

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 2139 of 2022.**

**In the Matter of:**

**Petition under Section 86 read with Section 63 of the Electricity Act for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff Based Competitive Bidding Process from Grid Connected Solar PV Projects and for approval of provisions regarding Greenshoe Option to be incorporated in the bid documents for procurement of power from project to be set up in proposed Khavda Solar Park.**

**And**

**IA No. 01 of 2023 in Petition No. 2139 of 2022.**

**In the Matter of:**

**Interlocutory Application for amendment of Petition and for compliance of the directives of the Commission vide Order dated 28.09.2022 in Petition No. 2139 of 2022.**

Petitioner : Gujarat Urja Vikas Nigam Limited

Represented By : Ms. Sailaja Vachhrajani and Mr. Amit H. Chavda

**CORAM:**

**Anil Mukim, Chairman  
Mehul M. Gandhi, Member  
S. R. Pandey, Member**

**Date: 07/03/2023.**

**ORDER**

1. The Petitioner Gujarat Urja Vikas Nigam Limited (GUVNL) has filed this Petition under Section 86 read with Section 63 of the Electricity Act seeking approval of deviations from the Guidelines dated 03.08.2017 issued by Central Government as amended from time to time for procurement of power through Tariff Based Competitive

Bidding Process from Grid Connected Solar PV Projects and for approval of provisions regarding Greenshoe Option to be incorporated in the bid documents for procurement of power from project to be set up in proposed Khavda Solar Park. The reliefs originally sought by the Petitioner in said Petition are as under:

- (a) To admit the present Petition;*
- (b) To approve the provisions regarding Greenshoe option mentioned at para 15 (vii) of the petition in respect of present tender.*
- (c) To approve the deviations from the Solar Guidelines dated 03.08.2017 issued by Central Government for procurement of power from Solar including modifications, as proposed by Petitioner as per details stated at para 16 of the present petition in respect of all future tenders of solar;*
- (d) To allow Petitioner to issue a fresh tender with the proposed deviations & provisions regarding Greenshoe Option, as an interim measure during pendency of the petition and the aforesaid tender may be opened only after final decision of Hon'ble Commission in the matter and in accordance with the directives of Hon'ble Commission.*
- (e) To condone any inadvertent omissions / errors /shortcomings and permit the petitioner to make addition / change /modification /alter this filing and make further submissions as may be required at a future date;*
- (f) To crave relief for filing any further submissions;*
- (g) Pass any other Order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case, to avoid further delay and in the interest of justice.*

2. Thereafter, the Petitioner filed an application vide affidavit dated 26.12.2022 seeking amendment of original Petition and compliance of directives issued by the Commission in its Daily Order dated 28.09.2022 being IA No. 01 of 2023 in Petition No. 2139 of 2022 and accordingly, the main Petition alongwith aforesaid IA are jointly dealt with in this Order. The Applicant/Petitioner through said IA has sought to amend the original Petition by proposing modification in (i) Greenshoe Option clause of the RfS, (ii) deviation from the guidelines regarding Scheduled Commissioning period as well as (iii) amending the prayer clause of the captioned Petition, which reads as under:

- (a) *To admit the present application.*
- (b) *To approve the provision regarding greenshoe option mentioned at para 7 of this application.*
- (c) *To approve the deviations from solar guidelines dated 03.08.2017 issued by central government for procurement of power from solar projects regarding Force Majeure provisions of PPA as elucidated at para 16 (page no.7-10) of the original petition.*
- (d) *To approve the deviations from solar guidelines dated 03.08.2017 issued by central government for procurement of power from solar projects regarding Scheduled Commissioning Period for increasing scheduled commissioning period of the projects from “15 months from the date of execution of PPA” to “21 months from the date of execution of PPA or actual COD of Associated Transmission System of Khavda Solar Park-2 (KPS-2), whichever is earlier” as elucidated at para 11 of the application.*
- (e) *To condone any inadvertent omissions / errors / shortcomings and permit the Petitioner to make addition / change / modification to this Petition as may be required.*
- (f) *The Petitioner craves relief of the Commission to allow further submissions, prayers, additions and alterations to this Petition as may be necessary from time to time.*
- (g) *Pass any other Order as the Hon’ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.*

3. The facts mentioned in the Petition in brief are as under:

- 3.1. It is stated that the Government of Gujarat has notified the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003 in May, 2003 for reorganization of the entire power sector in the State of Gujarat and pursuant thereof, the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme, 2003 has been notified under the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003, whereby, erstwhile Gujarat Electricity Board was reorganized and its functions have been vested in different entities.

- 3.2. As per the above re-organization scheme, the activities undertaken by erstwhile Gujarat Electricity Board of Generation, Transmission, Distribution, Bulk Power Purchase and Supply 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.
- 3.3. The Distribution companies 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.
- 3.4. 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.
- 3.5. It is also stated that 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. Also, as per Section 86 (1) (b) of the Electricity Act, 2003, 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.
- 3.6. It is stated that 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.

- 3.7. 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 respective State. In order to promote further competition, Section 63 of the Electricity Act 2003 provides that the State Commission to adopt such tariffs which have been discovered / determined through a transparent process of Competitive Bidding.
- 3.8. Clause 6.4 (2) of the National Tariff Policy, 2016 formulated by the Ministry of Power, Government of India has given specific guidance on purchase of power generated from renewable energy sources, which is reprocedured 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.”*

- 3.9. 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:

“.....

#### *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.”*

3.10. It is stated that the Petitioner on behalf of the four subsidiaries companies in the State, has been conducting tendering process from time to time for procurement of power from grid connected Solar Projects through Competitive Bidding (followed by e-reverse auction) and entering into agreements for procurement of power from the solar projects. The Petitioner is in process of issuing a tender for procurement of power from 600 MW Solar Projects to be set up in a solar park being developed at Khavda, Kutchh with Greenshoe option of additional upto 600 MW. The copy of draft bidding documents containing Request for Selection (RfS), Draft Power Purchase Agreement (PPA), Draft Implementation and Support Agreement (ISA) and Draft Land Lease Agreement (LLA) for this tender have been filed with the present Petition.

3.11. The salient features of the Solar Park and the bidding process to be conducted for procurement of power from the said solar park are as under:

(i) The State Government vide GR dated 25.01.2019 has notified the policy for allotment of land for development of Wind / Solar / Hybrid Parks. A High-Powered Committee, chaired by Hon'ble Chief Minister was constituted to decide about allocation of land to various developers.

- (ii) The Revenue Department, Government of Gujarat has allotted Approx. 72,400 hectares of land for 27,700 MW Renewable Energy capacity to following 6 Developers.

SN	Developers	Capacity (MW)	Land in (Ha.)
1	Gujarat Industries Power Company Ltd	2375	4750
2	Gujarat State Electricity Corporation Ltd	3325	6650
3	National Thermal Power Corporation Ltd	4750	9500
4	Adani Green Energy Ltd.	9500	19000
5	Sarjan Realities Ltd.	4750	9500
6	Solar Energy Corp. of India Ltd (for wind only)	3000	23000
	Total	27700	72400

- (iii) Under the State Government's Policy, the park developer is required to develop 50% Capacity within next 3 years and 100% capacity within 5 years. Accordingly, it is envisaged to develop approx. 14000 MW capacity in next 3 years and total 28,000 MW capacity in next 5 years in Khavda region near Vighakot Post, IB-Kutchh.
- (iv) GSECL and GIPCL have already commenced activities for development of first tranche of 600 MW Parks each under Mode 8 of MNRE Guidelines for development of Solar Park wherein there is a provision for Central Financial Assistance (CFA). GSECL and GIPCL will have to incur various capex considering infrastructure planning of total 3325 MW and 2375 MW respectively in their RE parks as some of the infrastructure will be common. Further, per MW charges to be collected by GSECL and GIPCL from solar project developers will be determined taking into consideration the expenditure for full capacity and CFA available from MNRE.
- (v) In view of above, GUVNL has given "In-Principle" approval to procure power to the extent of 3325 MW and 2375 MW capacity respectively from the solar projects of GSECL and GIPCL through tariff based competitive bidding. However, GSECL and GIPCL have requested GUVNL for procurement of power from part of the capacity at fixed tariff under CPSU Scheme of Government of India for availing the benefit of Viability Gap Funding under the CPSU Scheme. Therefore, Part of the procurement of power from the above capacity shall be through tariff based competitive bidding and

remaining part is proposed to be tied up at fixed tariff under CPSU Scheme of Government of India.

- (vi) The final break up of capacity to be tied up through competitive bidding and under CPSU Scheme will be decided after receipt of necessary approvals of MNRE particularly the quantum to be developed under CPSU Scheme. GSECL and GIPCL have already applied for and been granted Connectivity and Long-Term Access to the Inter-State Transmission Network of CTU to the extent of 600 MW each. Therefore, the procurement of power under the present tender would be for the first tranche of 600 MW capacity to be developed in the Solar Park to be set up by GSECL who will be developing the park as Solar Power Park Developer (SPPD) under Mode – 8 of the “Scheme for Development of Solar Parks and Ultra Mega Solar Power Projects” notified by Ministry of New and Renewable Energy vide OM dated 15.06.2020.
- (vii) There will be a Greenshoe option for additional 600 MW capacity which may be allowed to State PSUs of Gujarat for developing Solar Projects in any other Solar Park Developed by Government companies in the State of Gujarat wherein an option to develop solar projects at L1 tariff discovered in the tender would be given on first come first serve basis to such State PSUs being PSUs other than the SPPD of the tender.
- (viii) There are 6 plots of 100 MW capacity each in the Solar Park of GSECL (GSECL Stage 1) at Khavda, Kutchh, which will be allocated to the Successful Bidders based on their ranking after reverse auction. The Greenshoe capacity shall be developed in any other solar park developed by Government companies in the State of Gujarat.
- (ix) For evacuation of power from the solar parks of GSECL and GIPCL, CTU is developing the ISTS transmission network including 765 KV transmission line and 400 / 765 KV sub-station at Khavda (KPS 2). The power under the tender will be delivered to GUVNL at the CTU Sub-station and all transmission charges & losses upto the CTU sub-station will be borne by

developers. ISTS transmission charges and losses, if any, after the delivery point will be borne by GUVNL.

- (x) GSECL and GIPCL have approached State Government as well as MNRE for approval of Solar Park Charges in accordance with the provisions of scheme of MNRE viz. "Scheme for Development of Solar Parks and Ultra Mega Solar Power Projects" and the Solar Park charges of the solar park shall be finalized in accordance with the approval of State Government & MNRE. The solar park charges mentioned in the bid documents as 'Annexure F' of RFS are provisional and shall be finalized after approval of MNRE.

3.12. It is submitted that pending the issuance of the Standard Bidding Documents by the Central Government, the Petitioner is conducting the competitive bidding process for procurement of Solar power from time to time based on the bid documents containing detailed provisions that are consistent with the Guidelines as amended from time to time read with the deviations approved by the Commission vide (a) Order dated 15.03.2018 in Petition No. 1706 of 2018, (b) Order dated 13.01.2020 in Petition No. 1848 of 2019 and (c) Order dated 19.05.2022 in Petition No. 2069 of 2022. It is also stated that while all other provisions of the bid documents are prepared by the Petitioner with a view to align the provisions of the same with the Guidelines issued by the Central Government read with deviations approved in above referred Orders by the Commission.

3.13. It is also stated that the Petitioner is seeking further deviations / modifications. The relevant portion is reproduced below:

".....

**16.1 Force Majeure**

*The guidelines issued by Central Government for procurement of power from Solar Projects provide different Force Majeure provisions as detailed below:*

**Clause 5.4 of the Solar Guidelines – Force Majeure**

*Clause 5.4 of the Guidelines issued by Central Government vide notification dated 03.08.2017 read with amendment dated 22.10.2019 provides detailed provisions*

*regarding Force Majeure including definition of Force Majeure, Categorization of Force Majeure events into natural and non-natural Force Majeure events, Force Majeure exclusions, Notification of Force Majeure event, Performance & Liability related clauses and termination due to Force Majeure. The Hon'ble Commission vide Order dated 13.01.2020 in Petition No. 1848/2019 has already approved deviations from the aforesaid provisions of Guidelines and therefore the clauses of Guidelines are not reproduced for the sake of brevity.*

**Force Majeure clause proposed by Petitioner.**

**Article 8: Force Majeure**

**8.1 Force Majeure Events**

- a) *Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:*
- i) *acts of God;*
  - ii) *typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;*
  - iii) *acts of war (whether declared or undeclared), invasion or civil unrest;*
  - iv) *any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the Power Producer or GUVNL of any Law or any of their respective obligations under this Agreement);*
  - v) *inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;*
  - vi) *earthquakes, explosions, accidents, landslides; fire;*
  - vii) *expropriation and/or compulsory acquisition of the Project in whole or in part by Government Instrumentality;*
  - viii) *chemical or radioactive contamination or ionizing radiation; or*
  - ix) *damage to or breakdown of transmission facilities of GETCO/ DISCOMs;*
  - x) *Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.*

- xi) *non-fulfillment of obligations under Land Lease Agreement and Implementation & Support Agreement attributable to SPPD leading to delay in commissioning of the project.*
  - xii) *The delay in grant of connectivity/LTA, if applicable, by the CTU / STU and/or delay in readiness of the ISTS / InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS network, will be considered as a factor attributable to the CTU / STU / transmission licensee and beyond the control of the Parties subject to the following:*
    - (a) *The ISTS / InSTS sub-station at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS / InSTS network, with which the Power Producer applies for connectivity, shall be scheduled for completion on or before the SCOD of the concerned Project so as to match the two timelines.*
    - (b) *Subject to adherence to above, subsequent to grant of connectivity, in case there is a delay in grant / operationalization of connectivity / LTA by CTU / STU and/or there is a delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation & transmission infrastructure of the ISTS / InSTS network until SCOD of the project and it is established that;*
    - (c) *The Power Producer has complied with the complete application formalities as per the connectivity procedure(s) and the ISTS / InSTS sub-station at the delivery point at the power evacuation and transmission infrastructure of the ISTS / InSTS Network with which the Power Producer had applied for connectivity, was scheduled for completion on or before the SCOD of the project and;*
    - (d) *The Power Producer has adhered to the applicable procedure in this regard as notified by the CERC / GERC / CTU / STU and;*
    - (e) *The delay in grant of connectivity / LTA by CTU / STU and / or delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS Network, is a factor solely attributable to CTU / STU / transmission licensee and is beyond the control of the Parties;*
- b) *Force Majeure Exclusions: Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:*
- 1. *Unavailability, Late Delivery or Change in cost of plants and machineries, equipment, materials, spares parts or consumables for the project;*

2. *Delay in performance of any contractor / sub contractor or their agents;*
  3. *Non performance resulting from normal wear and tear experience in power generation materials and equipments;*
  4. *Strike or Labour Disturbances at the facilities of affected parties;*
  5. *Insufficiency of finances or funds or the agreement becoming onerous to perform, and*
  6. *Non performance caused by, or concerned with, the affected party's*
    - I. *Negligent and intentional acts, errors or omissions;*
    - II. *Failure to comply with Indian law or Indian Directive; or*
    - III. *Breach of, or default under this agreement or any Project agreement or Government agreement.*
- c) *The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If any event of Force Majeure results in a breakdown of communication rendering it not reasonable to give notice within the applicable time limit specified herein, then the party claiming Force Majeure shall give notice as soon as reasonably practicable after reinstatement of communication, but not later than one day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the situation.*
- d) *The affected Party shall give notice to the other Party of (1) cessation of relevant event of Force Majeure; and (2) cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this agreement, as soon as practicable after becoming aware of each of these cessations.*
- e) *To the extent not prevented by a Force Majeure event, the affected party shall continue to perform its obligations pursuant to this agreement. The affected party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.*

## **8.2 Available Relief for a Force Majeure Event:**

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

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

*The event specified at Article 8.1(a)(xii) above and consequent delay shall be treated as delay beyond the control of the Parties and both Parties shall be eligible for suitable time extension in it's SCOD."*

- 3.14. It is stated that the Petitioner is seeking approval of the Commission for the deviation from the Force Majeure clauses provided in the Guidelines issued by Central Government and to approve the clause proposed by Petitioner. In the aforesaid provisions proposed by GUVNL, the delay in commissioning of transmission and evacuation infrastructure by CTU / STU has been considered as Force Majeure event in order to avoid disputes in future.
- 3.15. The Petitioner has filed the present petition for (i) the approval of Greenshoe Option to be incorporated in the bid documents as mentioned at para 15 (vii) of the Petition and (ii) the approval of deviations from the guidelines issued by Central Government for procurement of power from solar projects as mentioned at para 16 of the Petition.
4. As noted above, the Petitioner has subsequently filed an IA No. 01 of 2023 in above Petition seeking amendment of main Petition. The fact in the said IA is enumerated as under:
- 4.1. It is stated that the Petitioner has filed the Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations in the "Force Majeure" Clause from the Guidelines issued by Central Government for procurement of power through Tariff Based Competitive Bidding Process from Grid Connected Solar PV Projects and for approval of provisions regarding Greenshoe Option to be incorporated in the bid documents for procurement of power from project to be set up in GSECL's plot in Khavda Solar Park.
- 4.2. It is further stated that in the said Petition, the Petitioner GUVNL has sought approval for deviations from the Guidelines dated 03.08.2017 issued by Central Government as amended for procurement of Solar power through Tariff based Competitive Bidding Process in Force Majeure events with regard to instances where there is delay

in CTU or STU network or sub-station at Delivery point but plant may be ready or there is delay in setting up the project due to non-fulfilment of obligations under Land Lease Agreement / Park issues but evacuation facility is ready etc. and has also sought approval for Greenshoe option for additional 600 MW capacity, which may be allowed at L1 tariff discovered in the tender would be given on first come first serve basis to such State PSUs of Gujarat for developing Solar Projects in any other Solar Park Developed by Government companies in the State of Gujarat.

- 4.3. It is also stated that the Commission vide Daily Order dated 28.09.2022 decided that the Petitioner may issue tender so that consultative process & other aspects can be undertaken. However, the Commission had clarified that the same shall be subject to final decision of the Commission in the present matter and the Petitioner will open the tender after the Commission accords its approval to the deviations and the Draft Bidding Documents in accordance with the deviations as may be approved.
- 4.4. Further, the Commission had raised the query regarding modality of Greenshoe option and sought as to how the tariff discovered at Khavda location is comparable with the tariff that may be discovered at different Solar Park in the State having different geographical conditions, solar park development charges, transmission charges payable, solar radiation etc. and when there is no mention about the same in the Petition and no clarity regarding the same with proper justification on it and provisions thereto from the Petitioner. Also, the Petitioner had been directed in said Daily Order to issue public notice in two daily newspapers, one in English language and one in vernacular language i.e., Gujarati, inviting suggestions and objections on the present Petition from the stakeholders and thereafter, the Commission shall decide the matter after considering the suggestions/objections received from the public that, since GUVNL is seeking approval of deviations from the Guidelines dated 03.08.2017 issued by MoP, GoI as amended for procurement of Solar power through Tariff based Competitive Bidding Process and for approval of provisions regarding 'Greenshoe' option in the bid documents.
- 4.5. Accordingly, the Petitioner had invited suggestions and objections from the stakeholders through Public Notice issued on 30.09.2022 in two daily newspapers, one in English language and one in vernacular language i.e., Gujarati, inviting

suggestions and objections on the present Petition from the stakeholders. The Petitioner GUVNL had also uploaded the Petition on its website [www.guvnl.com](http://www.guvnl.com) (in Notices section) for knowledge and information of the stakeholders under the title *“Notice inviting views / comments / suggestions from stakeholders on Petition No. 2139 of 2022 filed by GUVNL before GERC”* and informed the Commission regarding same vide affidavit dated 30.09.2022.

- 4.6. It is stated that in response to said public notice, Gujarat Industries Power Company Ltd. (GIPCL) had submitted comments/ suggestions requesting to allow to avail the Greenshoe option to State PSUs of Gujarat/ Gujarat State Government Controlled Companies/Gujarat State Government Controlled Companies having a Solar Park in Khavda approved by MNRE under Mode 8 of UMREPP on first come first serve basis for developing Solar Projects in any other solar park developed by Government Companies in the State of Gujarat, wherein an option to develop Solar Projects at L1 tariff discovered in the tender would be given to such State PSUs/Gujarat Govt. controlled companies being PSUs/Gujarat Govt. Controlled Companies other than SPPD of the tender.
- 4.7. In this regard, it is submitted by the Petitioner that:
- (i) The tariffs that may be discovered at different Solar parks in the State having different geographical conditions may not be comparable with each other due to various factors such as solar park development charges, transmission charges, solar radiation etc. Therefore the project under Greenshoe option may be allowed to develop only in Khavda Solar Park at Khavda location as there is no significant difference between geographical conditions.
  - (ii) The Greenshoe option has been included in the tender for Khavda Solar Park with a view to undertake speedier implementation of this socio-economically important project by availing maximum benefit of waiver of ISTS charges which is expiring in June-25 and considering that the project is expected to contribute significantly to the overall national targets of RE capacity addition.
  - (iii) Since the solar parks of State Government owned or controlled organizations at Khavda are in the vicinity of the same geographical area adjacent to each other,

there would not be significant variation in the solar park development charges and solar irradiation of these solar parks. The transmission charges for projects in both these parks will be similar as both of them are having ISTS connectivity. Further, the lease rate of both the parks is also similar.

- (iv) In view of above, Greenshoe Option may be allowed to any Organization owned or controlled by Govt. of Gujarat on first come first serve basis for developing solar projects in any Solar Park developed by Gujarat State Government owned or controlled organizations at Khavda under Mode 8 of UMREPP Guidelines wherein option to develop solar projects at L1 tariff discovered in the tender would be given to such State Government owned or controlled organizations other than the SPPD of the respective tender.

4.8. It is stated that accordingly, the Petitioner proposes following modifications in the Greenshoe Option clause:

a) Existing Clause 3.3.5 of the RfS:

*“Capacity Allocation under the Greenshoe Option - The modality for allocation of additional upto 600 MW capacity under Greenshoe Option shall be as under:-*

- (i) *Greenshoe option may be allowed to State PSUs of Gujarat on first come first served basis for developing Solar Projects in any other Solar Park Developed by Government companies in the State of Gujarat wherein an option to develop solar projects at L1 tariff discovered in the tender would be given to such State PSUs being PSUs other than the SPPD of the tender.*
- (ii) *The State PSUs referred to in sub-clause (i) above who are willing to execute PPA(s) with GUVNL at the lowest tariff (L1 rate) discovered under this competitive bidding process (followed by e-reverse auction), can be offered capacity under the Greenshoe Option on first come first serve basis.*
- (iii) *Eligible State PSUs intending to execute PPA for the Greenshoe Capacity shall have to meet the techno-commercial eligibility criteria for the capacity intended to be entered into PPA under Greenshoe Option. Eligible State PSUs shall have to comply with the same by making submissions required in accordance with Clause 3.4 of the RfS within a period of 10 days from the conclusion of the reverse auction.*

(iv) *The terms & conditions as well as obligations & rights of eligible State PSUs as well as GUVNL shall be identical for additional capacity allocated under the Greenshoe Option as for the base capacity of 600 MW under this RfS.”*

b) The proposed amended clause 3.3.5 of the RfS may be as per under: (changes underlined)

*“Capacity Allocation under the Greenshoe Option - The modality for allocation of additional upto 600 MW capacity under Greenshoe Option shall be as under:-*

(i) *Greenshoe Option may be allowed to any Organization owned or controlled by Govt. of Gujarat on first come first serve basis for developing solar projects in any solar park developed by Gujarat Government owned or controlled organizations at Khavda under Mode 8 of UMREPP Guidelines wherein option to develop solar projects at L1 tariff discovered in the tender would be given to such State Government owned or controlled organizations other than the SPPD of the respective tender.*

(ii) *The eligible Organization owned or controlled by Govt. of Gujarat referred to in sub-clause (i) above who are willing to execute PPA(s) with GUVNL at the lowest tariff (L1 rate) discovered under this competitive bidding process (followed by e-reverse auction), can be offered capacity under the Greenshoe Option on first come first serve basis with or without participating in the tender.*

(iii) *The eligible Organization owned or controlled by Govt. of Gujarat intending to execute PPA for the Greenshoe Capacity shall have to meet the techno-commercial eligibility criteria for the capacity intended to be entered into PPA under Greenshoe Option. The Eligible Organization owned or controlled by Govt. of Gujarat shall have to comply with the same by making submissions required in accordance with Clause 3.4 of the RfS within a period of 10 days from the conclusion of the reverse auction.*

(iv) *The terms & conditions as well as obligations & rights of eligible Organization owned or controlled by Govt. of Gujarat as well as GUVNL shall be identical for additional capacity allocated under the Greenshoe Option as for the base capacity of 600 MW under this RfS.”*

4.9. It is further stated that the pre-bid meeting of the tender was conducted by the Petitioner on 02.11.2022 during which prospective bidders had raised several issues such as approachability and workability at site, conditions of land/soil, water logging during monsoon, connectivity and requested the Petitioner to revise the SCOD timeline up to 21 months from the date of execution of the PPA instead of 15 months.

4.10. The MoP guidelines dated 03.08.2017 read with amendment Notification dated

03.01.2019 at Clause 14.3 provides that *“The Projects shall be commissioned, within a period of 15 (fifteen) months from the date of execution of the PPA, for projects being set up in solar park, and within a period of 18 months from the date of execution of PPA, for projects being set up outside solar park. However, if for some reason, the scheduled commissioning period needs to be kept smaller than that provided in this guideline, the procurer can do the same.”*

- 4.11. In view of above provisions of MoP guidelines, if the scheduled commissioning period needs to be increased higher than 15 months the same would be a deviation from the guidelines and the approval of the Commission would be required.
- 4.12. During the pre-bid meeting, the Solar Power Park Developer i.e. GSECL conveyed that the start date in the LTA agreement signed by them with CTU for 600 MW capacity is 30.11.2023. However, CTU vide email dated 12.11.2022 has conveyed that the anticipated SCOD of Transmission System is November-2024 considering 24 months from date of award of transmission capacity. As per prevailing Regulations, if the generation projects do not achieve COD within start date as per LTA or actual COD of transmission line, whichever is later, the LTA grantee is required to make payment of ISTS transmission charges which will be recovered from developers on back to back basis through provisions of ISA. The tender for transmission infrastructure of the project being undertaken by M/s REC Consulting (Bid Process Co-coordinator) is under process and the construction period of the same would be 24 months after date of award.
- 4.13. It is stated that in view of above factors and taking into consideration the time period of 90 days for signing of PPA after issuance of LOA, the Petitioner has proposed to increase the SCOD of the projects of present 1<sup>st</sup> tranche of 600 MW tender from “15 months from the date of execution of PPA” to “the date falling immediately after completion of 21 months from the date of execution of PPA or actual COD of Associated Transmission System of Khavda Solar Park-2 (KPS-2), whichever is earlier, subject to minimum time period of 15 months from the date of execution of PPA” by taking the deviation from MoP guidelines in order to give better clarity to developers to align their project investments during construction period with the physical progress of transmission infrastructure in this solar park having special

geographical conditions and for better price discovery in the tender for ultimate interest of consumers. It is further stated that the response of queries raised by the prospective bidders and amendments to be issued in the tender documents in consultation with SPPD-GSECL is submitted with the IA.

- 4.14. It is stated that in the above background and in accordance with Section 86 read with section 63 of the Electricity Act 2003, the Applicant/Petitioner has filed aforesaid application for amendment of original Petition for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff Based Competitive Bidding Process from Grid Connected Solar PV Projects and for approval of provisions regarding Greenshoe Option to be incorporated in the bid documents for procurement of power from project to be set up in proposed Khavda Solar Park.
5. The matter was heard on 20.02.2023 during which the representative appearing on behalf of the Petitioner while reiterating the facts of the Petition as stated above submitted that the Petitioner intends to undertake tendering process for procurement of power from 600 MW Solar Projects to be set up in Solar Park being developed at Khavda, Kutchh with 'Greenshoe' option of additional capacity allocation upto 600 MW for which the draft bidding documents have been prepared and filed by the Petitioner containing Request for Selection (RfS), Draft Power Purchase Agreement (PPA), Draft Implementation and Support Agreement (ISA) and Draft Land Lease Agreement (LLA).
- 5.1. It is argued that the State Government vide GR dated 25.01.2019 has notified the policy for allotment of land for development of renewable project parks and the Revenue Department, Government of Gujarat has allotted approximately 72,400 hectares of land for 27,700 MW renewable energy capacity to six developers which includes State Government PSUs viz. GIPCL & GSECL, who have already commenced activities for development of first tranche of 600 MW Parks each under MNRE Guidelines where there is a provision of Central Finance Assistance and CTU has also granted Connectivity and Long-Term Access to both GSECL & GIPCL. However, procurement of power under said tender will be for the first tranche of 600 MW capacity to be developed in the Solar Park to be set up by GSECL who will be

developing the said park s Solar Power Park Developer (SPPD) under the 'Scheme for Development of Solar Parks and Ultra Mega Solar Power Projects' notified by MNRE.

- 5.2. It is further argued that there is Greenshoe option for additional 600 MW capacity, which may be allowed to State PSUs of Gujarat for developing Solar Projects in any other Solar Park Developed by Government companies in the State of Gujarat wherein an option to develop solar projects at L1 tariff discovered in the tender would be given on first come first serve basis to such State Government PSUs being PSUs other than the SPPD of the tender for which modalities have been stipulated in the RfS document and such State Government PSUs may opt depending upon feasibility.
- 5.3. It is also argued that although the Commission had earlier approved deviations sought by the Petitioner regarding provisions of 'Force Majeure' clause vide its Order dated 13.01.2020 in Petition No. 1848 of 2019 qua the Central Government notified amendment dated 22.10.2019 to the bidding guidelines provisions relating to definition of Force Majeure, Categorization of Force Majeure events in Natural and Non-Natural Events, Force Majeure exclusions, Notification of Force Majeure events, Performance and Liabilities related clauses, Termination due to Force Majeure but now the Petitioner is seeking further deviation in the 'Force Majeure' clause and referring the relevant para of the Petition now proposed it is submitted that in order to provide clarity to bidders as to what constitutes Force Majeure or not, further clauses are incorporated with regard to instances where there is delay in CTU or STU network or sub-station at Delivery point but plant may be ready or there is delay in setting up the project due to non-fulfilment of obligations under Land Lease Agreement / park issues but evacuation facility is ready etc. The Petitioner also agreed to file further submissions on affidavit wth regard to query from the Commission regarding aspect of Greenshoe option.
- 5.4. Thereafter, during the hearing on 20.02.2023 of these matters, representative for the Petitioner / Applicant submitted that tender was floated so that consultative process & other aspects can be undertaken pursuant to interim permission granted by the Commission vide its Daily Order dated 30.09.2022 although the same shall be subject to final decision of the Commission in the present matter and that the Petitioner to open the tender after the Commission accords its approval. Moreover, in order to

provide clarity and modality regarding Greenshoe option, IA No. 01 of 2023 is also filed. Further, the Petitioner has also complied with the directive of the Commission by issuing public notices on 30.09.2022 in (i) Gujarati Daily newspaper - Divya Bhaskar and (ii) English daily newspaper - Indian Express apart from uploading the copy of Petition alongwith relevant documents on its web-site.

5.5. Moreover, in order to undertake consultative process pertaining the tender issued, the Applicant/Petitioner also held pre-bid meeting with prospective bidders and has also addressed the queries raised before the pre-bid meeting as well as during the pre-bid meeting. Further, in response to aforesaid public notice, the Petitioner has received comments/ suggestions only from GIPCL requesting to allow the Greenshoe option to be availed by State PSUs of Gujarat/ Gujarat State Government Controlled Companies/Gujarat State Government Controlled Companies having a Solar Park in Khavda approved by MNRE under Mode 8 of UMREPP on first come first serve basis for developing Solar Projects in any other solar park developed by Government Companies in the State of Gujarat, wherein an option to develop Solar Projects at L1 tariff discovered in the tender would be given to such State PSUs/Gujarat Govt. controlled companies being PSUs/Gujarat Govt. Controlled Companies other than SPPD of the tender. Accordingly, now the option is restricted and available to any Organization owned or controlled by Govt. of Gujarat on first come first serve basis for developing Solar projects in any solar park developed by Gujarat Government owned or controlled organizations at Khavda only. Thus, in the IA preferred by the Petitioner, approval of modified Clause 3.3.5 of the RfS document is also sought. Referring to clause (ii) thereof, it is argued that such option under clause (i) is available to eligible Organization owned or controlled by Govt. of Gujarat who are willing to execute the PPA(s) with the Petitioner GUVNL at the L-1 tariff discovered under the competitive bidding process followed by e-reverse auction under Greenshoe option on first come first serve basis with or without participating in the tender.

5.6. Responding to the purpose of aforesaid tender, it is argued that the waiver of transmission charges & losses for the CTU transmission network for renewable energy will be getting over and elaborating the rationale for it is submitted that there is no restriction for participating in the said tender including by State PSUs of Gujarat/

Gujarat State Government Controlled Companies/Gujarat State Government Controlled Companies and the Petitioner GUVNL is desirous for capacity addition.

- 5.7. It is further argued that during the pre-bid meeting the prospective bidders had apart from raising several issues requested the Petitioner to revise the SCOD timeline up to 21 months from the date of execution of the PPA instead of 15 months and although it was conveyed during the said meeting by the Solar Power Park Developer i.e. GSECL that the start date in the LTA agreement signed by them with CTU for 600 MW capacity is 30.11.2023 but CTU has conveyed that the anticipated SCOD of Transmission System is November-2024 considering 24 months from date of award of transmission capacity. Accordingly, taking into consideration the time period of 90 days for signing of PPA after issuance of LOA, the Petitioner has proposed to increase the SCOD of the projects of present 1<sup>st</sup> tranche of 600 MW tender from “15 months from the date of execution of PPA” to “the date falling immediately after completion of 21 months from the date of execution of PPA or actual COD of Associated Transmission System of Khavda Solar Park-2 (KPS-2), whichever is earlier, subject to minimum time period of 15 months from the date of execution of PPA” by taking the deviation from MoP guidelines in order to give better clarity to developers to align their project investments during construction period with the physical progress of transmission infrastructure in this solar park having special geographical conditions and for better price discovery in the tender for ultimate interest of consumers. Since, the scheduled commissioning period is increased higher than 15 months, the same would be a deviation from the guidelines and hence, the Petitioner in IA No. 01 of 20223 has also sought approval of the Commission for same.
- 5.8. It is argued that no further deviation is sought other than those stated in the main Petition readwith IA No. 01 of 2023 and the Commission is requested to approve the same at the earliest considering the bid submission deadline.
6. We have considered the submissions made by the Petitioner/Applicant. We note that pursuant to directives of the Commission in its Daily Order dated 28.09.2022 to issue Public Notice, the Petitioner had published public notices on 30.09.2022 in (i) Gujarati Daily newspaper - Divya Bhaskar and (ii) English daily newspaper - Indian Express and also placed the copy of Petition along with public notice on its website

(www.guvnl.com) inviting comments/objections/suggestions from the stakeholders in the present matter. We also note that the Petitioner had filed compliance affidavit dated 30.09.2022 before the Commission stating that tender for procurement of power from 600 MW grid connected Solar Photovoltaic power projects to be developed in the Solar Park of GSECL located at Khavda through Tariff Based Competitive Bidding process followed by E-Reverse auction with Greenshoe option for additional 600 MW through RfS No. GUVNL/600 MW/Solar (Phase-XVII) dated 29.09.2022 is also issued in accordance to the permission granted by the Commission in its aforesaid Daily Order.

6.1. We also note that the staff of the Commission also uploaded the matter along with the relevant documents on the Commission's website (www.gercin.org) for inviting comments/suggestions from the stakeholders. In response to the Public Notice, the Petitioner as well as the office of the Commission has received comments/suggestions on affidavit only from Gujarat Industries Power Company Ltd. (GIPCL) stating that Government of Gujarat has allocated 4750 Ha. Land in the Khavda RE park to GIPCL which is a Public Limited Company functioning under the Energy & Petrochemicals Department and is accordingly a Government of Gujarat controlled entity to develop a 2375 MW Solar Park for which MNRE approval under Mode 8 of UMREPP is received. It is also stated that for the purpose of better clarity and in order to enable GIPCL to avail the Greenshoe option, changes are proposed in the bid documents of the Petitioner pertaining to capacity allocation under the Greenshoe Option. We also note that other than GIPCL, no other stakeholder has filed any comments/suggestions in the present matter.

6.2. It is a fact that the Petitioner has filed the present Petition for approval of deviations from the Competitive Bidding Guidelines issued by the Central Government and allow the Petitioner to initiate Competitive Bidding Process followed by E-Reverse auction as envisaged under Section 63 of the Electricity Act, 2003 for procurement of 600 MW Solar power with Greenshoe option for additional 600 MW through the present tender i.e. RfS No. GUVNL/600 MW/Solar (Phase-XVII) dated 29.09.2022 for the first tranche of 600 MW capacity to be developed in the Solar Park to be set up by GSECL who will be developing the park as Solar Power Park Developer (SPPD) under Mode - 8 of the "Scheme for Development of Solar Parks and Ultra Mega Solar Power

Projects” notified by Ministry of New and Renewable Energy vide OM dated 15.06.2020.

6.3. The Petitioner, with an aim of procuring the Renewable Energy based generation at competitive rate, has initiated the above process as per the Guidelines for Tariff based Competitive Bidding process for Procurement of Power from grid connected Solar PV Power Projects as notified by Ministry of Power on 03.08.2017 under Section 63 of the Act read with Tariff Policy, 2016. Hence, it is necessary to refer the relevant Sections of the Act and Clauses of the Guidelines as set forth hereinbelow:

6.4. Section 63 of the Electricity Act, 2003 reads as under:

*“63 Determination of tariff by bidding process- Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”*

The aforesaid provision provides that when the tariff is discovered under Competitive Bidding through transparent process in accordance with bidding guidelines issued by the Central Government, the Appropriate Commission shall adopt it.

6.5. Further, Clause 6.4 (2) of the National Tariff Policy, 2016 formulated by the Ministry of Power reads as under:

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

The aforesaid provision provides that the procurement of energy from the renewable energy sources done by the distribution licensees through Competitive Bidding process from the date notified by the Central Government except Waste to Energy Projects.

6.6. The relevant provisions of the Guidelines dated 03.08.2017 by the Central Government are reproduced below:

*“2.1.2. Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer/Intermediary Procurer/End Procurer and the Authorised Representative of the Procurer. The process to be adopted in event of any deviation proposed from these Guidelines is specified in Clause 18 of these Guidelines.”*

According to the above Clause, the provisions of Guidelines are binding to the Procurer and if any deviations from these Guidelines is to be proposed then the process specified in Clause 18 of the Guidelines is to be followed.

6.7. It is also necessary to refer Clause 3.1.1 of the Competitive Bidding Guidelines dated 03.08.2017, which reads as under:

*“.....*

*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.”*

According to the above Clause, the Procurer is mandated to prepare the bid documents in accordance with the Guidelines and Standard Bid Documents notified by the Central Government. It is also necessary to inform the Appropriate Commission regarding initiation of the bidding process. Further, it is also provided that in case of deviation in the draft RfS, draft PPA or draft PSA from the Guidelines and/or SBDs, an approval as provided in Clause 18 of the Guidelines is required to be obtained by the Procurer.

Also, till the SBDs are notified by the Central Government, the Procurer may prepare the draft RfS, draft PPA and draft PSA and other agreements providing detailed provisions consistent with the Guidelines and such detailing will not be considered as deviation from the Guidelines.

6.8. It is also necessary to refer Clause 18 of the Guidelines which is reproduced below:

*“Clause 18: Deviation from process defined in the Guidelines  
In case there is any deviation from the Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 (ninety) days.”*

The aforesaid Clause provides that the if there is any deviation from the Guidelines and/or SBDs, the same shall be subject to the approval of the Appropriate Commission and the Appropriate Commission shall either approve or require modification to the Bid Documents within 90 days.

6.9. Now, coming to the approval of deviations from the Guidelines sought by the Petitioner, in the main Petition readwith IA No. 01 of 2023, we note that the Petitioner has sought (i) further deviation from the approved deviation by the Commission vide its Order dated 13.01.2020 in Petition No. 1848 of 2019 in respect of Clause 5.4 of the Guidelines pertaining to ‘Force Majeure’, (ii) to incorporate amended Clause as per IA No. 01 of 2023 on ‘Greenhoe’ option in Section 3.3.5 of the RfS and (iii) for increasing the scheduled commissioning period. Thus, it is pertinent to refer the relevant Clauses

of the Guidelines / deviations approved qua the deviations proposed in this Petition readwith IA No. 01 of 2023 by the Petitioner in Bid documents along with the justification/rationale given for it.

6.10. Now, we deal the first deviation proposed by the Petitioner qua the approved deviation by the Commission in its Order dated 13.01.2020 in Petition No. 1848 of 2019 in respect of 'Force Majeure'. We note that the Petitioner GUVNL had earlier sought deviations from the Guidelines with respect to Clause 5.4 pertaining to Force Majeure as amended vide Clause 2.5 of Notification dated 22.10.2019 in Petition No. 1848 of 2019 by proposing to continue with existing provisions of Force Majeure as per Article 8 of the PPA because amended provisions regarding Force Majeure vide Clause 2.5 of Notification dated 22.10.2019 provided detailed provisions regarding Force Majeure including definition of Force Majeure, Categorization of Force Majeure events into Natural and Non-natural Force Majeure events, Force Majeure exclusions, Notification of Force Majeure event, Performance & Liability related clauses and termination due to Force Majeure. This Commission vide its Order dated 13.01.2020 in Petition No. 1848 of 2019 has already approved deviations from the aforesaid provisions of Guidelines and therefore the clauses of Guidelines are not reproduced for the sake of brevity. However, now the Petitioner is seeking further deviations from the approved 'Force Majeure' provisions and sought approval for amended 'Force Majeure' provisions in the present Petition. Hence, it is necessary to refer the 'Force Majeure' clause proposed by the Petitioner, which is reproduced below:

***"Article 8: Force Majeure***

***8.1 Force Majeure Events***

- a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:*
- i) acts of God;*
  - ii) typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;*
  - iii) acts of war (whether declared or undeclared), invasion or civil unrest;*

- iv) *any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the Power Producer or GUVNL of any Law or any of their respective obligations under this Agreement);*
- v) *inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;*
- vi) *earthquakes, explosions, accidents, landslides; fire;*
- vii) *expropriation and/or compulsory acquisition of the Project in whole or in part by Government Instrumentality;*
- viii) *chemical or radioactive contamination or ionizing radiation; or*
- ix) *damage to or breakdown of transmission facilities of GETCO/ DISCOMs;*
- x) *Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.*
- xi) *non-fulfillment of obligations under Land Lease Agreement and Implementation & Support Agreement attributable to SPPD leading to delay in commissioning of the project.*
- xii) *The delay in grant of connectivity/LTA, if applicable, by the CTU / STU and/or delay in readiness of the ISTS / InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS network, will be considered as a factor attributable to the CTU / STU / transmission licensee and beyond the control of the Parties subject to the following:*
  - (a) *The ISTS / InSTS sub-station at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS / InSTS network, with which the Power Producer applies for connectivity, shall be scheduled for completion on or before the SCOD of the concerned Project so as to match the two timelines.*
  - (b) *Subject to adherence to above, subsequent to grant of connectivity, in case there is a delay in grant / operationalization of connectivity / LTA by CTU / STU and/or there is a delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation & transmission infrastructure of the ISTS / InSTS network until SCOD of the project and it is established that;*
  - (c) *The Power Producer has complied with the complete application formalities as per the connectivity procedure(s) and the ISTS / InSTS sub-station at the delivery point at the power evacuation and transmission infrastructure of the ISTS / InSTS Network with which the Power Producer had applied for connectivity, was scheduled for completion on or before the SCOD of the project and;*
  - (d) *The Power Producer has adhered to the applicable procedure in this regard as notified by the CERC / GERC / CTU / STU and;*

- (e) *The delay in grant of connectivity / LTA by CTU / STU and / or delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS Network, is a factor solely attributable to CTU / STU / transmission licensee and is beyond the control of the Parties;*
- b) *Force Majeure Exclusions: Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:*
1. *Unavailability, Late Delivery or Change in cost of plants and machineries, equipment, materials, spares parts or consumables for the project;*
  2. *Delay in performance of any contractor / sub contractor or their agents;*
  3. *Non performance resulting from normal wear and tear experience in power generation materials and equipments;*
  4. *Strike or Labour Disturbances at the facilities of affected parties;*
  5. *Insufficiency of finances or funds or the agreement becoming onerous to perform, and*
  6. *Non performance caused by, or concerned with, the affected party's*
    - I. *Negligent and intentional acts, errors or omissions;*
    - II. *Failure to comply with Indian law or Indian Directive; or*
    - III. *Breach of, or default under this agreement or any Project agreement or Government agreement.*
- c) *The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If any event of Force Majeure results in a breakdown of communication rendering it not reasonable to give notice within the applicable time limit specified herein, then the party claiming Force Majeure shall give notice as soon as reasonably practicable after reinstatement of communication, but not later than one day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the situation.*
- d) *The affected Party shall give notice to the other Party of (1) cessation of relevant event of Force Majeure; and (2) cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this agreement, as soon as practicable after becoming aware of each of these cessations.*

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

### **8.2 Available Relief for a Force Majeure Event:**

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

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

*The event specified at Article 8.1(a)(xii) above and consequent delay shall be treated as delay beyond the control of the Parties and both Parties shall be eligible for suitable time extension in it's SCOD."*

- 6.11. It is also necessary to refer the earlier approved deviations from the provisions of Guidelines pertaining to Force Majeure by this Commission vide its Order dated 13.01.2020 in Petition No. 1848 of 2019, which reads as under:

#### **"ARTICLE 8 : Force Majeure**

##### **8.1 Force Majeure Events:**

- a) *Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:*
- i) *acts of God;*
  - ii) *typhoons, floods, lightning, cyclone, hurricane, drought famine, epidemic, plague or other natural calamities;*
  - iii) *acts of war (whether declared or undeclared), invasion or civil unrest;*
  - iv) *any requirement, action or omission to act pursuant to any judgement or order of any court or judicial authority in India (provided such requirement, action*

- or omission to act is not due to the breach by the Power Producer or GUVNL of any Law or any of their respective obligations under this Agreement);*
- v) inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;*
  - vi) earthquakes, explosions, accidents, landslides; fire;*
  - vii) expropriation and/or compulsory acquisition of the Project in whole or in part by Government Instrumentality;*
  - viii) chemical or radioactive contamination or ionizing radiation; or*
  - ix) damage to or breakdown of transmission facilities of GETCO/DISCOMs;*
  - x) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.*
- b) Force Majeure Exclusions: Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:*
- 1. Unavailability, Late Delivery or Change in cost of plants and machineries, equipment, materials, spares parts or consumables for the project;*
  - 2. Delay in performance of any contractor / sub-contractor or their agents;*
  - 3. Non-performance resulting from normal wear and tear experience in power generation materials and equipments;*
  - 4. Strike or Labour Disturbances at the facilities of affected parties;*
  - 5. In efficiency of finances or funds or the agreement becoming onerous to perform, and*
  - 6. Nonperformance caused by, or concerned with, the affected party's*
    - I. Negligent and intentional acts, errors or omissions;*
    - II. Failure to comply with Indian law or Indian Directive; or*
- c) Breach of, or default under this agreement or any Project agreement or Government agreement.*
- d) The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If any event of Force Majeure results in a breakdown of communication rendering it not reasonable to give notice within the applicable*

*time limit specified herein, then the party claiming Force Majeure shall give notice as soon as reasonably practicable after reinstatement of communication, but not later than one day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the situation.*

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

**8.2 Available Relief for a Force Majeure Event:**

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

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

*....."*

- 6.12. On comparison of presently proposed clause by the Petitioner qua the previously approved clause pertaining to Force Majeure provisions in Article 8 of draft PPA, we note that the following is added by the Petitioner:

(A) In Article 8.1 (a) following is added:

- xi) *non-fulfillment of obligations under Land Lease Agreement and Implementation & Support Agreement attributable to SPPD leading to delay in commissioning of the project.*
- xiii) *The delay in grant of connectivity/LTA, if applicable, by the CTU / STU and/or delay in readiness of the ISTS / InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS network, will be considered as a factor attributable to the CTU / STU / transmission licensee and beyond the control of the Parties subject to the following:*
  - (a) *The ISTS / InSTS sub-station at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS / InSTS network, with which the Power Producer applies for connectivity, shall be scheduled for completion on or before the SCOD of the concerned Project so as to match the two timelines.*
  - (b) *Subject to adherence to above, subsequent to grant of connectivity, in case there is a delay in grant / operationalization of connectivity / LTA by CTU / STU and/or there is a delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation & transmission infrastructure of the ISTS / InSTS network until SCOD of the project and it is established that;*
  - (c) *The Power Producer has complied with the complete application formalities as per the connectivity procedure(s) and the ISTS / InSTS sub-station at the delivery point at the power evacuation and transmission infrastructure of the ISTS / InSTS Network with which the Power Producer had applied for connectivity, was scheduled for completion on or before the SCOD of the project and;*
  - (d) *The Power Producer has adhered to the applicable procedure in this regard as notified by the CERC / GERC / CTU / STU and;*
  - (e) *The delay in grant of connectivity / LTA by CTU / STU and / or delay in readiness of the ISTS / InSTS sub-station at the delivery point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS Network, is a factor solely attributable to CTU / STU / transmission licensee and is beyond the control of the Parties;*

(B) In Article 8.2 following is added as third para after second para:

*“The event specified at Article 8.1(a)(xii) above and consequent delay shall be treated as delay beyond the control of the Parties and both Parties shall be eligible for suitable time extension in it’s SCOD.”*

6.13. We note that above modification/ deviation is proposed by the Petitioner in order to

provide clarity to bidders as to what constitutes Force Majeure or not and further clauses are incorporated with regard to instances where there is delay in CTU or STU network or sub-station at Delivery point but plant may be ready or there is delay in setting up the project due to non-fulfilment of obligations under Land Lease Agreement / park issues but evacuation facility is ready etc.

- 6.14. It seems that Article 8.1 (a) (xi) is added by the Petitioner to consider the situation whereby if there is delay in commissioning of the project on account of non-fulfillment of obligations under Land Lease Agreement and Implementation & Support Agreement that are attributable to Solar Power Project Developer, the same be considered as force majeure event. Similarly, Article 8.1 (a) (xii) deals with delay in grant of connectivity/LTA by the CTU / STU as the case may be if same is applicable and/or delay in readiness of the ISTS / InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS / InSTS network which will be considered as a factor attributable to the CTU / STU / transmission licensee and beyond the control of the parties. However, this will be subject to the different conditions specified thereunder. Further, the Petitioner has stated the available relief in para added in Article 8.2 whereby for the event specified at Article 8.1(a)(xii) and consequent delay to be treated as delay beyond the control of the parties and both Parties shall be eligible for suitable time extension in it's SCOD.
- 6.15. We are of view that considering specific nature of present tender wherein there may be certain events inter-se between the parties for which clarity is desirous. Hence, we decide to approve the aforesaid further deviation sought by the Petitioner.
- 6.16. We now deal with the proposed provision of 'Greenshoe' option by the Petitioner. The proposed amended Clause 3.3.5 of the RfS in this regard as per IA No. 01 of 2023 is reproduced below:

*"Capacity Allocation under the Greenshoe Option - The modality for allocation of additional upto 600 MW capacity under Greenshoe Option shall be as under:-*

- (i) *Greenshoe Option may be allowed to any Organization owned or controlled by Govt. of Gujarat on first come first serve basis for developing solar projects in any solar park developed by Gujarat Government owned or controlled organizations at Khavda under Mode 8 of UMREPP Guidelines wherein option to develop solar projects at L1 tariff discovered in the tender would be given to such State Government owned or controlled organizations other than the SPPD of the respective tender.*
- (ii) *The eligible Organization owned or controlled by Govt. of Gujarat referred to in sub-clause (i) above who are willing to execute PPA(s) with GUVNL at the lowest tariff (L1 rate) discovered under this competitive bidding process (followed by e-reverse auction), can be offered capacity under the Greenshoe Option on first come first serve basis with or without participating in the tender.*
- (iii) *The eligible Organization owned or controlled by Govt. of Gujarat intending to execute PPA for the Greenshoe Capacity shall have to meet the techno-commercial eligibility criteria for the capacity intended to be entered into PPA under Greenshoe Option. The Eligible Organization owned or controlled by Govt. of Gujarat shall have to comply with the same by making submissions required in accordance with Clause 3.4 of the RfS within a period of 10 days from the conclusion of the reverse auction.*
- (iv) *The terms & conditions as well as obligations & rights of eligible Organization owned or controlled by Govt. of Gujarat as well as GUVNL shall be identical for additional capacity allocated under the Greenshoe Option as for the base capacity of 600 MW under this RfS.”*

6.17. We note that the provisions pertaining to Greenshoe option have been earlier approved by this Commission vide its Order dated 13.01.2020 in Petition No. 1848 of 2019, which reads as under:

**“3.3.5 Eligibility for Project Capacity Allocation**

*Following conditions shall be applicable to Bidders for submission of bids against the RfS:*

.....

*3.3.5 Capacity Allocation under the Greenshoe Option – The modality for allocation of additional upto 500 MW capacity under Greenshoe Option shall be as under:*

- a) Upto 500 MW additional capacity through Greenshoe option be offered to the successful bidder(s), who are willing to execute PPA(s) with GUVNL at the lowest tariff (L1 rate) discovered under competitive bidding process (followed by e-reverse auction) to the extent of their respective quoted capacity or higher quantum (in case any of the Successful Bidder does not accept the additional quantum offered under the Greenshoe Option) to the extent of greenshoe capacity.*
- b) Successful Bidder(s) intending to execute PPA for the Greenshoe Capacity shall have to meet the eligibility criteria for the capacity intended to be entered into PPA under Greenshoe Option. Successful Bidder(s) shall have to comply with the same by making submissions required in accordance with Clause 3.4 of the RfS within a period of 10 days from the conclusion of the reverse auction.*
- c) In addition to the foregoing, the Successful Bidders willing to execute PPA with GUVNL at the L1 rate shall have to give confirmation within the period of 10 days from the conclusion of reverse e-auction.*
- d) Greenshoe capacity shall be allocated in proportion of capacity allotted to the successful bidders in the reverse auction and willing to offer additional capacity under Greenshoe Option.*
- e) The terms & conditions as well as obligations & rights of Successful Bidder(s) as well as GUVNL shall be identical for additional capacity allocated under the Greenshoe Option as for the base capacity of 500 MW under this RfS.”*

**“Greenshoe Option** – *In the reverse auction conducted by GUVNL on 16.03.2022 in the recently concluded bidding process vide RFS dated 03.01.2022 (Phase XIII), the tariff of Rs 2.29 / unit has been discovered for which GUVNL shall separately approach Hon’ble Commission for adoption of tariff. In the above reverse auction, out of 2270 MW capacity for which the reverse auction*

*was conducted, the discovered tariff for 500 MW is Rs 2.29 / unit whereas the quoted tariff of unsuccessful bidders to the tune of 270 MW capacity was Rs 2.29 – 2.30 / unit but the same could not be allocated due to bucket size of 500 MW. There was no Greenshoe Option / discretion to allot additional capacity beyond 500 MW in the tender condition. Therefore, in the upcoming tender, GUVNL is contemplating a Greenshoe option of additional 500 MW in order to tie up cheaper capacity beyond bucket size at L1 tariff. The terms of allotment under Greenshoe option are stipulated at Clause 3.3.5 of the RFS. The MoP Guidelines are silent regarding Greenshoe option and therefore the addition of Greenshoe option in the tender may not be considered as a deviation from the Guidelines.”*

- 6.18. Moreover, in aforesaid Order dated 13.01.2020 in Petition No. 1848 of 2019 it was noted by the Commission that the Guidelines dated 03.08.2017 and subsequent amendments thereto issued by the Ministry of Power are silent on the deviation on greenshoe option provisions in the Bidding documents sought by the Petitioner.
- 6.19. The Petitioner had previously under Clause 3.3.5 of RfS had provided that Greenshoe option may be allowed to State PSUs of Gujarat but in response to public notice issued by the Petitioner, comments / suggestions were submitted by GIPCL requesting to allow to avail the Greenshoe option to State PSUs of Gujarat/ Gujarat State Government Controlled Companies/Gujarat State Government Controlled Companies at L1 tariff discovered in the tender. Accordingly, the Applicant/Petitioner has proposed amended/modified Clause 3.3.5 in IA No. 01 of 2023. It is noted that the Greenshoe option is now being offered as per aforesaid modified clause to any organization that is owned or controlled by the Government of Gujarat only on first come first serve basis.
- 6.20. Further, with regard to earlier provision in sub-clause (i) providing for allowing greenshoe option for developing the Solar project in any other Solar Park Developed by Government companies in the State of Gujarat, the Petitioner after considering the observation made by the Commission that how the tariff discovered at Khavda location is comparable with the tariff that may be discovered at different Solar Park in the State having different geographical conditions, solar park development charges, transmission charges payable, solar radiation etc. has now also changed sub-

clause (i) of Clause 3.3.5 of RfS by allowing greenshoe option to any organization that is owned or controlled by the Government of Gujarat only on first come first serve basis for developing solar projects in any solar park developed by Gujarat Government owned or controlled organizations at Khavda under Mode 8 of UMREPP Guidelines wherein option to develop solar projects at L1 tariff discovered in the tender would be given to such State Government owned or controlled organizations other than the SPPD of the respective tender instead of earlier provision.

6.21. The Petitioner has submitted following with regard to aforesaid Clause 3.3.5 of RfS regarding 'Greenshoe' option:

“.....

- (i) *The tariffs that may be discovered at different Solar parks in the State having different geographical conditions may not be comparable with each other due to various factors such as solar park development charges, transmission charges, solar radiation etc. Therefore the project under Greenshoe option may be allowed to develop only in Khavda Solar Park at Khavda location as there is no significant difference between geographical conditions.*
- (ii) *The Greenshoe option has been included in the tender for Khavda Solar Park with a view to undertake speedier implementation of this socio-economically important project by availing maximum benefit of waiver of ISTS charges which is expiring in June-25 and considering that the project is expected to contribute significantly to the overall national targets of RE capacity addition.*
- (iii) *Since the solar parks of State Government owned or controlled organizations at Khavda are in the vicinity of the same geographical area adjacent to each other, there would not be significant variation in the solar park development charges and solar irradiation of these solar parks. The transmission charges for projects in both these parks will be similar as both of them are having ISTS connectivity. Further, the lease rate of both the parks is also similar.*
- (iv) *In view of above, Greenshoe Option may be allowed to any Organization owned or controlled by Govt. of Gujarat on first come first serve basis for developing solar projects in any Solar Park developed by Gujarat State Government owned or*

*controlled organizations at Khavda under Mode 8 of UMREPP Guidelines wherein option to develop solar projects at L1 tariff discovered in the tender would be given to such State Government owned or controlled organizations other than the SPPD of the respective tender.*

6.22. The Petitioner has stipulated the detailed modalities for allotment of the Greenshoe option in aforesaid Clause 3.3.5 of the RfS as a part of 'Capacity Allocation under the Greenshoe option. We note that the procurement of power under the present tender for which this Petition alongwith IA No. 01 of 2023 is filed by the Petitioner is for the first tranche of 600 MW capacity to be developed in the Solar Park to be set up by GSECL who will be developing the park as Solar Power Park Developer (SPPD) under Mode – 8 of the "Scheme for Development of Solar Parks and Ultra Mega Solar Power Projects" notified by Ministry of New and Renewable Energy vide OM dated 15.06.2020 and the Revenue Department, Government of Gujarat has allotted 6650 Ha. land for setting up 3325 MW capacity by GSECL and activities for development of said first tranche of 600 MW park is already commenced by GSECL. Also, GIPCL is allotted 4750 Ha. land for 2375 MW capacity at Khavda. Thus, GSECL and GIPCL are amongst the six developers to whom land is allotted and under Mode 8 of MNRE Guidelines for development of Solar Park there is a provision for Central Financial Assistance (CFA). Accordingly, GSECL and GIPCL will have to incur various capex considering infrastructure planning of total 3325 MW and 2375 MW respectively in their RE parks as some of the infrastructure will be common. The per MW charges to be collected by GSECL and GIPCL from solar project developers will be determined taking into consideration the expenditure for full capacity and CFA available from MNRE. The Petitioner GUVNL has given "In-Principle" approval to procure power to the extent of 3325 MW and 2375 MW capacity respectively from the solar projects of GSECL and GIPCL through tariff based competitive bidding, but both have requested GUVNL for procurement of power from part of the capacity at fixed tariff under CPSU Scheme of Government of India for availing the benefit of Viability Gap Funding under the CPSU Scheme. Although, final break up of capacity to be tied up through competitive bidding and under CPSU Scheme will be decided after receipt of necessary approvals of MNRE particularly the quantum to be developed under CPSU Scheme and accordingly, part of the procurement of power from the above capacity

shall be through tariff based competitive bidding and remaining part is proposed to be tied up at fixed tariff under CPSU Scheme of Government of India.

6.23. We note that the Petitioner has specified the methodology and conditions for additional capacity allocation under Greenshoe option in the aforesaid clause of the RfS. The said provision states that additional capacity up to 600 MW under Greenshoe option be allocated to any organization owned or controlled by Government of Gujarat other than the SPPD of the respective tender on first come first served basis for setting up solar projects in any solar park developed by Gujarat Government owned or controlled organization at Khavda under Mode 8 of UMREPP Guidelines who is willing to execute PPA with the Petitioner at lowest tariff (L1) discovered under the e-reverse auction.

6.24. We also note that the Applicant/Petitioner in sub-clause (ii) of Clause 3.3.5 of RfS has specified to allow green shoe option to eligible organization owned or controlled by Government of Gujarat referred to in sub-clause (i) with or without participating in the tender. However, we are of the view that allowing any eligible organization owned or controlled by Government of Gujarat without participating in the tendering / bidding process is not correct and appropriate because such eligible organization needs participate in the competitive tendering / bidding process. Therefore, we decide that the Petitioner needs to delete the word 'without' in said sub-clause (ii). Accordingly, the sub-clause (ii) of Clause 3.3.5 be amended by the Petitioner as under:

*(ii) The eligible Organization owned or controlled by Govt. of Gujarat referred to in sub-clause (i) above who has participated in present bidding process and is willing to execute PPA(s) with GUVNL at the lowest tariff (L1 rate) discovered under this competitive bidding process (followed by e-reverse auction), can be offered capacity under the Greenshoe Option on first come first serve basis by participating in this tender.*

6.25. In sub-clause (iii), it is specified that the eligible Organization owned or controlled by Govt. of Gujarat intending to execute PPA for the Greenshoe option shall have to meet the techno-commercial eligibility criteria for the capacity intended to be entered in PPA and shall comply with the qualifying criteria specified in Article 3.4 of the RfS.

Moreover, they have to sign the PPA with the Petitioner (GUVNL) at the L1 tariff and confirmation of the same shall need to give within 10 days period from conclusion of e-reverse auction. Further, terms and conditions and obligations and rights are same of successful bidder as well as GUVNL.

- 6.26. The aforesaid provision provides flexibility to the procurer GUVNL to tie up the additional capacity for procurement of solar power under Greenshoe option, if it is found that the rate discovered under e-reverse auction are quite attractive and beneficial to procurer to purchase the power at cheaper rate of discovered lowest tariff L1. It is beneficial to the licensee as well as the consumer of the State in case of the discovered tariff found attractive and lowest by the procurer GUVNL. The terms and conditions as well as obligations and rights of the seller/successful bidder offered under Greenshoe option as well as GUVNL are same as per the PPA executed between the parties.
- 6.27. Considering the above, subject to modification of sub-clause (ii) of Clause 3.3.5 of the RfS by the Petitioner as per para 6.24 and 6.26 above, we decide to approve the aforesaid deviation of Greenshoe option as a special case proposed by the Petitioner for RfS No. GUVNL/600 MW/Solar (Phase-XVII) dated 29.09.2022, while making it clear that the same will not be considered as a precedence.
- 6.28. Lastly, we deal with the deviation proposed by the Petitioner regarding 'Commissioning Schedule' timeline up to 21 months from the date of execution of the PPA instead of 15 months. We note that Clause 14.3 of the Guidelines dated 03.08.2017 has been amended by Ministry of Power vide Resolution dated 03.01.2019. It is therefore necessary to refer the amended Clause 14.3 of the Guidelines, which reads as under:

".....

**14.3 Commissioning Schedule:**

*The Projects shall be commissioned, within a period of 15 (fifteen) months from the date of execution of the PPA, for projects being set up in solar park, and within a period of 18 months from the date of execution of PPA, for projects being set up outside solar park. However, if for some reason, the scheduled commissioning period needs to be kept smaller than that provided in this guideline, the procurer*

*can do the same. Delay in commissioning, beyond the Scheduled Commissioning Period shall involve penalties on the Solar Power Generator, as detailed out in PPA. In case of site specified by the Procurer, any delay in handing over land to the Solar Power Generator in accordance with the given timelines, shall entail a corresponding extension in financial closure and scheduled commissioning date, provided that the maximum extension shall be limited to a period of 1 year commencing from the expiry of date of handing over of balance 10% of land in terms of Clause 3.2.1 (a).”*

- 6.29. According to the Petitioner prospective bidders had raised several issues during the pre-bid meeting of the tender on 02.11.2022 such as approachability and workability at site, conditions of land/soil, water logging during monsoon, connectivity and requested the Petitioner to revise the aforesaid timeline. Moreover, according to SPPD i.e. GSECL the start date in the LTA agreement signed by them with CTU for 600 MW capacity is 30.11.2023 but CTU has conveyed that the anticipated SCOD of Transmission System is November-2024 considering 24 months from date of award of transmission capacity. Accordingly, as per prevailing Regulations, if the generation projects do not achieve COD within start date as per LTA or actual COD of transmission line, whichever is later, the LTA grantee is required to make payment of ISTS transmission charges which will be recovered from developers on back to back basis through provisions of Implementation and Support Agreement (ISA). It is also stated that taking into consideration the time period of 90 days for signing of PPA after issuance of LOA, the Petitioner has proposed to increase the SCOD of the projects of present 1<sup>st</sup> tranche of 600 MW tender from “15 months from the date of execution of PPA” to “the date falling immediately after completion of 21 months from the date of execution of PPA or actual COD of Associated Transmission System of Khavda Solar Park-2 (KPS-2), whichever is earlier, subject to minimum time period of 15 months from the date of execution of PPA” by taking the deviation from MoP guidelines.
- 6.30. The above deviation seems to be taken with consideration of CTU developing the ISTS transmission network including 765 KV transmission line and 400 / 765 KV sub-station at Khavda (KPS 2) for evacuation of power from the Solar Park of GSECL to be delivered to GUVNL at the CTU Sub-station. Further, it appears that said deviation may give better clarity to developers to align their project investments during

construction period with the physical progress of transmission infrastructure in said Solar Park having special geographical conditions and for better price discovery in the tender for ultimate interest of consumers. Therefore, considering the same, we decide to approve the said deviation.

7. In view of above, except modifying / amending sub-clause (ii) of Clause 3.4.5 regarding 'Greenshoe' option as directed above, we decide and approve the deviations sought by the Petitioner in this Petition readwith IA No. 01 of 2023.

**ORDER**

8. We decide that the present Petition partly succeeds. We approve the deviations proposed by the Petitioner with regard to (i) Article 8 pertaining to "Force Majeure" in the PPA and (ii) incorporation of Greenshoe option after modifying / amending sub-clause (ii) of Clause 3.4.5 of the RfS as decided at para 6.24 hereinabove as a special case for present tender i.e. RfS No. GUVNL/600 MW/Solar (Phase-XVII) dated 29.09.2022, while making it clear that the same will not be considered as a precedence and (iii) provision regarding 'Commissioning Schedule' submitted by the Applicant/Petitioner.
9. We order accordingly.
10. With this order the present Petition alongwith IA No. 01 of 2023 stands disposed of.

**Sd/-**  
**[S. R. Pandey]**  
**Member**

**Sd/-**  
**[Mehul M. Gandhi]**  
**Member**

**Sd/-**  
**[Anil Mukim]**  
**Chairman**

Place: Gandhinagar.

Date: 07/03/2023.