



GUJARAT URJA VIKAS NIGAM LIMITED

(An ISO 9001:2015 Certified Company)

CIN:- U40109GJ2004SGC045195

Sardar Patel Vidyut Bhavan,

Race Course, Vadodara: 390 007

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REF NO: GUVNL/COM/2022/GM(RE & IPP)/Solar/ 566

Date: 26/05/2022

To
Shri Roopwant Singh, IAS
Secretary
Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City,
Gandhinagar - 382355,
Gujarat, India.

*AD (Legal) / Ex (Legal)
Process
PH
26/05/2022*

RECORDED
INWARD No - 3034
Date : 26 MAY 2022

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

Respected Sir,

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

The Petition (1 original + 4 copies) on affidavit is attached herewith. In this regard, GUVNL has made payment of requisite petition file fees of Rs. 10,000 as per Schedule 24 of GERC (Fees, Fines and Charges) Regulations, 2005 and the payment details are attached herewith.

Thanking you,

Yours faithfully,

K.P Jangid
General Manager (Comm)

*TXN REFNO: 63557920220526008400000005
MR No 3127
30/5/22
Pl. accept the fees of Rs. 10,000/- subject to Verification of GERC (Fees, Fines & Charges) Regulations, 2005.
AD (Legal)
26/5/2022*

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION,
GANDHINAGAR**

Filing No:

Petition No:

IN THE MATTER OF:

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

PETITIONER Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race Course,
Vadodara - 390 007

PETITION UNDER SECTION 86(1) READ WITH SECTION 63 OF THE ELECTRICITY ACT, 2003 AND THE PROVISIONS OF THE RELEVANT GUIDELINES NOTIFIED BY THE CENTRAL GOVERNMENT UNDER SECTION 63 OF THE ELECTRICITY ACT, 2003 FOR DIRECTIONS IN REGARD TO TARIFF BASED COMPETITIVE PROCUREMENT OF ELECTRICITY.

MOST RESPECTFULLY SHOWETH:

- 1) The present Petition is being filed by the Petitioner, Gujarat Urja Vikas Nigam Limited, a company incorporated under the provisions of the Companies Act, 1956 with its registered office at Sardar Patel Vidyut Bhavan, Race Course, Vadodara. The Petitioner is a licensee and the entity undertaking bulk purchase of electricity from generating companies and other sources and bulk sale of electricity to the State Distribution Licensees.



- 2) The Government of Gujarat ("GoG") has notified the Gujarat Electricity Industry (Reorganization and Regulation) Act 2003 in May 2003 for the reorganization of the entire power sector in the State of Gujarat.
- 3) Pursuant to the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme, 2003 notified under the Gujarat Electricity Industry (Reorganization and Regulation) Act 2003, erstwhile Gujarat Electricity Board has been reorganised and its functions have been vested in different entities.
- 4) The activities of Generation, Transmission, Distribution, Bulk power purchase and supply undertaken by erstwhile Gujarat Electricity Board has been entrusted to separate seven functional entities. The generation activity is assigned to Gujarat State Electricity Corporation Ltd. (GSECL), the transmission activity is assigned to Gujarat Energy Transmission Corporation Ltd. (GETCO) and the distribution activity is assigned to four Distribution companies viz. Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL), Dakshin Gujarat Vij Company Ltd. (DGVCL) and Paschim Gujarat Vij Company Ltd. (PGVCL). Further, the function of Bulk purchase and Bulk sale of power is assigned to the Petitioner - Gujarat Urja Vikas Nigam Ltd. (GUVNL) as per the re-organization scheme.
- 5) The Distribution Companies are mandated to procure power from Renewable Energy Sources as per the provisions of section 86(1)(e) of the Electricity Act, 2003 and in terms of Gujarat Electricity Regulatory Commission(Procurement of Energy from Renewable Energy Sources) Regulations, 2010 as amended from time to time.
- 6) In accordance with the same, the Petitioner on behalf of its four Distribution Companies has been entering into Power Purchase Agreements amongst others with various Renewable Energy Generators for procurement of renewable power from time to time.
- 7) Section 63 of the Electricity Act, 2003 provides that 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.
- 8) Section 86(1)(b) of the Electricity Act 2003 provides that the State Commission shall discharge following functions, namely:

Clause (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."

- 9) Promotion of competition in the electricity industry in India is one of the key objectives of the Electricity Act 2003. The 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 of power and lead to reduction in prices of electricity and in significant benefits for consumers.
- 10) Sections 61 and 62 of the Electricity Act 2003 empower the State Commissions to specify the terms and conditions for the determination of tariff for generation, transmission, distribution and supply of electricity in their State. In order to promote further competition, Section 63 of the Electricity Act 2003 provides the State Commission to adopt such tariffs which have been determined through a transparent process of Competitive Bidding. Section 63 of the Electricity Act 2003 provides as under:

"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 Govt."

- 11) The National Tariff Policy, 2016 formulated by the Ministry of Power has given specific guidance on purchase of power generated from renewable energy sources. Section 6.4(2), of the National Tariff Policy provides as under:

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

- 12) The Central Government has, inter-alia, notified the following Guidelines under Section 63 of the Electricity Act 2003 relating to procurement of power from Renewable Energy Projects:

- (i) "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" issued by the Ministry of Power vide Resolution dated 03.08.2017 ('**Solar Guidelines**');
- (ii) "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects" issued by the Ministry of Power vide Resolution dated 08.12.2017 ('**Wind Guidelines**'); and



- (iii) "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects" issued by the Ministry of New & Renewable Energy vide O.M. dated 14.10.2020 ('**Wind-Solar Hybrid Guidelines**').

The Standard Bidding Documents are yet to be published by the Central Government under the above Guidelines. The copies of the Solar Guidelines dated 03.08.2017, Wind Guidelines dated 08.12.2017 and the Wind-Solar Hybrid Guidelines dated 14.10.2020, along with subsequent amendments and clarifications is attached hereto and marked as **Annexure 'A'** ('Colly').

- 13) The above Guidelines (as amended) provide following conditions to be met by Procurer while issuing the tender documents:

i. **Clause 3.1.1 of the Solar Guidelines dated 03.08.2017:**

3. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

.....
3.1.1 Bid Documentation

- 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."

ii. **Clause 5 of the Wind Guidelines dated 08.12.2017:**

5. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

The Procurer shall meet the following conditions:

5.1. Bid Documentation:

- a) Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model PPA and Model PSA] 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 22 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.

iii. **Clause 6 of the Wind Solar Hybrid Guidelines dated 14.10.2020:**

6. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

The Procurer(s) shall meet the following conditions:

6.1. Bid Document:

It shall prepare the bid documents in accordance with these Guidelines. Any deviations from the Guidelines need to be approved by the appropriate Commission

14) The Petitioner on behalf of the four Distribution Companies in the State, which are its subsidiaries, has been conducting tendering process from time to time for procurement of grid connected renewable energy power from Renewable Energy Projects through Competitive Bidding (followed by e-reverse auction).

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

(a) The procurement of power under the tender would be for 500 MW RE power with Co-located Energy Storage Systems wherein developer can install



projects with one of the following three combinations. (1) **Combination A** – Wind Power Projects with Co-located Energy Storage Systems (2) **Combination B** – Solar Power Projects with Co-located Energy Storage Systems (3) **Combination C** – Wind-Solar Hybrid Projects with Co-located Energy Storage Systems;

- (b) In the aforesaid tender, the time periods from 06-09 Hrs in the morning and 18-24 Hrs in the evening have been designated as peak hours. Out of these peak hours, 2 hours in morning and 4 hours in evening on each day would be selected by GUVNL/SLDC in which the developer will be mandatorily required to supply firm dispatchable power either from RE Projects or from ESS;
- (c) It will be mandatory for the developer to supply 3 MWh energy during peak periods for every 1 MW of contracted capacity for which the developer may install Battery Energy Storage Systems or Pump Storage Hydro Power Systems or any other Storage Systems along with RE project. However, the tender would be technology agnostic for ESS;
- (d) Peak power will be purchased at tariff discovered through competitive bidding whereas Off Peak power will be purchased at fixed rate of Rs 2.29 / unit which is the rate discovered previously in the reverse auction conducted on 16.03.2022 in GUVNL's Solar tender dated 03.01.2022; and
- (e) The tender documents have been prepared with a view to align the provisions of same to the Guidelines of tariff based competitive bidding issued by Government of India for purchase of power from respective RE sources i.e. Wind or Solar or Wind-Solar Hybrid Projects as there are no guidelines at present for procurement of power from Energy Storage Systems which are included as part of the RE project. The aspects of deviations from the Guidelines are discussed in the subsequent para.

- 16) It is submitted that Central Government has recently notified the Guidelines under Section 63 of the Electricity Act 2003 for Procurement and Utilization of Battery Energy Storage Systems (BESS) as part of Generation, Transmission and Distribution assets, along with Ancillary Services vide notification dated 10.03.2022 which provides that in case of systems which contain RE generating stations along with BESS as a single Project (co-located or multi-located), the respective Standard Bidding Guidelines issued for procurement of power from Solar, Wind and Hybrid Power Projects, or the Unified Standard Bidding Guidelines, as issued by the Ministry of Power, shall be applicable. It is also provided in this Guidelines that the BESS may be charged by RE power or non RE power or through a



combination of RE and non-RE power, however, when it seeks to supply RE power, it will need to be charged with RE power only. The tender documents of the present petition are in consonance with the provisions of the aforesaid Guidelines dated 10.03.2022.

17) It is submitted that the deviations from the Guidelines of the Central Government approved by Hon'ble Commission vide orders dated 15.03.2018 in Petition No. 1706 of 2018 & dated 13.01.2020 in 1848 of 2019 in case of solar projects and vide order dated 15.03.2018 in Petition No. 1709 of 2018 in case of Wind projects have been included in the present bid documents prepared by Petitioner. Further, the provisions of "Change in Law" in the present tender are kept in line with the Petition no. 2069 of 2022 recently filed by GUVNL before Hon'ble Commission for approval of Change in Law clause in case of Solar Tenders which has been approved by the Hon'ble Commission vide Order dated 19.05.2022. In the present tender, the Change in Law clause of all three RE sources i.e. Wind or Solar or Wind-Solar Hybrid are proposed to be kept uniform which will entail deviations from respective Guidelines. While approval for deviations from Central Government Guidelines for 'Change in Law' in case of Solar is already under process, the approval for the deviations in case of Wind and Wind-Solar Hybrid sources is sought under present petition.

18) While the all other provisions of the bid documents are in consonance with the Guidelines issued by Central Government read with deviations approved by Hon'ble Commission vide orders dated 15.03.2018 in Petition No. 1706 of 2018 & dated 13.01.2020 in 1848 of 2019 in case of solar projects and vide order dated 15.03.2018 in Petition No. 1709 of 2018 in case of Wind projects, the Petitioner is seeking following deviations / modifications from the respective guidelines applicable to each RE source as detailed below.

18.1 Payment Security Fund: It is pertinent to mention that the Central Government Guidelines in all three cases of RE procurement provide for mandatory creation of payment security fund by procurers in favour of generators towards payment security in addition to Letter of Credit. In case of Wind and Solar projects, GUVNL has taken the approval of Hon'ble Commission for deviation from the provision of Payment Security Fund. However, in case of Wind-Solar Hybrid projects, GUVNL seeks approval of similar deviations from clause 8.4.1(ii) of the Wind Solar Hybrid Guidelines dated 14.10.2020 as amended vide OM dated 23.07.2021 issued by the Ministry of New and Renewable Energy, Government of India. Clause 8.4.1 of the Wind Solar Hybrid Guidelines reads as under.



"8.4.1 Scenario 1: Direct Procurement by Distribution Licensee from Hybrid Power Generator:

Distribution Licensee shall provide payment security to the Hybrid Power Generator through:

- (i) *Revolving Letter of Credit (LC) of an amount not less than 1 (one) months' average billing from the Project under consideration;*

AND

- (ii) *Payment Security Fund, which shall be suitable to support payment for at least 3 (three) months' billing of all the Projects tied up with such fund;*

- (iii) *In addition to (i) & (ii) above, Distribution Licensee may also choose to provide State Government Guarantee, in a legally enforceable form, ensuring that there is adequate security to the Hybrid Power Generator, both in terms of payment of energy charges and termination compensation if any."*

The Petitioner hereby seeks approval of Hon'ble Commission for the deviation from the clause 8.4.1 (ii) of the guidelines as the Petitioner is having good track record of making timely payment(s) by availing rebate on prompt payment prior to due date. Keeping of clause 8.4.1 (ii) of the Guidelines may lead to unnecessary blockage of funds and costs associated thereto and ultimately create burden on end consumers of the State and thus, it is not necessary in the Petitioner's case whose record for the payment to the generators is good. The above deviation proposed in case of Wind-Solar Hybrid sources is in line with deviations already approved in case of Solar and Wind sources.

18.2 Change in Law – The Change in Law clauses stipulated in the Guidelines issued by Central Government provide a broad scope in case of all three sources i.e., Solar, Wind and Wind-Solar Hybrid. The relevant clauses of the Guidelines are reproduced hereunder

i. Clause 5.7 of the Solar Guidelines dated 03.08.2017- Change in Law:

"5.7.1 In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

5.7.2. In these Guidelines, the term Change in Law shall refer to the occurrence of any of the following events after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an



amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes which have a direct effect on the Project. However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.”

ii. **Clause 7.8 of the Wind Guidelines dated 08.12.2017- Change in Law:**

“5.7.1 In the event a Change in Law results in any adverse financial loss/ gain to the WPG then, in order to ensure that the WPG is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the WPG/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

5.7.2. In these Guidelines, the term Change in Law shall refer to the occurrence of any of the following events after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes which have a direct effect on the Project. However, Change in Law shall not include any change in (a) taxes on corporate income or any change in any withholding tax on income or dividends; and (b) Custom duty on imported equipment”

iii. **Clause 8.5 of the Wind-Solar Hybrid Guidelines dated 14.10.2020- Change in Law:**

“8.5.1 In the event a change in Law results in any increase or decrease in the cost of generation, the said increase / decrease in cost shall be passed on in tariff in the following manner:

(a) For the purpose of ensuring that the pass through happens in an expeditious manner within 30 days of the Change in Law event, the following formula may be followed:-

Let Financial Impact of Change in Law = P;

Then, the modification in PPA tariff (M.T.) for compensating the financial impact is given
by

$M.T. = Y/X$

Where, X = estimated monthly electricity generation (in kWh) = (1/12) [contracted capacity of the RE power plant as per PPA (in MW) x Annual CUF declared in PPA (in %) x 8760 hours x 10];

