D carried out subsequent bidding wherein also RTC power has been tied up. Moreover, the situation of domestic coal has still not improved and the State is facing the issue of lower local generation. Due to this, TPL-D is not getting necessary NOC for open access from SLDC. So, if TPL tie up the power then there is possibility higher priority in seeking NOC for open access. It is further stated that the State owned DISCOMs have also tied up power procurement arrangement at the rate which is comparable with the rate at which TPL-D has tied up the power procurement. It is also submitted that while issuing LOA, due consideration to the market conditions and technical constraint was given to ensure the reliable and continuous power to the consumers. Moreover, even after all these considerations, only part of their total requirement of power has been tied up and balance power is required to be sourced from power exchange and though the rate of power at power exchange is lower, at present the Petitioner is unable to procure power from market in absence of necessary NOC for short term open access from SLDC.

- 3.3. With regard to query by the Commission that difference in the rate of power to be sourced from Jindal Power Ltd. and DB Power for the month of December, 2021, it is submitted that TPL-D has tied up 100 MW with DB power at the rate of Rs. 6 per unit and 50 MW with Jindal Power Ltd. at the rate of Rs. 4.48 per unit for December, 2021 and the price of power depends on fuel cost, market perception of the generator and location of the generator. It is further argued that State owned DISCOMs are procuring power under PPA at the rate of Rs. 6.40 per unit. So, while accepting the bids, a proper consideration was given to the available information and when the power was tied up no one was aware about the situation of imported coal prices, whether it will improve, to what extent etc. and keeping in view the uncertainty in the fuel price market, the Petitioner tied up only part quantity.
- 3.4. In reply to query by the Commission that despite consistent offer of cheaper rate by DB Power for the months of January, February and March compared to the higher rates offered by SKS Power particularly for the month of March, 2022, the Petitioner submitted that rate offered by generators depend on their location, fuel cost arrangements, available fuel stock, the rate of fuel they have tied up and their own perception about the market. The Petitioner is also keeping track of imported coal

prices, which currently is around US \$ 100 per MMBTU FOB for 4500 to 5000 GCV. Considering all these aspects, TPL- D found the rates offered by different generators reasonable and hence the Committee has recommended to issue Letter of Award. Moreover, the gas prices are still very high and that is the reason at that point of time for initiating the bidding process for procurement of power to optimize the overall power purchase cost.

- 3.5. On a further query by the Commission about alternative arrangement for procuring power in place of power offered by DB Power @ Rs. 6 per unit for the month of December, 2021 and SKS Power @ Rs. 5.50 per unit for the month of March, 2022 keeping in view the prevailing market condition and consideration of PPA and LOAs, it is submitted that the fuel market is quite volatile and no one can predict how the market will operate. Further to ensure the sanctity of bidding process and to optimize the power purchase cost we requested the bidders to improve upon rate and quantity to the extent possible. The bidders submitted their offer accordingly and when the rates were compared with reference to the prevailing market situation, TPL-D found it quite competitive and reasonable and hence, were accepted including consideration of current imported coal price the rates offered by the bidders were found to be reasonable and justifiable. Therefore, due consideration was given to various aspects for tie-up of power else meeting the demand may become difficult and the Petitioner would not have any option but to resort to the load shedding.
- 3.6. On a query of the Commission about power purchase planning for the next year, the Commission was apprised that necessary bidding process has been initiated and the Petitioner will approach the Commission with discovered tariff. Moreover, the Petitioner is keeping close watch on prices of imported coal and gas and post winter, from April onwards gas price may come within reasonable limit and even the coal situation is improving internationally.
- 3.7. Further, admitting the Petition keeping in view the requirement of power supply of TPL- D in order to maintain continuous and reliable power supply to consumers of Ahmedabad, Gandhinagar and Surat license area vide Daily Order dated 01.01.2022 for above hearing, the Petitioner was also informed about certain typographical

errors in the Table at para 13 of the Petition compared to the Standing Committee certificates and various LOAs issued by the Petitioner and directed to file corrected table.

4. The Petitioner has filed its point-wise response / submissions vide affidavit dated 11.01.2022 in response to various queries by the Commission during above hearing as under:
 - 4.1. Regarding higher rate of the power discovered in the bidding processes undertaken by the Petitioner it is submitted that the bidding process was carried out during October and November, 2021 when the situation was very uncertain and it was difficult to predict how it will unfold. It needs to be noted that the situation of domestic/imported coal has not yet improved and the State is facing the issue of lower in-state generation. Due to this, the Petitioner faced difficulty in getting necessary NOC for availing open access from SLDC, especially, severe issues in respect of purchase of power from exchange was faced due to curtailment of NOC. Hence, the Petitioner had to tie up the power in advance to get higher priority in NOC for open access.
 - 4.2. Moreover, while tying up quantum through bidding process, the Petitioner has given due consideration to the market conditions and technical constraints to ensure reliable and continuous power to the consumers and only part of the total requirement of power has been tied up. Although, the requirement was for RTC power as well as Day power, the Petitioner tied up only RTC power due to higher rates and also carried out subsequent bidding and again tied up RTC power. Also, the rates concluded in the bidding process are comparable with the rates at which the State owned DISCOMs have tied up power.
 - 4.3. With regard to difference in the rate of power to be sourced from Jindal Power Ltd. and DB Power for the month of December, 2021 and observation about consistent offer of cheaper rate by DB Power for the months of January, February and March compared to the higher rate offered by SKS Power particularly for the month of March, 2022 and possibility of alternative arrangement for procuring power in place of power offered by DB Power @ Rs. 6 per unit for the month of December, 2021 and SKS Power @ Rs. 5.50 per unit for the month of March, 2022, it is

submitted that the Petitioner has tied up 100 MW with DB power at the rate of Rs. 6 per unit and 50 MW with Jindal Power Ltd. at the rate of Rs. 4.48 per unit for the Month of December, 2021.

- 4.4. The Petitioner has given due consideration to prevailing market conditions and the rates offered by generators depend on their location of generation, fuel cost arrangements, available fuel stock, rate of tied up fuel and their own perception about the market. It is submitted that fuel rates surged unexpectedly and fuel market is still quite volatile. The price of Imported Coal at present are still in the range of \$ 100 per MT FOB for GCV of 4000 to 4500 kCal. and further, considering onset of winter, the Gas prices are also expected to remain higher. Further to optimize the power purchase cost, the Petitioner requested the bidders to improve upon rate and quantity to the extent possible and in turn, the bidders submitted the final offer. Thus, considering the prevailing market situation, the rates identified in the bidding process are reasonable and in turn, the offers have been accepted. However, at the same time, by exercising business prudence, the Petitioner has also tied up only part quantity of total requirements. Moreover, NOC for availing Open Access for procurement of power from exchange is being curtailed by the SLDC and continued to insist for increasing the generation from gas-based stations located in the State despite higher cost to mitigate the transmission constraints. Hence, power has been tied up by the Petitioner else it would have to resort to the load shedding due to prevailing open access situations.
- 4.5. Regarding power purchase planning for the next year, it is submitted that necessary bidding process has been initiated for FY 2022-23 and the Petitioner will approach the Commission with discovered rates. Further, the Petitioner is keeping close watch on prices of imported coal and gas and with completion of winter, gas prices may come down from April 2022 onwards and coal situation is also expected to improve internationally. Accordingly, the Petitioner will make necessary arrangement and will apprise the Commission.
- 4.6. Regarding the details of Bidders to whom LOAs are issued, in compliance to the directives by the Commission, revised details are submitted as under:

Month	Time Slot	Bidder/Ref. No.	Source	Revised volume and rate	
				Quantity (MW)	Price (Rs. / unit)
16-11-2021 to 30-11-2021	00 hours to 2400 hours	PTC India Limited/74476	DB Power	100	6.00
01-12-2021 to 31-12-2021	00 hours to 2400 hours	Tata Power Trading Company Ltd/74185	Jindal Power Limited	50	4.48
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01-01-2022 to 12-01-2022	00 hours to 2400 hours	Tata Power Trading Company/74176	Tata Power Haldia	80	4.60
13-01-2022 to 31-01-2022				55	
18-01-2022 to 31-01-2022		PTC India Limited/74491	DB Power Limited	50	4.98
		PTC India Limited/74491	DB Power Limited	50	4.98
01-02-2022 to 28-02-2022	00 hours to 2400 hours	PTC India Limited/74491	SKS Power	50	4.90
		Tata Power Trading Company Limited/74187	Tata Power Haldia	80	5.06
01-03-2022 to 31-03-2022	00 hours to 2400 hours	Tata Power Trading Company Limited/74185	Jindal Power Limited	100	4.48
		PTC India Limited/74491	DB Power Limited	50	4.98
		Tata Power Trading Company Limited/74187	Tata Power Haldia	80	5.06
		PTC India Limited/74491	SKS Power	50	5.50

5. We have considered the submissions made by the Petitioner. The Petitioner has filed the present Petition seeking approval for Short Term Round the Clock (RTC) Power Purchase Arrangement i.e. from 0000 hrs. to 2400 hrs. for the period from 16.11.2021 to 31.03.2022. We also note that the Petitioner, being a distribution

licensee, has the Universal Service Obligation to ensure uninterrupted electricity supply to the consumers within its license area as provided under Section 43 of the Electricity Act, 2003.

5.1. The Petitioner has prayed to approve the arrangement for sourcing different quantum of power for different periods from different sources at different rates as stated in table above through short term bidding process to cater to the demand of Ahmedabad, Gandhinagar and Surat license area. The Petitioner published tender notice inviting bids through e-tendering and on Reverse Auction basis and the bidders were required to bid on MSTC's website and accordingly it is stated by the Petitioner that tendering was undertaken through transparent e-bidding process on DEEP Portal and prayed for approval under the provisions of the Guidelines for Power Procurement by the Distribution Licensee issued by the Commission vide Notification No. 02 of 2013 dated 14.08.2013 read with Section 86 (1) (b) of the Electricity Act, 2003.

5.2. Section 86 (1) (b) empowers the Commission to regulate the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured. It is, therefore, necessary to refer the relevant provisions of Section 86 (1) (b) of the Electricity Act:

“

86. Functions of State Commission, --

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

.....

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

.....”

As per the aforesaid provision, it is the function of the Commission to regulate the electricity purchase and procurement process of the Distribution Licensee including price, quantum and agreement.

5.3. This Commission has also issued the 'Guidelines for Procurement of Power through Competitive Bidding' dated 14.08.2013. Clause 13, 14, 15 and 16 of the aforesaid Guidelines issued by the Commission are reproduced below:

“.....

13. Where the Distribution Licensee is to procure power on a short-term basis or there is a shortfall due to any reason whatsoever, or failure in the supply of electricity from any approved source of supply during the year, for any reason whatsoever, the licensee may enter in to a short-term arrangement or agreement for procurement of power through power exchanges or through a transparent process of open tendering and competitive bidding.

14. In case of procurement of power through competitive bidding, the Distribution Licensee shall initiate the process for short-term power procurement in accordance with the Ministry of Power's Guidelines for Short Term Procurement of Power by Distribution Licensees through Tariff based bidding process' notified by the Ministry of Power on 15/05/2012 and in force from time to time. As provided in the MoP Guidelines:

a) The bid documentation shall be prepared in accordance with the MoP guidelines and the approval of the GERC shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government.

b) Generally, no deviation shall be allowed from these Guidelines. However, if it is essential to have the deviation from these Guidelines, the same could be done with the prior approval of the GERC.

c) The Procurer(s) shall procure short-term power as per the plan approved by the GERC or appropriate body as may have been constituted for the purpose by the GERC. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the GERC.

d) In case procurement of short-term power exceeds the approved annual short-term procurement plan, the Procurer(s) shall obtain prior approval from the GERC or any appropriate body as may have been constituted for the purpose by the GERC.

15. For procurement on short-term basis, a single-stage bid process by inviting Request for Proposal (RFP) shall be adopted. Procurer or authorized representative shall prepare bid document in line with these Guidelines. The Procurer shall publish an RFP notice in at least two national newspapers and upload the same on company website to accord it wide publicity. The bidding shall necessarily be by way of competitive bidding.

16. The PPA shall be signed with the selected bidder(s) consequent to the selection process.

(a). After the conclusion of bid process, the Standing Committee constituted for evaluation of RFP bids shall provide appropriate certificate on conformity of the bid process evaluation to the provisions of the RFP document. The Procurer shall provide a certificate on the conformity of the bid process to these Guidelines to the GERC.

(b). If the quantum of power procured and tariff determined are within the overall approval granted by the GERC in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the GERC.

In all other cases, the Procurer(s) shall submit a petition to the GERC for adoption of tariff within two days from the date of signing of PPA. The GERC should communicate the decision within seven days from the date of submission of petition.”

As per Clause 13 of the aforesaid guidelines, when the Distribution Licensee needs to procure the power to meet the demand of the consumers on the short-term basis, the Distribution Licensee may do so through energy exchange or through transparent process of open tendering and competitive bidding.

Clause 14 of the aforesaid Guidelines provides that in case of procurement of power through the competitive bidding, the Distribution Licensee shall initiate the process for Short-Term Power Procurement in accordance with the Guidelines for Short-Term Procurement of Power by the Distribution Licensee through tariff based bidding process notified by the Ministry of Power, Government of India on 15th May, 2012. The bid documents submitted by the Petitioner are as per the MoP

guidelines consist of the deviations earlier approved by the Commission. Thus, the bid documents are in accordance with the MoP guidelines.

Sub-clause (b) of Clause 14 of the aforesaid Guidelines provides that whenever there is any deviation from these Guidelines, the same could be done with prior approval of the Commission. Further, sub-clause (c) of the Clause 14 of the aforesaid Guidelines provides that the procurer shall procure the short term power as per the plan approved by the Commission.

Clause 15 of the said Guidelines provides that for Procurement of Power on short-term basis a single stage bid process by inviting Request for Proposal (RFP) shall be adopted. Further, it is also provided that the procurer/distribution licensee shall publish an RFP notice in at least 2 national newspapers and upload the same on the company's website to accord wide publicity. The bidding shall necessarily be by way of competitive bidding.

Sub-Clause (a) of Clause 16 of the aforesaid Guidelines provides that the Standing Committee needs to be constituted for evaluation of RFP bids who shall provide appropriate certificate on conformity of the bid process evaluation to the provisions of RFP document and conformity of the bid process to these guidelines to the Commission.

Sub-Clause (b) of Clause 16 of the aforesaid Guidelines provides that if the quantum of power procured and tariff determined are within the overall approval granted by the Commission in the Aggregate Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the Commission.

- 5.4. The Petitioner published a tender notice on 30.09.2021 in Business Standard (All India Edition) and Mint newspaper (All India Edition) for procurement of power on short term basis inviting bids through transparent e-bidding Reverse Auction process on DEEP Portal whereby the bidders were required to submit their bid/offers on MSTC website and last date for submission of same was 05.10.2021. Thus, the tender notice issued by the Petitioner in 2 (two) newspapers is in

compliance with Clause 15 of the Guidelines for Procurement of Power issued by the Commission.

- 5.5. The Petitioner has filed the RFP dated 29.09.2021 and draft PPA whereby bids were invited for supply of power for its license areas of Ahmedabad and Surat for following quantity and duration vide its tender no Torrent Power Limited/Short/21-22/ET/55 dated 29.09.2021:

Requisition	Period	Time slot	Total Quantum (MW)	Minimum Quantum (MW) to be offered by seller
1	16-11-2021 to 30-11-2021	0000 hours to 2400 hours	150	50
2	16-11-2021 to 30-11-2021	0600 hours to 2200 hours	250	50
3	01-12-2021 to 31-12-2021	0000 hours to 2400 hours	100	50
4	01-12-2021 to 31-12-2021	0600 hours to 2200 hours	100	50
5	01-01-2022 to 31-01-2022	0600 hours to 2200 hours	125	50
6	01-02-2022 to 28-02-2022	0000 hours to 2400 hours	100	50
7	01-02-2022 to 28-02-2022	0700 hours to 2200 hours	200	50
8	01-03-2022 to 31-03-2022	0000 hours to 2400 hours	200	50
9	01-03-2022 to 31-03-2022	0700 hours to 2400 hours	250	50

- 5.6. The Petitioner received bids from seven (7) bidders at IPO stage and e-reverse auction was conducted on MSTC's portal on 08.10.2021. Since the rates discovered in e-Reverse Auction were on higher side, the Petitioner TPL asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum. Based on final offers received from bidders, the Petitioner approached the Committee with all the details and in turn the Committee recommended to issue "Letter of Award" (LOA) to certain bidders.

5.7. We further note that the Petitioner has constituted a Standing Committee as per Clause 6 of the Guidelines for Procurement of Power by the Distribution Licensee issued by MoP. The Standing Committee comprises of following persons:

- | | |
|---------------------------------------|----------|
| 1. Shri Kashyap Desia, Vice President | Chairman |
| 2. Shri Naimesh Shah, Vice President | Member |
| 3. Shri Mayank Gupta, Vice President | Member |

The Petitioner submitted a certificate dated 21.10.2021 of Standing Committee which is reproduced below:-

“.....
Background

Torrent Power Limited (TPL) decided to invite bids for supply of power for its license areas of Ahmedabad and Surat for following quantity and duration vide its tender no Torrent Power Limited/Short/21-22/ET/55 dated 29th September 2021:

Requisition	Period	Time slot	Total Quantum (MW)	Minimum Quantum (MW) to be offered by seller
1	16-11-2021 to 30-11-2021	0000 hours to 2400 hours	150	50
2	16-11-2021 to 30-11-2021	0600 hours to 2200 hours	250	50
3	01-12-2021 to 31-12-2021	0000 hours to 2400 hours	100	50
4	01-12-2021 to 31-12-2021	0600 hours to 2200 hours	100	50
5	01-01-2022 to 31-01-2022	0600 hours to 2200 hours	125	50
6	01-02-2022 to 28-02-2022	0000 hours to 2400 hours	100	50
7	01-02-2022 to 28-02-2022	0700 hours to 2200 hours	200	50
8	01-03-2022 to 31-03-2022	0000 hours to 2400 hours	200	50
9	01-03-2022 to 31-03-2022	0700 hours to 2400 hours	250	50

Publication of tender

TPL issued tender on DEEP portal of MSTC website on 29th September 2021 and published the tender notice on 30th September 2021 for procurement of Power on short term basis during 16th November 2021 to 31st March 2022 in the following newspapers:

- (1) *Business Standard (All Edition-Eng.): Delhi, Lucknow, Chandigarh, Kolkata, Bhubaneswar, Mumbai, Pune, Ahmedabad, Chennai, Kochi, Bangalore, Hyderabad*
- (2) *Mint- All Edition: Ahmedabad, Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, (Chandigarh & Pune - Satellite editions)*

Bid evaluation

Bids from seven bidders were received at IPO stage. E-reverse auction was conducted on MSTC's portal on 8th October 2021. The result of e-reverse auction is as under:

Sn.	Period	Time Slot	Required MW	Bidder/Ref. No.	Quantity	Price
1	16 th Nov'21 to 30 th Nov'21	00 hours to 2400 hours	150	Tata Power Trading Company Limited/74176	50	7.6
				PTC India Limited/74476	50	7.9
				Tata Power Trading Company Limited/74244	50	10.23
2	16 th Nov'21 to 30 th Nov'21	0600 hours to 2200 hours	250	PTC India Limited/74476	50	7.9
				Tata Power Trading Company Limited/74244	100	10.74
3	Dec'21	00 hours to 2400 hours	100	Tata Power Trading Company Limited/74176	50	7.6
				PTC India Limited/74476	50	7.9
4	Dec'21	0600 hrs to 2200 hrs	100	PTC India Limited/74476	50	7.9
				Tata Power Trading Company Limited/74244	50	10.23
5	Jan'21	0600 hrs to 2200 hrs	125	PTC India Limited/74476	50	7.9
				PTC India Limited/74489	50	7.9
				Tata Power Trading Company Limited/74244	25	10.23
6	Feb'21	00 hours to 2400 hours	100	PTC India Limited/74491	50	4.9
				Tata Power Trading Company Limited /74187	50	5.06
7	Feb'21	0700 hrs to 2200 hrs	200	PTC India Limited/74476	50	7.9
				PTC India Limited/74489	50	7.9
				Tata Power Trading Company Limited/74244	100	7.9
8	Mar'21	00 hours to 2400 hours	200	Tata Power Trading Company Limited /74187	80	5.06
				PTC India Limited/74491	50	5.5
				Tata Power Trading Company Limited/74176	50	7.6
				PTC India Limited/74476	20	7.9
9	Mar'21	0700 hrs to 2400 hrs	250	PTC India Limited/74476	50	7.9
				PTC India Limited/74489	50	7.9
				Tata Power Trading Company Limited/74244	100	10.23

Since the rate discovered in e-Reverse Auction were on higher side, TPL asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum.

Outcome:

1. PTC India Limited (ref no: 74476) revised rate to Rs. 6 per unit from Rs. 7.9 per unit and increased quantum from 50 MW to 100 MW for 00 hours to 2400 hours for the month of Nov'21 and Dec'21.
2. Tata Power Trading Company Limited (ref no: 74187) increased quantum from 50 MW to 80 MW for RTC supply during Feb'22
3. Tata Power Trading Company Limited (ref no: 74244) reduced the rate from Rs. 10.23/unit and 10.76/unit to Rs. 7.6/unit-7.9/unit. They also increased their quantity to 100 MW / 50 MW for various requisitions.

Based on final offers received TPL approached the Committee and Committee recommended to issue Letter of Award (LOA) to following bidders:

Period	Time Slot	Bidder/Ref. No.	Source	e-RA		Revised Final Offers	
				Quantity (MW)	Price (Rs./unit)	Quantity (MW)	Price (Rs./unit)
16 th Nov'21 to 30 th Nov'21	00 hours to 2400 hours	PTC India Limited/74476	DB Power	50	7.9	100	6.0
Dec'21	00 hours to 2400 hours	PTC India Limited/74476	DB Power	50	7.9	100	6.0
Feb'22	00 hours to 2400 hours	PTC India Limited/74491	SKS Power	50	4.9	50	4.9
		Tata Power Trading Company Limited /74187	Tata Power Haldia	50	5.06	80	5.06
Mar'22	00 hours to 2400 hours	Tata Power Trading Company Limited /74187	Tata Power Haldia	80	5.06	80	5.06
		PTC India Limited/74491	SKS Power	50	5.5	50	5.5

The Committee hereby certifies that the bid process evaluation is done according to the provisions of the RfP document and the bidding process is in conformity with the Guideline for short term power procurement issued by Ministry of Power vide notification no 23/25/2011-R&R dated 30th March 2016.

Sd/-
Kashyap Desai
Chairman

Sd/-
Naimesh Shah
Member

Sd/-
Mayank Gupta
Member

Date: 21st Oct' 2021
Place: Ahmedabad

.....”

It is observed that the Standing Committee has confirmed that the tender notice was published in the newspapers, viz, (i) Business Standard (All Editions): Delhi, Lucknow, Chandigarh, Kolkata, Bhubaneswar, Mumbai, Pune, Ahmedabad, Chennai, Kochi, Bangalore, Hyderabad and (ii) Mint (All Editions): Ahmedabad, Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, (Chandigarh & Pune – Satellite Editions).

- 5.8. The aforesaid certificate dated 21.10.2021 issued by the Standing Committee states that bids were invited for supply of power during 16.11.2021 to 31.03.2022 for its license areas of Ahmedabad and Surat for different quantities for different duration.
- 5.9. The Certificate also states that bids were received from 7 bidders and thereafter e-reverse auction was conducted on MSTC's Portal on 08.10.2021. It also states that the rates discovered in e-Reverse Auction were on higher side and therefore, the Petitioner TPL asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum. Accordingly, revised offers were submitted by M/s PTC India Limited (ref no: 74476) by revising rate to Rs. 6 per unit from Rs. 7.90 per unit and increasing quantum from 50 MW to 100 MW for 0000 hours to 2400 hours for the month of November-2021 and December-2021. Also, Tata Power Trading Company Limited (ref no: 74187) increased quantum from 50 MW to 80 MW for RTC supply during February-2022. Moreover, Tata Power Trading Company Limited (ref no: 74244) reduced the rate from Rs. 10.23 per unit and 10.76 per unit to Rs. 7.6 per unit -Rs. 7.9 per unit and also increased their quantity to 100 MW / 50 MW for various requisitions. The said certificate also states that based on the final offers received the Petitioner TPL approached the Committee and the Committee decided to issue Letter of Award to PTC India Ltd. and Tata Power Trading Company Limited. Accordingly, the Petitioner issued Letter of Awards dated 21.10.2021 to these two bidders as under:

PTC India Limited					
Period	MSTC No.	Time Duration	Quantum (MW)	Rate at GETCO Periphery (Rs./kWh)	Injecting Source

16 th Nov'21 to 30 th Nov'21	74475	00 hours to 2400 hours	100	6.00	DB Power
1 st Dec' 21 to 31 st Dec'21	74476		100		
1 st Feb'22 to 28 th Feb'22	74491		50	4.90	SKS Power Generation (Chhatisgarh)
1 st Mar'22 to 31 st Mar'22	74491		50	5.50	

Tata Power Trading Company Limited.					
Period	MSTC No.	Time Duration	Quantum (MW)	Rate at GETCO Periphery (Rs./kWh)	Injecting Source
1 st Feb'22 to 28 th Feb'22	74187	00 hours to 2400 hours	80	5.06	Tata Power Haldia
1 st Mar'22 to 31 st Mar'22					

- 5.10. As the Petitioner did not tie up entire requirement of power in the aforementioned tender due to higher rates, the Petitioner issued another tender notice on 28.10.2021 for procurement of power on short term basis through e-tendering and on Reverse Auction basis in Business Standard (All India Edition) and Mint newspaper (All India Edition) for procurement of power on short term basis inviting bids through transparent e-bidding Reverse Auction process on DEEP Portal vide its tender no Torrent Power Limited/Short/21-22/ET/55 dated 27th October 2021 as under, whereby the bidders were required to submit their bid/offers on MSTC website and last date for submission of same was 01.11.2021. as under:

Requisition	Period	Time slot	Total Quantum (MW)	Minimum Quantum (MW) to be offered by seller
1	01-12-2021 to 31-12-2021	0000 hours to 2400 hours	50	50
2	01-12-2021 to 31-12-2021	0700 hours to 2100 hours	200	50
3	01-01-2022 to 31-01-2022	0000 hours to 2400 hours	50	50
4	01-01-2022 to 31-01-2022	0700 hours to 2100 hours	200	50
5	01-02-2022 to 28-02-2022	0000 hours to 2400 hours	50	50

6	01-02-2022 to 28-02-2022	0700 hours to 2100 hours	200	50
7	01-03-2022 to 31-03-2022	0000 hours to 2400 hours	125	50
8	01-03-2022 to 31-03-2022	0700 hours to 2400 hours	200	50

5.11. The Petitioner received bids from seven (7) bidders at IPO stage and e-reverse auction was conducted on MSTC's portal on 12.11.2021. Since the rates discovered in e-Reverse Auction were on higher side, the Petitioner TPL asked all the bidders to submit their best offer in terms of reduction in rate and increase in quantum. Based on final offers received from bidders, the Petitioner approached the Committee with all the details and in turn the Committee recommended to issue "Letter of Award" (LOA) to certain bidders. The Petitioner submitted a certificate of Standing Committee which is reproduced below:-

"Standing Committee Certificate.

Standing Committee:

- | | |
|---------------------------------------|----------|
| 1. Shri Kashyap Desia, Vice President | Chairman |
| 2. Shri Naimesh Shah, Vice President | Member |
| 3. Shri Mayank Gupta, Vice President | Member |

Background

Torrent Power Limited (TPL) decided to invite bids for supply of power for its license areas of Ahmedabad and Surat for following quantity and duration vide its tender no Torrent Power Limited/Short/21-22/ET/55 dated 27th October 2021:

Requisition	Period	Time slot	Total Quantum (MW)	Minimum Quantum (MW) to be offered by seller
1	01-12-2021 to 31-12-2021	0000 hours to 2400 hours	50	50
2	01-12-2021 to 31-12-2021	0700 hours to 2100 hours	200	50
3	01-01-2022 to 31-01-2022	0000 hours to 2400 hours	50	50
4	01-01-2022 to 31-01-2022	0700 hours to 2100 hours	200	50
5	01-02-2022 to 28-02-2022	0000 hours to 2400 hours	50	50
6	01-02-2022 to 28-02-2022	0700 hours to 2100 hours	200	50
7	01-03-2022 to 31-03-2022	0000 hours to 2400 hours	125	50

8	01-03-2022 to 31-03-2022	0700 hours to 2400 hours	200	50
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Publication of tender

TPL issued tender on DEEP portal of MSTC website on 27th October 2021 and published the tender notice on 28th October 2021 for procurement of Power on short term basis during 1st December 2021 to 31st March 2022 in the following newspapers:

- (1) Business Standard (All Edition-Eng.): Delhi, Lucknow, Chandigarh, Kolkata, Bhubaneswar, Mumbai, Pune, Ahmedabad, Chennai, Kochi, Bangalore, Hyderabad
- (2) Mint- All Edition: Ahmedabad, Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, (Chandigarh & Pune - Satellite editions)

Bid evaluation

Bids from seven bidders were received at IPO stage. E-reverse auction was conducted on MSTC's portal on 12th November 2021. The result of e-reverse auction is as under:

Sn	Month	Time Slot	Requested Qty (MW)	Bidder/Ref. No.	Quantity (MW)	Price (Rs / kWh)
1	Dec'21	RTC	50	Tata Trading /74185	50	4.48
2	Dec'21	0700 hrs to 2100 hrs	200	Tata Trading /74185	100	5.95
				PTC India /74489	50	5.96
				PTC India /74488	50	7.12
3	Jan'21	RTC	50	Tata Trading /74176	50	4.98
4	Jan'21	0700 hrs to 2100 hrs	200	Tata Trading /74185	100	5.96
				PTC India /74489	50	5.97
				PTC India /74488	50	6.97
5	Feb'21	RTC	50	PTC India/74491	50	5.42
6	Feb'21	0700 hrs to 2100 hrs	200	Tata Trading /74185	100	5.96
				PTC India /74489	50	5.97
				PTC India /74488	50	6.35
7	Mar'21	RTC	125	Tata Trading /74185	100	5.4
				PTC India/74491	25	5.4
8	Mar'21	0700 hrs to 2300 hrs	200	Tata Trading /74185	100	5.96
				PTC India /74489	50	5.97
				PTC India /74488	50	6.35

Since the rate discovered in e-Reverse Auction were on higher side, TPL asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum.

Outcome:

1. Tata Power Trading Company Limited:

Generation source 1 (Jindal Power Limited):

Month	Duration (Hrs.)	RA offer (Rs/kWh)	Revised offer (Rs/kWh)
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01.12.2021 to 31.12.2021	00:00-24:00	4.48	4.48
	07:00-21:00	5.95	5.69
01.01.2022 to 31.01.2022	00:00-24:00	5.05	4.98
	07:00-21:00	5.96	5.69
01.02.2022 to 28.02.2022	00:00-24:00	5.42	4.98
	07:00-21:00	5.96	5.69
01.03.2022 to 31.03.2022	00:00-24:00	5.40	4.48
	07:00-21:00	5.96	5.69

Generation source 2 (Tata Power Haldia):

Period (Date)	RA offer (Rs/kWh)			Revised offer		
	Duration (Hrs.)	Quantum (MW)	Price (Rs/kWh)	Period (Date)	Quantum (MW)	Price (Rs/kWh)
01-01-2022 to 31-01-2022	0000 - 24:00	50	4.98	01.01.2022 to 12.01.2022	80	4.60
				13.01.2022 to 31.01.2022	55	4.60

2. PTC India Limited:

Generation source 1 (DB Power Limited):

Month	Duration(hrs)	Quantum (MW)	RA Offer	Revised Offer
01-12-2021 to 31-12-2021	00 -24:00	50	5.32	4.98
18-01-2022 to 31-01-2022	00 -24:00	50	4.98	4.98
01-02-2022 to 28-02-2022	00 -24:00	50	5.4	4.98
01-03-2022 to 31-03-2022	00 -24:00	50	5.4	4.98

Generation source 2 (SEMBCORP):

Month	Duration	Quantum (MW)	RA Offer	Revised Offer
01-12-2021 to 31-12-2021	07-21 Hrs	50	7.12	5.95
01-01-2022 to 31-01-2022	07-21 Hrs	50	6.97	5.96
01-02-2022 to 28-02-2022	07-21 Hrs	50	6.35	5.96
01-03-2022 to 31-03-2022	07-23 Hrs	50	6.35	5.96

Based on final offers received TPL approached the Committee and Committee recommended to issue Letter of Award (LOA) to following bidders:

Sn	Month	Name of bidder/Ref no	Source	Time Slot	Quantum (MW)	Rate (Rs./unit) @ GETCO Periphery
1	01-12-2021 to 31-12-2021	Tata Power Trading Company Ltd/74185	Jindal Power Limited	RTC	50	4.48
2	01-01-2022 to 12-01-2022	Tata Power Trading Company Ltd/74176	Tata Power Haldia		80	4.60
3	13-01-2022 to 31-01-2022				55	
4	18-01-2022 to 31-01-2022	PTC India Limited/74491	D B Power		50	4.98
5	01-02-2022 to 28-02-2022	PTC India Limited/74491	D B Power		50	4.98
6	01-03-2022 to 31-03-2022	Tata Power Trading Company Ltd/74185	Jindal Power Limited		100	4.48

		PTC India Limited/74491	D B Power Limited		50	4.98
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The Committee hereby certifies that the bid process evaluation is done according to the provisions of the RfP document and the bidding process is in conformity with the Guideline for short term power procurement issued by Ministry of Power vide notification no 23/25/2011-R&R dated 30th March 2016.

*Sd/-
Kashyap Desai
Chairman*

*Sd/-
Naimesh Shah
Member*

*Sd/-
Mayank Gupta
Member*

Date: 24th Oct'2021

Place: Ahmedabad

.....”

- 5.12. It is also observed that the Standing Committee has confirmed that the tender notice was published in the newspapers, viz, (i) Business Standard (All Editions): Delhi, Lucknow, Chandigarh, Kolkata, Bhubaneswar, Mumbai, Pune, Ahmedabad, Chennai, Kochi, Bangalore, Hyderabad and (ii) Mint (All Editions): Ahmedabad, Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, (Chandigarh & Pune – Satellite Editions).
- 5.13. The aforesaid certificate dated 24.10.2021 issued by the Standing Committee states that bids were invited for supply of power during 01.12.2021 to 31.03.2022 for its license areas of Ahmedabad and Surat for different quantities for different duration.
- 5.14. The Certificate also states that bids were received from 7 bidders and thereafter e-reverse auction was conducted on MSTC's Portal on 12.11.2021. It also states that the rates discovered in e-Reverse Auction were on higher side and therefore, the Petitioner TPL asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum. The said certificate also states that based on the final offers received, the Petitioner TPL approached the Committee and the Committee decided to issue Letter of Award to PTC India Ltd. and Tata Power Trading Company Limited. Accordingly, the Petitioner issued Letter of Awards dated 24.11.2021 to these two bidders as under:

PTC India Limited					
Period	MSTC No.	Time Duration	Quantum (MW)	Rate at GETCO Periphery (Rs./kWh)	Injecting Source
18 th Jan'22 to 31 st Jan'22	74491	0000 hours to 2400 hours	50	4.98	DB Power Limited
1 st Feb'22 to 28 th Feb'22					
1 st Mar'22 to 31 st Mar'22					

Tata Power Trading Company Limited.					
Period	MSTC No.	Time Duration	Quantum (MW)	Rate at GETCO Periphery (Rs./kWh)	Injecting Source
1 st Dec' 21 to 31 st Dec'21	74185	00 hours to 2400 hours	50	4.48	Jindal Power Limited
1 st Jan' 22 to 12 th Jan'22	74176	00 hours to 2400 hours	80	4.60	Tata Power Haldia
1 st Feb'22 to 28 th Feb'22			55		
1 st Mar'22 to 31 st Mar'22	74185	00 hours to 2400 hours	100	4.48	Jindal Power Limited

5.15. It is observed that the above certificate of the Standing Committee is dated 24.10.2021 when tender no is 'Torrent Power Limited/Short/21-22/ET/55 dated 27th October 2021' for which notice was published in newspaper on 28.10.2021 and E-Reverse Auction conducted on 12.11.2021 which seems to be typographical mistake.

5.16. We also note that the Ministry of Power has notified the Electricity (Late Payment Surcharge) Rules, 2021. The Rules have come into force on the date of their publication in the Official Gazette i.e. 22.02.2021. The said Rules read as under:

".....

2 Application.-

.....

(b) such Power Purchase Agreements, Power Supply Agreements and Transmission Service Agreements that become effective after these rules come into force, in which tariff is determined under section 63 of the Act.

3. *Definitions.* – (1) *In these rules, unless the context otherwise requires,-*

(a) *“Act” means the Electricity Act, 2003 (36 of 2003);*

(b) *“base rate of Late Payment Surcharge” means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:*

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;

(c) *“due date” means the date by which the bill for the charges for power supplied by the generating company or electricity trader or for the transmission service provided by a transmission licensee are to be paid, in accordance with the Power Purchase Agreement, Power Supply Agreement or Transmission Service Agreement, as the case may be, and if not specified in the agreement, forty-five days from the date of presentation of the bill by such generating company, electricity trader or transmission licensee;*

(d) *“Late Payment Surcharge” means the charges payable by a distribution company to a generating company or electricity trader for power procured from it, or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date;*

(2) *Words and expressions used and not defined herein but defined in the Act shall have the meaning respectively assigned to them in the Act.*

4. *Late Payment Surcharge.*

(1) *Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default.*

(2) *The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:*

Provided that the rate at which Late Payment Surcharge shall be payable shall not be higher than the rate specified in the agreement for purchase or transmission of power, if any:

Provided further that, if a distribution licensee has any payment including Late Payment Surcharge outstanding against a bill after the expiry of seven months from the due date of the bill, it shall be debarred from procuring power from a power exchange or grant of short term open access till such bill is paid.

The aforesaid rules are statutory Rules notified under the Electricity Act, 2003. Therefore, it needs to be given an effect in the power procurement by the distribution licensee. We note that the Petitioner has made necessary changes in Article 5.3.3 of the draft Power Purchase Agreement as noted hereinafter.

- 5.17. We also note that the Petitioner has incorporated deviations from the MoP bidding guidelines as approved by the Commission vide its Order dated 24.04.2017 in Petition No. 1636 of 2017 in Clause 5.2.3 of Article 5 pertaining to 'Billing & Payment' of the draft PPA filed for availing better terms and flexibility to reduce the overall cost of power procurement which are as under:

“.....

5.2.3. Liquidated Damages:

- a). *Both the parties would ensure that actual scheduling does not deviate by more than 20% of the contracted power as per the approved open access on calendar monthly basis.*
- b). *In case deviation from Procurer side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Procurer shall pay compensation at Rs. 2.00 per kWh for the quantum, of shortfall in excess of permitted deviation of 20% in energy off-take while continuing to pay open access charges as per contract.*
- c). *In case deviation from Seller side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Seller shall pay compensation to Procurer at Rs. 2.00 per kWh for the quantum, of shortfall in excess of permitted deviation of 20% in energy supplied and pay for the open access charges to the extent of energy not supplied by the Seller.*

.....”

- 5.18. We note that the Petitioner has specified at Clause 5.3.3 under Article 5 of the Draft Power Purchase Agreement filed with this Petition regarding Late Payment Surcharge in terms of Electricity (Late Payment Surcharge) Rules, 2021 notified by the Ministry of Power, Government of India which reads as under:

“.....

5.3.3. LATE PAYMENT SURCHARGE

(1) Late Payment Surcharge shall be payable on the payment outstanding after the 15th day of the date of receipt of bill, at the base rate of Late Payment Surcharge applicable for the period for the first month of default.

(2) The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:

Provided that the rate at which Late Payment Surcharge shall be payable under Article 5.3.3 (1) or Article 5.3.3 (2) shall not be higher than 15%

5.19. We also note that the Petitioner has defined ‘base rate of Late Payment Surcharge’ under Article 1 which reads as under:

“.....

“base rate of Late Payment Surcharge” means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;

5.20. The Petitioner has filed two separate Certificates of the ‘Standing Committee’ and both of them mentions that since the rate discovered in e-Reverse Auction were on higher side, the Petitioner asked all bidders to submit their best offer in terms of reduction in rate and increase in quantum. Thereafter, the Petitioner approached the Committee and based on recommendation by the Standing Committee, the Petitioner has issued LoAs. Moreover, in both these certificates, the Standing Committee has also certified and confirmed that the bid process evaluation has

been done in accordance with the provisions of the RFP document and the bidding process carried out in conformity with the Guidelines for Short-Term Power Procurement issued by the Ministry of Power vide notification No. 23/25/2011-R&R dated 30th March, 2016.

- 5.21. It is also noted that during the hearing of the matter and subsequently, vide its affidavit dated 11.01.2022, the Petitioner has made submissions regarding the situation prevailing at relevant point of time when bidding was undertaken, high prices of imported coal & gas, shortage of domestic coal being faced etc.
- 5.22. Based on the above, we decide that the process for procurement of power is carried out by the Petitioner in conformity with the Guidelines for Short-Term Procurement of Power by Distribution Licensee through Tariff based bidding, issued by the Ministry of Power vide Notification dated 30th March, 2016 and the Guidelines for Procurement of Power by Distribution Licensee issued by the Commission vide Notification No. 2 of 2013 dated 14th August, 2013.
- 5.23. We, therefore, decide to approve the procurement of power by the Petitioner for the period from 16.11.2021 to 31.03.2022 as per the recommendation of the Standing Committee constituted for bid evaluation, which is as under:

Month	Time Slot	Bidder/Ref. No.	Source	Revised volume and rate	
				Quantity (MW)	Price (Rs. / unit)
16-11-2021 to 30-11-2021	00 hours to 2400 hours	PTC India Limited/74476	DB Power	100	6.00
01-12-2021 to 31-12-2021	00 hours to 2400 hours	Tata Power Trading Company Ltd/74185	Jindal Power Limited	50	4.48
		PTC India Limited/74476	DB Power	100	6.00
01-01-2022 to 12-01-2022	00 hours to 2400 hours	Tata Power Trading Company/74176	Tata Power Haldia	80	4.60
13-01-2022 to 31-01-2022				55	
18-01-2022 to 31-01-2022	00 hours to 2400 hours	PTC India Limited/74491	DB Power Limited	50	4.98

Month	Time Slot	Bidder/Ref. No.	Source	Revised volume and rate	
				Quantity (MW)	Price (Rs. / unit)
01-02-2022 to 28-02-2022		PTC India Limited/74491	DB Power Limited	50	4.98
		PTC India Limited/74491	SKS Power	50	4.90
		Tata Power Trading Company Limited/74187	Tata Power Haldia	80	5.06
01-03-2022 to 31-03-2022	00 hours to 2400 hours	Tata Power Trading Company Limited/74185	Jindal Power Limited	100	4.48
		PTC India Limited/74491	DB Power Limited	50	4.98
		Tata Power Trading Company Limited/74187	Tata Power Haldia	80	5.06
		PTC India Limited/74491	SKS Power	50	5.50

5.24. As already mentioned above, the Petitioner in terms of recommendations by the Standing Committee has issued 'Letter of Award's' (LoAs) dated 21.10.2021 to M/s PTC India Ltd. and Tata Power Trading Company Ltd. and thereafter, 'Letter of Award's' (LoAs) dated 24.11.2021 are also issued to M/s PTC India Ltd. and to Tata Power Trading Company.

6. In view of above, this Petition is allowed and it is decided to approve the above Short Term Power Purchase of RTC power for the period 16.11.2021 to 31.03.2022 as recommended by the Standing Committee of Bid Evaluation. It is directed to the Petitioner to submit copies of duly executed PPAs to the Commission confirming on affidavit that the PPAs consist of terms and conditions as per the bidding guidelines documents and deviations approved by the Commission. It is also directed to the Petitioner that for the purpose of transparency, it shall make the bids public by indicating the tariff quoted by all the Bidders. While doing so, only the name of the Successful Bidder(s) shall be made public and tariffs quoted by other Bidders shall

be made public anonymously in terms of Clause 11.3 of the Guidelines for short-term (i.e. for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process notified by Ministry of Power vide Notification No.23/25/2011-R&R dated 30th March, 2016.

7. With this, the present Petition stands disposed of.
8. We order accordingly.

Sd/-
[S.R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 07/02/2022.

