

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2226 of 2023.

In the Matter of:

Petition seeking approval of Power Procurement Plan (01st July 2023 to 30th June 2024), adoption of Tariff discovered through competitive bidding, approval for executing Power Purchase Agreement with bidder, purchase of balance power from Dakshin Gujarat Vij Company Limited (DGVCL) and Power Exchange (PX) under the provisions of Sections 63 and 86 (1) (b) of the Electricity Act, 2003 read with guidelines under Notification No. 02 of 2013 - GERC (Guidelines for Procurement of Power by Distribution Licensees), 2013.

Petitioner : Jubilant Infrastructure Limited

Represented by : Mr. Mahesh Mandwarya, Mr. Dhruv Tripathi, Mr. Pranay Shah and Deepak Khanddwal

CORAM:

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

Date: 03/08/2023

ORDER

1. The present Petition has been filed by the Petitioner Jubilant Infrastructures Limited (JIL) under Section 63 read with Section 86(1)(b) of the Electricity Act 2003 *interalia* seeking following prayers:
 - (a) *Admit the present Petition.*
 - (b) *Approve the terms & conditions of Power Purchase Agreement (PPA) along with deviation and allow petitioner to execute PPA with Phillips Carbon Black Limited (PCBL).*
 - (c) *Approve tariff of Rs. 5.50/kWh discovered through competitive bidding process for the duration from 01st July 2023 to 30th June 2024.*

- (d) *To allow JIL to procure balance power through DGVCL for a period of one year starting from 01st July 2023.*
- (e) *To allow JIL to procure power through power exchange or any other means as permissible under the GERC Regulations in case of any contingent load requirement vis-à-vis allow the petitioner to sale of surplus power via bilateral mode or through Power Exchange in case any situation arises where power requirement is less than the contracted power.*
- (f) *As an interim arrangement, allow JIL to charge consumers in its license area at the tariff applicable to respective categories of DGVCL's consumers as the ceiling tariff till JIL's ARR and tariff finalized by the Commission.*
- (g) *To condone any shortcomings/deficiencies and allow JIL to submit additional information/data at a later stage as may be required.*

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

“.....

Section 63:

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

.....”

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

“.....

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

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

.....”

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

3. This Petition filed by the Petitioner is within the purview of the jurisdiction of this Commission and in terms of the powers vested by the Electricity Act, 2003 and Regulations framed thereunder, the Commission admits the present Petition.
4. The facts mentioned in the Petition, in brief, are as under:
 - 4.1. The Petitioner Jubilant Infrastructure Limited (JIL) is a company incorporated in the year 2008 under the Companies Act, 1956, and is a wholly owned subsidiary of Jubilant Ingrevia Limited.
 - 4.2. The Ministry of Commerce and Industry, Government of India vide Notification No. 290 (E) dated 11th February 2008 has notified JIL as SEZ Developer to set up sector-specific Special Economic Zone (SEZ) for Chemicals in proposed area of 107 hectares at Vilayat, District Bharuch, Gujarat.
 - 4.3. It is stated that Ministry of Commerce and Industry (Department of Commerce), Government of India, vide Notification dated 3rd March 2010 under Section 49(1) (b) of the SEZ Act, 2005 has specified that the developer of a SEZ is deemed to be a Distribution Licensee under the provisions of the Electricity Act, 2003. Electricity Act, 2003 was amended through Notification dated 3rd March 2010 and added a proviso to Section 14 (b) which is reproduced as under:

"14. Grant of License

The Appropriate Commission may, on an application made to it under section 15, grant a license to any person –

- a. To transmit electricity as a transmission licensee; or*
- b. To distribute electricity as a Distribution Licensee; or:*

.....

Provided that the Developer of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone;"

- 4.4. It is stated that the Commission vide its Letter No. 02152/GERC/Legal/2012 dated 11th October 2012 has granted the distribution license to the Petitioner bearing License No. 07 of 2012 in the SEZ area notified by Ministry of Commerce & Industry, Government of India and also approved the Map of the distribution of electricity license area and the said license still continues and held by the Petitioner.
- 4.5. The Department of Commerce and Industries also notified adjoining Plot No. 4 admeasuring 18.55.92 hectares in the original SEZ area (107.16.50) on 05th September 2017 totaling to the total SEZ area of 125.72.42 Hectares and a Rectification Lease Deed in favor of JIL is already executed by GIDC on dated 22nd June 2016.
- 4.6. The Petitioner being the Developer of the SEZ is also responsible for development, operations and maintenance of all utility services including distribution of electricity within the SEZ area to provide consumers with plug-n-play services. Accordingly, the Petitioner developed a 66kV Switchyard/Sub-Station to source power from Grid and connected through double circuit line including 11 kV network to supply power to consumers in the SEZ area and also to manage the utility services.
- 4.7. The Petitioner has taken the Distribution License from the Commission but due to certain reasons such as low load demand, variability in load and being new to the

distribution business, the Petitioner has not forward to move as Licensee at that point of time in year 2012-13. Considering the sufficient loads and readiness of the distribution Network at SEZ area, Petitioner intends to start its operation as a Licensee.

- 4.8. It is stated that upon request of JIL, the Commission vide Order 22nd July 2021 in Petition No. 1957 of 2021 allowed JIL to initiate operations as a distribution licensee and to source power directly from other distribution companies, generating sources, power exchanges and other option available in Indian Power Market and get the benefit of competitive power market pricing, under various time horizons as per load requirements.
- 4.9. The 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.
- 4.10. The Clause 4 (vi) of Guidelines issued by Department of Commerce (SEZ Division), Government of India dated 27th October 2010 provides that it would be appropriate that the SEZ is self-dependent on power supply and the SEZs should be able to provide 7 x 24 hours uninterrupted quality power supply. It would be desirable for Developer to undertake distribution of power either on its own or through a Co-Developer and source power from power plants located in other SEZs or set up a captive power plant. Clause No. 6 of GERC (Guidelines for Procurement of Power by Distribution Licensees), 2013, Notification No. 2 of 2013 provides that in case of Procurement of Power through competitive bidding, the Distribution Licensees shall initiate the process for short-term power procurement in accordance with the Ministry of Power's 'Guidelines for Short-Term Procurement of Power by Distribution Licensees through Tariff based bidding process' notified by the

Ministry of Power on 15.05.2012 and in force from time to time as provided in the MoP Guidelines.

4.11. It is submitted that Central Government vide Resolution dated 30th March 2016 has notified the revised “Guidelines for Short-Term (i.e., for a period of more than one day to one year) Procurement of Power by Distribution Licensees through Tariff based bidding process”, under the provisions of Section 63 of the Act, with the following objectives:

- (i) Promote competitive procurement of electricity by Distribution Licensees for their short-term demand (for a period of more than one year to one year).
- (ii) Reduce the Power Purchase cost of Distribution Licensees through a process of planned procurement based on transparent guidelines.
- (iii) Provide benefit to consumers.
- (iv) Facilitate transparency and fairness in procurement process; and
- (v) Introduce a system of e-Tendering and e-Reverse Auction.

4.12. The Petitioner is structured to provide quality infrastructure to attract investment as well as generate employment and revenue for the State. The SEZ is sector specific SEZ for Chemicals in 310.66 acres of land at Vilayat GIDC Industrial Estate, in Bharuch District of Gujarat.

4.13. It is submitted that the development of SEZ is in the advanced stages and the consumers in SEZ area require electricity for their operations from 10th July 2023. The details of the consumers along with their plot size, contract demand and connectivity voltage level are as follows: -

Table 1: Plot-size, Contract Demand and Voltage Level of Consumers-

Sr. No.	Name of Consumers	Plot Size (Acres)	Contract demand	Voltage level
1	Jubilant Ingrevia Limited Unit#1	19.64	3500 kVA	11KV
2	Jubilant Ingrevia Limited Unit#2	10.96	2000 KVA	11 kV
3	Jubilant Ingrevia Limited Unit#4	10.00	2500 KVA	11KV
4	Jubilant Infrastructure Limited (Boiler, ADM Building, Utilities, etc.)	269.96	1250 KVA	11 KV
	Total Load in KVA		9250 KVA	

- 4.14. It is submitted that the power costs play a significant role in attracting new investment in the area and also to provide competitiveness to the existing consumers in the Global Market. The Petitioner being a licensee would like to source power directly from other distribution companies, generating sources, power exchanges & other power market players without paying the cross-subsidy charges & additional surcharges and get the benefit of competitive power market pricing under various time horizons as per load requirements.
- 4.15. Further, the Petitioner being a Distribution licensee is committed towards complying the statutory requirements of the Commission (GERC) and shall also be following the GERC' Rules and Regulation to procure power under long/medium / Short Term Arrangements and also the provisions of Section 63 of the Electricity Act, 2003 and Ministry of Power (MoP) Guidelines. It is submitted that it shall develop the relevant documents for issuing the connection to consumers in the license area and shall also open a separate bank account for power distribution business only.
- 4.16. It is submitted that the Petitioner have separate books of account for power distribution business and the same shall be maintained and submitted to the Commission from time to time. It is submitted that in order to meet the obligations under Rule 5A of SEZ Rules, 2006 regarding to provide 24 x 7 uninterrupted power supply within the area of supply, the Petitioner has to undertake distribution activities under the provisions of the Electricity Act, 2003. It is submitted that the Petitioner has already a robust power distribution system comprising of 66 kV Switchyard /Sub-Station to source power from Grid and connected through double circuit line including 11 KV network to supply power to consumers in the SEZ area and also to manage the utility services.
- 4.17. It is also submitted that the Petitioner has already paid the requisite connectivity fee to GETCO and executed the connectivity agreement and charge 66 kV power line to ensure power supply to consumers in license area. The SEZ area is being developed as a Sector Specific SEZ for Chemicals. The consumer base of a typical distribution licensee would be inclusive of diverse consumer categories i.e., non-

residential, industrial, commercial, agriculture, public lighting, public works, railways etc. However, the SEZ at JIL is unlikely to include the entire consumer mix of a typical distribution licensee and may be limited to non-residential, commercial, industrial, and public services.

- 4.18. It is submitted that the Petitioner is undergoing process of developing the SEZ area, the plot allotment plan of leasable land as envisaged in the JIL Distribution Plan is provided in the table below:

Table 2: Plot Allotment Plan as envisaged in JIL Business Plan

Sr. No.	Plot number	Area (Acres)	Type of connection	Expected Load (kVA)
01.	P1 L11 & L18	23	HT	1500
02.	P1 L1 (Expansion)	Expansion	HT	750
03.	Plot 4	50	HT	1500
04.	Infra	Expansion	HT	1000

- 4.19. It is submitted that the Petitioner being new to the distribution business and has expected phase-wise load growth details of HT & LT consumers for 10 years (year 2023-2033) along with the Peak and Base power requirement is hard to be projected. Therefore, the Petitioner has stated expected phase-wise load growth details of different consumer types along with the Peak and Base power requirement for FY 2023-24 & FY 2024-25 in table below:

Table 3: Expected phase-wise Base Load Projections (in MVA) of different types of consumers (FY 2024 to FY 2025): -

Project Phases	Type	Area (Acre)	FY-2024	FY-2025
Phase I	HT	73	~ 10-11	~ 12-13

Table 4: Expected phase-wise Peak Load Projections (in MVA) of different types of consumers (FY 2024 to FY 2025)-

Project Phases	Type	Area (Ha)	FY-2024	FY-2025
Phase I	HT	73	~ 12-13	~ 14-15

4.20. It is submitted that since the Petitioner is about to start its operation as a licensee and being new to the distribution business, the Petitioner feels it appropriate to have some more time to study and monitor the load growth in license area in coming days and then project the load requirement for the remaining six (6) years as mentioned in the GERC (Guidelines for Procurement of Power by Distribution Licensees), 2013. It is submitted that as on date, 3 no. of plot holder(s)/ consumer(s) have requested the Petitioner for supply of regular power so as to enable them to commence their operation. Copy of Application/Request from above consumers/industrial units for providing supply is also filed with this Petition.

4.21. The power requirement at SEZ from the above-mentioned consumers is expected to be as follows:

Table 5: Yearly power requirement at SEZ

Particulars	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Power Requirement MW	~ 10-11	~ 12	~ 12-13	~ 13-14
Power Requirement MUs	95	103	111	120

4.22. It is submitted that as the operation of consumers is expected to be 24 hours' duration, no separate peak load requirement has been estimated. At present, the total load is considered as base load only. The Petitioner is an ambitious SEZ project planned to be developed with world class infrastructure and other operational facilities for sector specific chemical plants. Having a separate tariff structure in its license area is always beneficial for the Petitioner to attract the industrial and manufacturing units in its early stage of development.

4.23. The Petitioner is planning to commence its business as a Distribution Licensee and accordingly initiating to procure power under Open Access through a portfolio mix of LTOA/MTOA/STOA/Collective transaction including procuring power from RE sources. Tentative year-wise procurement plan is as follows:

Table 6: Tentative year-wise procurement plan at SEZ

Sr. No.	Power Sourcing Mode	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
1	LTOA/MTOA	~ 3-5 MW	~ 6 MW	~ 6 MW	~ 8 MW

2	STOA/Collective Transaction	~ 4-6MW	~ 5-6 MW	~ 6 MW	~ 6 MW
	Total	~ 10-11 MW	~ 12.0 MW	~ 12-13 MW	~ 14.0 MW

4.24. The Petitioner is in process to execute a Power Purchase Agreement with M/s DGVCL for supply of 8 MW power for a period of 12 months w.e.f. July 10, 2023. Further, in line with GERC (Guidelines for Procurement of Power by Distribution Licensees), 2013, the Petitioner has issued Request for Proposal for procurement of power through competitive bidding on DEEP portal on 05.05.2023 to commence its operations as a Distribution Licensee. The salient points of the RFP are as follows-

Table 7: Major points of RFP

Contracted Capacity	4 MW
Delivery Point	Gujarat STU Periphery
Contract Period	Shall mean a period starting from 01 st July 2023 to 30 th June 2024.
Tariff	Tariff discovered through competitive bidding process i.e. Rs. 5.50/ kWh
Effective Date	Date of receipt of Open Access approval from nodal agency

4.25. Considering the load profile of consumer's in JIL's SEZ area, following deviations were included in the RFP document as well as Corrigendum-I dated 19.05.2023.

Table 8: Deviations from model guidelines

Particulars	DEEP Guidelines	Draft PPA & RFP Clause	Remarks
Liquidated Damages	Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved Open Access on monthly basis.	Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved Open Access on calendar quarterly (three months) basis.	As JIL has predominantly Industrial load, therefore, it is envisaged that consumers may have certain short time periods like Preventive maintenance / Shutdown maintenance, etc. wherein the load requirements may be lower. Therefore, the proposed deviation was included to

			mitigate such risks of penalties .
Force Majeure	1. Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, volcanic eruption, fire or landslide or acts of terrorism causing disruption of the system.	1) Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, pandemic, epidemic, volcanic eruption, fire or landslide or acts of war, armed conflict, riots, acts of terrorism causing disruption of the system. 2. Non-grant / delay of NOC/concurrence/open access by SLDC/RLDC/STU/CTU/D ISCOM.	Considering the predominantly Industrial Load and likely impact of any Pandemic/Epidemic, the Pandemic and Epidemic terms have been included in the Force Majeure

4.26. It is stated that one of the potential bidders namely M/s Phillips Carbon Black Limited (PCBL) has raised few queries on 21.05.2023 such as change in early termination, clarification on delivery point, force majeure, treatment of Open Access charges and losses, etc. which were addressed through Corrigendum-II dated 24.05.2023.

4.27. Based on the requests received from bidders, the timelines of bid submission were further extended three (3) times and accordingly the following Corrigendum were issued by the Petitioner JIL:

Table 9: Corrigendum details

S. No.	Corrigendum No.	Date of Corrigendum
1	Corrigendum III	30.05.2023
2	Corrigendum IV	05.06.2023
3	Corrigendum V	08.06.2023

4.28. It is submitted that as per Corrigendum-V, Bidders were required to submit the bids by 13.06.2023, 15:00 Hours. Subsequently, the bids received on Deep Portal were opened on 14.06.2023 at 16:00 Hours. The Petitioner JIL received only one (1) bid from M/s. Phillips Carbon Black Limited (PCBL) wherein they have proposed to supply power from its Mundra Plant in Gujarat. Since only one (1) bid was received, e-Reverse Auction could not be conducted.

4.29. Thereafter, on 15th June 2023, the technical bid was evaluated. PCBL had submitted all the relevant documents in line with RFP. However, the following deviation has been proposed by PCBL under Clause no. 23 of RFP:

Sr. No.	Deviation	Remarks
1	<p>Notwithstanding anything contained in this Agreement, the Seller has the right to terminate this Agreement forthwith on failure of Procurer to offtake Minimum Quantum (which is 4MW) during continuous period of 30 days or offtakes less than 75% of Minimum Quantum during a calendar month</p> <p>In the event of termination of the Agreement by the Seller pursuant to the above Clause, any cost associated with termination including any charges (including relinquishment charges), levy, duty, taxes etc. shall be borne by the Procurer.</p>	<p>Phillips Carbon Black Limited, operate cogeneration power plants in Mundra and Palej, which operate solely on waste gas generated from our carbon black process plant.</p> <p>Therefore, if procurer is not taking the power as per PPA or taking less than minimum quantum, we may not be in a position to evacuate power or balance power, as the case may be, to energy exchange or any third party as per SLDC rules, unless the PPA is terminated.</p>
2	<p>Definition of 'Delivery Point' in RFP, Article 1 Definition and Interpretation, is "The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU)"</p> <p>Definition of 'Delivery Point' is sought to be changed to:</p> <p>"The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU) where the ex- bus of Phillips Carbon Black Limited (Mundra unit / Palej unit) is connected."</p>	<p>Definition of delivery point appears vague as both seller as well as Procurer are connected with state transmission periphery of Gujarat (Gujarat-STU). In this regard, we want to highlight that the tariff quoted by PCBL in its bid/offer is based on this understanding that Delivery point is ex bus of PCBL where it is connected with GETCO transmission system.</p>
3	<p>To provide clarity in relation to payment of open access charges, the following addition is sought in clause 5.3.6 of the PPA:</p> <p>"For avoidance of doubt , it is clarified that open access charges (including Gujarat STU Charges and losses) beyond the delivery point shall be reimbursed to seller on actual basis by Procurer."</p>	<p>In the event, open access charges including Gujarat STU charges & losses beyond the delivery point are paid by the seller on behalf of the procurer, the same shall be reimbursed by the procurer to the seller on receipt of the relevant Invoices.</p>

4.30. It is submitted that the Petitioner vide its email dated 14.06.2023, requested PCBL to withdraw the deviations sought by them in their Bid. However, PCBL vide its email dated 14.06.2023 denied to withdraw the deviations citing the difficulties to

run the power plant without these conditions. The Technical Committee of JIL evaluated the technical bid submitted by PCBL on 15.06.2023 including the likely impact of deviations proposed by PCBL on JIL.

4.31. During the said meeting of Technical Committee, the deviations proposed by PCBL were also discussed and committee's observations against the same are as follows:

Sr. No.	Deviation	Technical Committee's observations
1	<p>Notwithstanding anything contained in this Agreement, the Seller has the right to terminate this Agreement forthwith on failure of Procurer to offtake Minimum Quantum (which is 4MW) during continuous period of 30 days or offtakes less than 75% of Minimum Quantum during a calendar month</p> <p>In the event of termination of the Agreement by the Seller pursuant to the above Clause, any cost associated with termination including any charges (including relinquishment charges), levy, duty, taxes etc. shall be borne by the Procurer.</p>	<p>The said deviation is not material considering the load requirement of JIL as the load of its SEZ area is continuous and barely goes below 4-5 MW.</p>
2	<p>Definition of 'Delivery Point' in RFP, Article 1 Definition and Interpretation, is "The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU)"</p> <p>Definition of 'Delivery Point' is sought to be changed to:</p> <p>"The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU) where the ex- bus of Phillips Carbon Black Limited (Mundra unit / Palej unit) is connected."</p>	<p>The Delivery Point as per RFP & PPA is state transmission periphery of Gujarat (Gujarat-STU) wherein the open access charges like STU charges & losses of Gujarat are to be borne by JIL.</p> <p>The Delivery Point proposed by PCBL shall be the ex-bus of PCBL's generating station connected at 66 kV with GETCO system, wherein the open access charges like STU charges & losses of Gujarat are still to be borne by JIL.</p> <p>Further, the clause Sr. No. 5.3 of the 'Guidelines for short-term Procurement of Power by Distribution Licensees through Tariff based bidding process' read as follows:</p> <p>" For intra-state transmission of power, inter-connection point of seller with</p>

		<p>STU/ CTU to be taken as Delivery Point”.</p> <p>Hence, there would be no impact on JIL in case the Delivery Point changes to Ex-bus of the generator’s interconnection with STU.</p>
3	<p>To Provide clarity in relation to payment of open access charges, the following addition is sought in clause 5.3.6 of the PPA:</p> <p>“For avoidance of doubt , it is clarified that open access charges (including Gujarat STU Charges and losses) beyond the delivery point shall be reimbursed to seller on actual basis by Procurer.”</p>	<p>The said deviation proposed by M/s PCBL was already clarified under Corrigendum-II issued by JIL on Deep Portal on 23.05.2023.</p> <p>For the sake of clarity, it is reiterated that any charges and losses beyond the Delivery Point (but not limited to) Gujarat STU charges and Gujarat STU losses, Gujarat STU/SLDC scheduling and operating charges shall be borne by JIL.</p> <p>Please note seller may raise bills on JIL on account of open access charges/ transmission charges paid on their behalf by Seller, if any.</p>

4.32. It is submitted that since the deviations proposed by PCBL were not material, therefore, it was recommended by Technical Committee to open the financial bid. Thereafter, Financial Bid was opened on 16.06.2023 and the price quoted by PCBL was discovered as Rs. 5.50/kWh for the tenure of the Agreement as mentioned in the RfP. A copy of Minute of Meeting of the Technical Committee is also filed with the present Petition.

4.33. It is requested to allow the Petitioner to execute Power Purchase Agreement with PCBL for procurement of 4 MW power at a tariff of Rs. 5.50/kWh discovered through competitive bidding conducted on DEEP portal to enable the Petitioner to commence its distribution business and to provide competitive power to consumers from its area of supply.

4.34. It is requested to also approve the Draft Power Purchase Agreement, with the deviations mentioned in the earlier sections, to be signed between Petitioner and bidder i.e., Phillips Carbon Black Limited.

4.35. The Petitioner has submitted the details of tariffs discovered during recent auctions by various licensees on DEEP Portal as under

Table 10: Summary of Tender Results for Power procured by Utilities on DEEP

Sr. No.	Name of Licensee	Delivery Point	Period of Supply	Quantum (MW)	Tariff (Rs./kWh)
1	GUVNL	Gujarat Periphery	01.06.2023 to 30.06.2023	45	8.11
2	Torrent Power Limited	Gujarat Periphery	01.05.2023 to 31.05.2023	25	9.00
3	Torrent Power Limited	Gujarat Periphery	01.08.2023 to 31.08.2023	25	7.99
4	KRC Infrastructure and Projects Pvt. Ltd.	Maharashtra Periphery	01.06.2023 to 30.06.2023	1	9.25
5	Jawaharlal Nehru Port Trust	Maharashtra Periphery	01.07.2023 to 30.06.2024	2	6.30
6	Jawaharlal Nehru Port Trust	Maharashtra Periphery	01.07.2023 to 30.06.2024	2	6.50
7	Laxmipati Balaji Supply Chain Management Limited	Maharashtra Periphery	01.02.2023 to 31.01.2024	1	5.40
8	EON Kharadi Infrastructure Pvt Ltd	Maharashtra Periphery	01.04.2023 to 30.06.2023	4	6.76
9	EON Kharadi Infrastructure Pvt Ltd	Maharashtra Periphery	01.10.2023 to 31.01.2024	4	6.47

4.36. Therefore, considering the competitiveness of the tariff offered by Phillips Carbon Black Limited i.e., Rs. 5.50/kWh compared to the recent price discoveries on DEEP portal, the Petitioner JIL is requested the Commission to approve the PPA with Phillips Carbon Black Limited.

4.37. It is submitted that the Petitioner is also in the process of executing the PPA with DGVCL for procurement of balance power under license to license arrangement in order to ensure efficacy, stability and to reduce dependency on single power generator so that uninterrupted quality power is provided to the consumers connected in the area of licensee.

4.38. Summary of terms and conditions of PPA is also stated as under:

Sr. No.	Billing Component	Rate under agreement for supply as licensee
1	Capacity Charges applicable on full contracted capacity	Rs. 350/KVA/Month
2	Energy Charges Rates	Rs. 4.55/KWh
3	Recovery of Incentive charges: (In case availability is in excess of 80% on cumulative basis)	Rs. 0.25/KWh
4	Time of Use Charges Additional charge for the energy scheduled during the two peak periods, i.e., 07.00 Hrs. to 11.00 Hrs. and 18.00 Hrs. to 22.00 Hrs.	100 Paisa per Unit
5	Reactive Charge	Reactive charges will be recovered as per GERC Grid Code and relevant provisions applicable from time to time directly by SLDC-Vadodara
6	FPPPA Charges	FPPPA charges determined in accordance with the approved formula of GERC as applicable to all other category of consumers will also be applicable.
7	Meter Charges	The meter charge is chargeable at Rs.750 per month for each meter.
8	Minimum Bills	The amount equivalent to the Capacity charges shall formulate monthly Minimum Bill payable.
9	Delayed Payment Charges	No delayed Payment charges, if the bill is paid within ten days from the date of billing. Delayed Payment Charges are payable at the rate of 18% per annum, from the date of billing till the date of payment, if the bill is paid after 10 days from the date of billing. The above delayed payment charges does not take away the right of disconnecting /discontinuing the

		supply for non-payment of the bills, electricity duty, if any, and other charges due to DGVCL
10	Effective Date and tenure of the Agreement	The tenure of the agreement shall be for one year from date of signing of agreement.
11	Scheduling of Power	Shall require to schedule power on day ahead basis in accordance with GERC Intra State ABT order & GERC Open access Regulations as amended from time to time.
12	UI/DSM charges	Shall be settled with SLDC directly.

4.39. It is submitted that the Petitioner would be meeting its contingent power requirement through Power Exchanges and accordingly Power Purchase Agreement for purchase through Power Exchange to be executed with PTC India Limited. Moreover, it is requested that as an interim arrangement, the Petitioner should be granted to charge consumers within its licensed area at a tariff equivalent to the respective categories of consumers under DGVCL. This arrangement would serve as a ceiling tariff until the completion of the regulatory process regarding submission and finalization of the Petitioner's Annual Revenue Requirement (ARR) by the Commission.

4.40. It is submitted that the purpose of this interim arrangement is to ensure that the Petitioner can continue to provide reliable and uninterrupted power supply to its consumers while the regulatory proceedings are under consideration and by allowing the Petitioner JIL to charge consumers at a tariff consistent with DGVCL's applicable categories, it would mitigate any potential financial burden on the Petitioner and its consumers during this transitional period.

4. The matter was heard on 05.07.2023. During the hearing, representative appearing on behalf of the Petitioner Jubilant Infrastructures Limited, reiterating the facts of the Petition as stated at para 4 above. It is requested that the Commission may adopt the tariff discovered in Competitive Bidding Process undertaken by the Petitioner and also to approve the PPA through Tender No. JIL/MEE/US/SEZ-Power Supply/2023/E293 dated 05.05.2023.

5. We have considered the submissions made by the Petitioner. The Petitioner has filed

the present Petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003. The Petitioner has sought the approval of the Commission for adoption of discovered tariff of Rs. 5.50 per unit under competitive bidding process followed by e-reverse auction of Tender No. JIL/MEE/US/SEZ-Power Supply/2023/E293 dated 05.05.2023 for the duration from 01.07.2023 to 30.06.2024. The Petitioner also sought approval with regards to terms & conditions of PPA to be executed with M/s Phillips Carbon Black Limited alongwith deviation sought in the Petition. We also note that the Petitioner further sought a liberty to procure the balance power through DGVCL for a period of one year from 01.07.2023 and also to procure power through Power Exchange or any other means as permissible under the GERC Regulations in case of any contingent load requirement vis-à-vis allow the Petitioner to sale of surplus power via bilateral mode or through Power Exchange in case any situation arises where power requirement is less than the contracted power. It is also prayed that being interim arrangement, the Commission may allow the Petitioner to charge consumers in its license area at the tariff applicable to respective categories of DGVCL's consumers as the ceiling tariff till Petitioner's ARR and tariff finalized by the Commission.

- 5.1. We note that the Petitioner, being a distribution licensee, has the Universal Service Obligation to ensure uninterrupted electricity supply to the consumers within the licensee area as provided under Section 43 of the Electricity Act, 2003.
- 5.2. The Petitioner has proposed to procure the power to meet its 4 MW demand out of anticipated 12 MW demand during the FY 2023-24 and FY 2024-25 of its licensee area from M/s PCBL who was selected under Deep Portal by the Petitioner in the Competitive Bidding Process through Tender No. JIL/MEE/US/SEZ-Power Supply/2023/E293 dated 05.05.2023.
- 5.3. It is observed that the Petitioner initiated the Competitive Bidding Process followed by e-reverse auction as per Section 63 of the Electricity Act vide Tender No. JIL/MEE/US/SEZ-Power Supply/2023/E293 dated 05.05.2023 for procurement of 4 MW by executing the PPA with from Phillips Carbon Black Limited with an intimation to the Commission under Clause 3.1.1 of the Competitive Bidding

guidelines issued by the Ministry of Power.

- 5.4. Clauses 6 and 17 of the 'Guidelines for Power Procurement by the Distribution Licensee' dated 14.08.2013 issued by the Commission are reproduced below:

“

6. The Distribution Licensee shall normally endeavor to procure power through competitive bidding. In case of any proposal for procurement of power through MoU route, the Distribution Licensee shall obtain prior approval of the GERC.

.....

17. The GERC may permit any Distribution Licensee to make purchase of power without requiring that such purchase be subject to Competitive/Open Process in the event of an unforeseen and an exceptional situation. However, the Distribution Licensee shall not, thereby, be exempted from demonstrating the need and the reason for departure from a competitive process together with the economic justification for the purchase, the means, whereby, in the absence of competition, the Distribution Licensee proposes to secure the best possible terms and such other information as the GERC may require.

.....”

As per aforesaid Clause 6 of the guidelines, in case, if the distribution licensee desires to procure the power through MoU route other than competitive bidding, then the Distribution Licensee needs to obtain prior approval of the Commission for such power procurement.

Clause 17 of the aforesaid Guidelines provides that the Commission may grant permission to the Distribution Licensee to procure power without following Competitive/Open Process in the event of an unforeseen and an exceptional situation, subject to the Distribution Licensee demonstrating the need and reason for such departure from the competitive process together with the economic justification for the purchase. It also states that in the absence of competition, the

Distribution Licensee proposes to secure the best possible terms and such other information as the Commission may require.

5.5. We note that the Petitioner Jubilant Infrastructure Limited granted License No. 07 of 2012 by the Commission in the SEZ area notified by Ministry of Commerce & Industry, Government of India and also approved the Map of the distribution of electricity license area. We also note that the Petitioner being the Developer of the SEZ is also responsible for development, operations and maintenance of all utility services including distribution of electricity within the SEZ area to provide consumers with plug-n-play services. Accordingly, the Petitioner developed 66kV Switchyard / Sub-Station to source power from the Grid and connected through double circuit line including 11 kV network to supply power to consumers in its SEZ area and also to manage the utility services. We also note that although the Petitioner has taken the Distribution License from Commission but on account of certain reasons such as low load demand, variability in load and being new to the distribution business, the distribution activities not taken forward to move as Licensee at that point of time in the year 2012-13 and considering the sufficient loads and readiness of the distribution Network at SEZ area, the Petitioner intends to start its operation as a licensee. Upon the request of the Petitioner, the Commission vide its Order dated 22.07.2021 allowed the Petitioner to initiate operations as a distribution licensee and to source power directly from other distribution companies, generating sources, power exchanges and other option available in Indian Power Market and to get the benefit of competitive power market pricing, under various time horizons as per load requirements.

5.6. We also note that the Petitioner JIL is structured to provide quality infrastructure to attract investment as well as generate employment and revenue for the State and the SEZ is Sector Specific SEZ for Chemicals in 310.66 Acres of land at Vilayat GIDC Industrial Estate, in Bharuch District of Gujarat. The development of SEZ is in the advanced stages and the consumers in SEZ area require electricity for their operations from 10.07.2023. Accordingly, there are four consumers of the Petitioner having total contract demand of 9250 KVA at 11 KV voltage level with total plot size area of 310.56 acres.

5.7. According to the submissions of the Petitioner, as the power costs play a significant

role in attracting new investment in the area and also to provide competitiveness to the existing consumers in the Global Market, the Petitioner being a distribution licensee is to source power directly from other distribution companies, generating sources, power exchanges & other power market players without paying the Cross Subsidy Charges & Additional Surcharge and get the benefit of competitive power market pricing, under various time horizons as per load requirements. The Petitioner being a Distribution licensee, is also committed towards complying the statutory requirements of the Commission and also following the GERC Rules and Regulations to procure power under long term/ medium term/ short term arrangements under the provisions of Section 63 of the Electricity Act, 2003 and Ministry of Power (MoP) Guidelines. The Petitioner also develop the relevant documents for issuing the connection to consumers in the license area and shall also open a separate bank account for power distribution business only. The Petitioner will also maintain separate books of account for power distribution business and submit the same to the Commission from time to time. In order to meet the obligations under Rule 5A of SEZ Rules, 2006 regarding to provide 24x7 uninterrupted power supply within the area of supply, the Petitioner has to undertake distribution activities under the provisions of the Electricity Act, 2003. Therefore, as stated above, the Petitioner already has a robust power distribution system comprising of 66 kV Switchyard /Sub-Station to source power from the Grid and connected through double circuit line including 11 kV network to supply power to consumers and also to manage the utility services in its SEZ area.

- 5.8. We further note that the Petitioner has already paid the requisite connectivity fee to GETCO and executed the connectivity agreement and charged the 66 kV power line to ensure power supply to consumers in license area. The consumer base of a typical distribution licensee would be inclusive of diverse consumer categories i.e. non-residential, industrial, commercial, agriculture, public lighting, public works, railways etc. However, the SEZ of the Petitioner is unlikely to include the entire consumer mix of a typical distribution licensee and may be limited to non-residential, commercial, industrial and public services. Therefore, the Petitioner is undergoing process of developing the SEZ area and the plot was allotted in accordance with plan of leasable land as envisaged in the Petitioner's Distribution Plan.

- 5.9. We note that the Petitioner being new to the distribution business has expected phase-wise load growth details of HT & LT consumers for 10 years (year 2023-2033) along with the Peak and Base power requirement is hard to be projected. Therefore, it was expected that the phase-wise based load growth of different types of consumer was increased from ~ 12-13 to ~ 14-15. Since the Petitioner is to start its operation as a licensee, the Petitioner feels it appropriate to have some more time to study and monitor the load growth in license area in coming days and then project the load requirement for the remaining six (6) years as mentioned in the GERC (Guidelines for Procurement of Power by Distribution Licensees), 2013. As per the submission, at present there are three nos. of plot holder(s)/consumer(s) who have made the request to the Petitioner for supplying the regular power to enable them to commence their operation. Copy of the application from the said consumers for providing the supply is also filed with the present Petition.
- 5.10. We note the submission of the Petitioner that as the operation of consumers is expected to be 24 hours' duration, no separate peak load requirement has been estimated at present by the Petitioner and accordingly the total load is considered as base load only. The Petitioner is an ambitious SEZ project planned to be developed with world class infrastructure and other operational facilities for sector specific chemical plants and having a separate tariff structure in its license area is always beneficial for the Petitioner to attract the industrial and manufacturing units in its early stage of development. Accordingly, the Petitioner is planning to commence its Business as a Distribution Licensee and initiating to procure power under Open Access through a portfolio mix of LTOA/MTOA/STOA/Collective Transaction including procuring power from RE sources.
- 5.11. We note that since the Petitioner is in process to execute a Power Purchase Agreement with DGVCL for supply of 8 MW power for a period of 12 months from July 10, 2023, has also issued RFP for procurement of power through competitive bidding on DEEP portal on 05.05.2023 to commence its operations as a Distribution Licensee under the provisions of the GERC (Guidelines for Procurement of Power by Distribution Licensees), 2013. Considering the load profile of consumers in Petitioner's SEZ area, certain deviations were included in the RFP document and Corrigendum-I dated 19.05.2023 in this regard was issued by the Petitioner.

- 5.12. As per the submissions of the Petitioner, one potential bidder viz, M/s Phillips Carbon Black Limited raised certain queries on 21.05.2023 such as change in early termination, clarification on delivery point, force majeure issue, treatment of Open Access charges and losses, etc. which were addressed by the Petitioner vide Corrigendum-II dated 24.05.2023. We also note that as per requests of the bidders, the timelines of the bid submission were extended three times by the Petitioner vide Corrigendum's dated 30.05.2023, 05.06.2023 and 08.06.2023 respectively. As per the last Corrigendum dated 08.06.2023, the bidders were required to submit the bids by 13.06.2023 at 15:00 Hours. The bids received on Deep Portal were opened on 14.06.2023 at 16:00 hours wherein the Petitioner has received only one (1) bid i.e., from M/s Phillips Carbon Black Limited (PCBL) wherein PCBL have proposed to supply power from its Mundra Plant in Gujarat. Since only one bid was received, e-Reverse Auction could not be conducted.
- 5.13. We note that the technical bid was evaluated on 15.06.2023 and PCBL had submitted the relevant documents in line with RFP wherein deviations have also been proposed by PCBL under Clause no. 23 of RFP. The Petitioner JIL vide its email dated 14.06.2023 requested PCBL to withdraw the said deviations sought by them in their Bid but PCBL vide its email dated 14.06.2023 has denied to withdraw the deviations citing the difficulties to run the power plant without these conditions.
- 5.14. We note that the Petitioner has also issued 'e- Tender for the procurement of power for its SEZ with Tender No. JIL/MEE/US//SEZ-Power Supply/2023/E293 and Event No. Jubilant Infrastructure Limited/Short/23-24/ET/54 dated 19.05.2023 on Deep Portal. The last date of bid submission in the tendering process initially was 23.05.2023 which was subsequently extended up to 13.06.2023.
- 5.15. Thereafter, the bids received on Deep Portal were open on 14.06.2023 at 16:00 Hours. The Technical Committee of the Petitioner has evaluated the technical bid submitted by PCBL on 15.06.2023 including the impact of deviations proposed by PCBL on JIL. We note that the Petitioner only received one bid from M/s Phillips Carbon Black Limited and the technical bid opening was held on 15.06.2023 in the presence of Bid Evaluation Committee consisting of following officials:

Sr. No.	Name	Designation
1	Mr. Chetan Maheshwari	Director – Engg.
2	Mr. Pranay Shah	Associate Director – Elect.

5.16. It is also submitted by the Petitioner that the aforesaid bid received from one bidder was opened in presence of Bid Evaluation Committee and also evaluated by said Committee. As per technical evaluation report of the said Committee, it is observed that one bid received was technically qualified and technical evaluation report signed by the Members of the Bid Evaluation Committee is filed by the Petitioner, which is reproduced below:

“Technical Bid Evaluation Report

JIL floated an e-Tender for the procurement of power for its SEZ with Tender No. JIL/MEE/US/SEZ-POWER SUPPLY/2023/E 293 and Event No. JUBILANT INFRASTRUCTURE LIMITED/Short/23-24/ET/54 dated 19.05.2023 on DEEP Portal. Bids received on Deep Portal were opened on 14.06.2023 at 16:00 Hours and evaluated in the presence of the following officials:

- 1. Chetan Maheshwari (Director – Engg.) 2. Pranay Shah (Associate Director – Elect.)*

During the meeting, following points were discussed:

- 1. JIL received only one (1) bid that is from M/s. Phillips Carbon Black Limited (PCBL) wherein it has proposed to supply power from its Mundra Plant in Gujarat.*
- 2. PCBL had submitted all the relevant documents in line with RFP. However, deviations were proposed by M/ s. PCBL under Clause no. 23 of RFP.*
- 3. JIL requested PCBL to withdraw the deviations sought vide its mail dated 15.06.2023 in their Bid. However, PCBL denied to withdraw the deviations citing the difficulties to run the power plant without these conditions.*
- 4. Further, the deviations proposed by M/s. PCBL were discussed in detail and committee's observation on the same are as follows:*

Sr. No.	Deviation	Observations
1	<p>Notwithstanding anything contained in this Agreement, the Seller has the right to terminate this Agreement forthwith on failure of Procurer to offtake Minimum Quantum (which is 4 MW) during continuous period of 30 days or offtakes less than 75% of Minimum Quantum during a calendar month.</p> <p>In the event of termination of the Agreement by the Seller pursuant to the above Clause, any cost associated with termination including any charges (including relinquishment charges), levy, duty, taxes etc. shall be borne by the Procurer.</p>	<p>It is not material considering the load requirement of JIL as the load of its SEZ area is continuous and barely goes below 4-5 MW.</p>
2	<p>Definition of 'Delivery Point' in RFP, Article 1 Definition and Interpretation, is "The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU)"</p> <p>Definition of 'Delivery Point' is sought to be changed to:</p> <p>"The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU) where the ex-bus of Phillips Carbon Black Limited (Mundra unit/Palej t) is connected."</p>	<p>The Delivery Point as per RFP & PPA is state transmission periphery of Gujarat (Gujarat-STU) wherein the open access charges like STU charges & losses of Gujarat are to be borne by JIL.</p> <p>The Delivery Point proposed by PCBL shall be the ex-bus of PCBL's generating station connected at 66 kV with GETCO system, wherein the open access charges like STU charges & losses of Gujarat are still to be borne by JIL.</p> <p>Further, the clause Sr. No. 5.3 of the 'Guidelines for short-term Procurement of Power by Distribution Licensees through Tariff based bidding process' read as follows: ".....For infra-state transmission of power, inter-connection point of seller with STU/ CTU to be taken as Delivery Point". Hence, there would be no impact on JIL in case the Delivery Point changes to Ex-bus of the generator's inter-connection with STU.</p>
3	<p>To Provide clarity in relation to payment of open access charges, the following addition is sought in clause 5.3.6 of the PPA:</p> <p>"For avoidance of doubt, it is clarified that open access charges (including Gujarat STU Charges and losses) beyond the delivery point shall be reimbursed to seller on actual basis by Procurer."</p>	<p>The said clause is more of a related to clarification not the deviation. JIL has already clarified through RFP, PPA and Corrigendum-II that charges and losses beyond the Delivery Point (but not limited to) Gujarat STU charges and Gujarat STU losses, Gujarat STU/SLDC scheduling arid operating charges shall be borne by JIL. Hence, said clause, which is self-explanatory, will have no impact on JIL.</p>

Since the deviations proposed by M/s PCBL are not material, it is therefore recommended that JIL may open the financial bid and approach Hon'ble Commission to adopt the Tariff discovered in the bid, and also seek the commission's approval for execution of the PPA with M/s PCBL.

Sd/-
Chetan
.....”

Sd/-
Pranay Shah

From the Technical Evaluation Report, it is apparent that only one bid was found to be responsive and hence was deemed qualified for opening of their financial bids. Accordingly, as per the Technical Report of the Bid Evaluation Committee and recommendation after technical bid evaluation of one bidder to be technically qualified and since the deviation proposed by M/s PCBL are not material, Bid Evaluation Committee has recommended that the Petitioner may open the financial bid M/s PBCL, and accordingly financial bid was opened on 16.06.2023 on Deep Portal in the presence of the Bid Evaluation Committee.

- 5.17. Upon the opening of financial bid, it is observed that the price quoted by M/s PCBL was discovered at Rs. 5.50 per kWh and submitted the summary of the Financial Bid and Price Comparative Statement is as under:

“Bid Evaluation Report

- JIL floated an e-Tender for the procurement of power for its SEZ with Tender No. JIL/MEE/US/SEZ-POWER SUPPLY/2023/E 293 and Event No. JUBILANT INFRASTRUCTURE LIMITED/Short/23-24/ET/54 dated 19.05.2023 on DEEP Portal. Bids received on Deep Portal were opened on 14.06.2023 at 16:00 Hrs and evaluated in the presence of the following officials.*
 - Chetan Maheshwari (Director-Engg.)*
 - Pranay Shah (Associate Director-Elect.)*
- JIL received only one (1) bid that is from M/s. Phillips Carbon Black Limited (PCBL) wherein PCBL proposed to supply power from its Mundra Plant in Gujarat.*
- PCBL had submitted all the relevant documents in line with RFP. However, deviations were proposed by M/s. PCBL under Clause no. 23 of RFP.*
- JIL requested PCBL to withdraw the deviations sought vide its mail dated 15.06.2023 in their Bid. However, PCBL denied to withdraw the deviations citing the difficulties to run the power plant without these conditions.*
- Further, the deviations proposed by M/s. PCBL were discussed in detail and committee's observation on the same are as follows:*

Sr. No.	Deviations	Observations
1.	<i>Notwithstanding anything contained in this Agreement, the Seller has the right to terminate this Agreement forthwith on</i>	<i>It is not material considering the load requirement of JIL as the load of its SEZ</i>

	<p>failure of Procurer to offtake Minimum Quantum (which is 4MW) during continuous period of 30 days or offtakes less than 75% of Minimum Quantum during a calendar month.</p> <p>In the event of termination of the Agreement by the Seller pursuant to the above Clause, any cost associated with termination including any charges (including relinquishment charges), levy, duty, taxes etc. shall be borne by the Procurer.</p>	<p>area is continuous and barely goes below 4-5 MW.</p>
2.	<p>Definition of 'Delivery Point' in RFP, Article 1 Definition, and Interpretation, is "The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU)"</p> <p>Definition of 'Delivery Point' is sought to be changed to:</p> <p>"The delivery point for the power shall be the state transmission periphery of Gujarat (Gujarat-STU) where the ex-bus of Phillips Carbon Black Limited (Mundra unit/Palej unit) is connected."</p>	<p>The Delivery Point as per RFP & PPA is state transmission periphery of Gujarat (Gujarat STU) wherein the open access charges like STU charges & losses of Gujarat are to be borne by JIL.</p> <p>The Delivery Point proposed by PCBL shall be the ex-bus of PCBL's generating station connected at 66 KV with GETCO system, wherein the open access charges like STU charges & losses of Gujarat are still to be borne by JIL.</p> <p>Further, the clause Sr. No. 5.3 of the 'Guidelines for short-term Procurement of Power by Distribution Licensees through Tariff based bidding process' read as follows:</p> <p>"For intra-state transmission of power, inter-connection point of seller with STU/CTU to be taken as Delivery Point". Hence, there would be no impact on JIL in case the Delivery Point changes to Ex-bus of the generator's interconnection with STU.</p>
3.	<p>To Provide clarity in relation to payment of open access charges, the following addition is sought in clause 5.3.6 of the PPA:</p> <p>"For avoidance of doubt, it is clarified that open access charges (including Gujarat STU Charges and losses) beyond the delivery point shall be reimbursed to seller on actual basis by Procurer."</p>	<p>The said clause is more of a related to clarification not the deviation. JIL has already clarified through RFP, PPA and Corrigendum-II that charges and losses beyond the Delivery Point (but not limited to) Gujarat STU charges and Gujarat STU losses, Gujarat STU/SLDC scheduling and operating charges shall be borne by JIL.</p> <p>Hence, said clause, which is self-explanatory, will have no impact on JIL.</p>

6. The summary of the financial Bid is as follows:

Sr. No.	Particulars	Description
1	Event Number	Jubilant Infrastructures Limited/Short/23-24/ET/54
2	Successful Bidder	Phillips Carbon Black Limited
3	Bid Quantity	4 MW
4	Period	01.06.2023 to 31.05.2023
5	Time-Slot	From 00:00 hours to 24:00 hours
6	Bid Price	Rs. 5.50 per kWh

Financial Bid is also enclosed for your kind reference and consideration.

Price Comparative Statement

Event No. Jubilant Infrastructures Limited/Short/23-24/ET/54

Period: 19/05/2023 16:00:00 To 13/06/2023 15:00:00

1	Item No.1 Desc. 01.06.2023:00:00 to 31.05.2024:24:00 Quantity 4.0 MW	
	Price Header	PHILLIPS CARBON BLACK LIMITED (msct/Phillips carbon Black Limited/155592)
	Bid Quantity - MW	4.000
	Bid Price – Rs. /Unit	5.500
	Min. Order Qty-MW	4.000

.....”

5.18. We note that the Petitioner in the present Petition sought the approval of the Commission for procurement of power from following ways and entities, as under:

- (i) 4 MW from Phillips Carbon Black Limited through Competitive Bidding carried out on Deep Portal from the period from 01.07.2023 to 30.06.2024.
- (ii) 8 MW from DGVCL by executing the PPA for the period of one year from 01.07.2023.
- (iii) Procurement of power, if any required, from the Power Exchanges or any other means or through entities via bilateral mode as permissible under GERC Regulations.

5.19. We note the submissions of the Petitioner that the Power requirement for FY 2023-24 is 10 MW to 11 MW. It is also fact that the Petitioner has initiated the power procurement through deep portal by issuing Tender No. JIL/MEE/US/SEZ-Power Supply/2023/E293 and Event No. JUBILANT INFRASTRUCTURE LIMITED/Short/23-24/ET/54 dated 19.05.2023 for 4 MW wherein only the single bidder i.e., M/s Phillips Carbon Black Limited (PCBL) agreed to supply the power at Rs. 5.50 per kWh to the Petitioner. The Bid Evaluation Committee has verified the bids and also considered it for procurement of power from the aforesaid bidder for

period of one year. We note that the power requirement stated by the Petitioner is quite lower and only one bidder has participated in the bidding process whose offer was accepted by the Bid Evaluation Committee constituted by the Petitioner. We also note that the price discovered seems reasonable with considerable of price discovered in different bids as stated in earlier para of this Order.

5.20. In view of the above, as it was recommended by Bid Evaluation Committee for opening of Financial Bids wherein the rate was discovered as Rs. 5.50 per kWh for 4 MW for the period from 01.06.2023 to 31.05.2024 and also requested by the Petitioner to adopt the same, we decides to adopt the above discovered tariff as mentioned in the following table:

5.21. We note that as per Clause 10.2 of the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' issued by the Ministry of Power, Government of India, after the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids has to certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS. However, the Petitioner JIL after the conclusion of bidding process has not submitted the Certificate of Bid Evaluation Committee certifying that the Evaluation Committee constituted for evaluation of RfS bids has critically evaluated the bids and that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS. Hence, the Petitioner in compliance to aforesaid clause has to certify that the Committee has critically evaluated the bids and that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS. Therefore,

Sr. No.	Period	Bidder's Name	Capacity (MW)	Tariff (Rs./ Unit)
1	01.06.2023 to 31.05.2024	Phillips Carbon Black Limited	4	5.50
Total			4	

it is clarified that the aforesaid adoption of the tariff is subject to submission of the Certificate of Bid Evaluation Committee by the Petitioner. The Petitioner is directed to submit the same, within weeks' time from the date of this Order.

5.22. We also note the submission of the Petitioner that the Petitioner JIL is in process to execute a Power Purchase Agreement with DGVCL for supply of 8 MW power for a

period of 12 months with effect from 10.07.2023. It is also prayed that as an interim arrangement, the Petitioner JIL may be allowed to charge consumers in its license area at the tariff applicable to respective categories of DGVCL's consumers as the ceiling tariff till JIL's ARR and tariff finalized by the Commission. In this regard, it is to note that the Petitioner is a distribution licensee to whom the distribution license has been granted on 11.10.2012 by the Commission in SEZ area notified by Ministry of Commerce and Industry, Government of India. We also note that the Commission vide its Order dated 22.07.2021 in Petition No. 1957 of 2021 allowed the Petitioner for initiation of the distribution activities with procurement of power and supply to its consumers and fulfil its Universal Service Obligation on it.

- 5.23. As noted above, the Petitioner has stated its power requirement for FY 2023-24 as 10 MW to 11 MW and for FY 2024-25, it may be 12 MW. Once the power requirement of 4 MW from M/s PCBL is available to the Petitioner, the balance requirement of power may be 6 MW to 8 MW as per submissions of the Petitioner. We also note that it is the duty of licensees to provide supply of electricity to its consumers under Universal Service Obligations as per provisions of the Electricity Act, 2003, Rules or Regulations made thereunder. The Petitioner has submitted that in order to meet out the consumers' demand, it is also planning to procure the power from DGVCL under the following tariff:

Sr. No.	Billing Component	Rate under agreement for supply as licensee
1	Capacity Charges applicable on full contracted capacity	Rs. 350/KVA/Month
2	Energy Charges Rates	Rs. 4.55/KWh
3	Recovery of Incentive charges: (In case availability is in excess of 80% on cumulative basis)	Rs. 0.25/KWh
4	Time of Use Charges Additional charge for the energy scheduled during the two peak periods, i.e., 07.00 Hrs. to 11.00 Hrs. and 18.00 Hrs. to 22.00 Hrs.	100 Paisa per Unit
5	Reactive Charge	Reactive charges will be recovered as per GERC Grid Code and relevant provisions applicable from time to time directly by SLDC-Vadodara
6	FPPPA Charges	FPPPA charges determined in accordance with the approved formula of GERC as applicable to all other category of consumers will also be applicable.

7	Meter Charges	The meter charge is chargeable at Rs.750 per month for each meter.
8	Minimum Bills	The amount equivalent to the Capacity charges shall formulate monthly Minimum Bill payable.
9	Delayed Payment Charges	No delayed Payment charges, if the bill is paid within ten days from the date of billing. Delayed Payment Charges are payable at the rate of 18% per annum, from the date of billing till the date of payment, if the bill is paid after 10 days from the date of billing. The above delayed payment charges does not take away the right of disconnecting /discontinuing the supply for non-payment of the bills, electricity duty, if any, and other charges due to DGVCL
10	Effective Date and tenure of the Agreement	The tenure of the agreement shall be for one year from date of signing of agreement.
11	Scheduling of Power	Shall require to schedule power on day ahead basis in accordance with GERC Intra State ABT order & GERC Open access Regulations as amended from time to time.
12	UI/DSM charges	Shall be settled with SLDC directly.

5.24. The aforesaid rates proposed by DGVCL seems to be the tariff for HTP-I category of consumers approved by the Commission. Therefore, the procurement price for such energy is as per the tariff order of the Commission.

5.25. We also note that the Petitioner would like to source power directly from other distribution companies, generating sources, power exchanges without paying Cross Subsidiary Chagres and Additional Charges. We note that such procurement of power is necessary for the Petitioner to meet out its requirement of power for supply the same to its consumers. Further, any procurement by it as a distribution licensee, no Cross Subsidiary Chagres and Additional Charges is applicable. We also note that it is first hear of operationalization of license activities by the Petitioner wherein it has planned to purchase the power from different sources. We note that in the procurement of power through Deep Portal, only single bid was received by the Petitioner limited to 4 MW whereas the requirement of power to meet out the consumers demand is higher than it. Hence, it is necessary for the Petitioner to procure the balance and reliable power from the other sources also. As the Petitioner

has proposed to procure the power from DGVCL which the State-owned distribution licensees who is ready to supply the power of 7 to 8 MW to the Petitioner for the period of one year, seems to be proper and just for meeting out the demand of the consumers of the Petitioner.

- 5.26. The Petitioner also stated that in case of shortfall in power requirement the same may be carried out by the Petitioner by procuring the power from Power Exchange or bilateral means from the other agencies as per the provisions of the Electricity Act, 2003. We note that being the licensee, the requirement of the power may vary with demand of the consumers and such deviations in the power requirement are on different reasons. Hence, in order to fulfill the requirement of power on short term/Daily Basis, the Petitioner requires to procure more power either through Exchange or other sources as per provisions of Electricity Act, Rules and Regulations. Therefore, the prayer of the Petitioner to allow procurement of balance power from power exchanges or bilateral mean as per provisions of Electricity Act, 2003, Rules or Regulations, is just and valid.
- 5.27. Considering the above, we approve the power procurement proposed by the Petitioner in the present Petition from the sources and prices as stated above for the period from 01.07.2023 to 30.06.2024. We also direct the Petitioner that they should plan for procurement of power on long term and medium basis to ensure the power supply at competitive rates as per provisions of the Electricity Act, Rules & Regulations framed thereunder, and Guidelines notified by Government of India from time to time.
- 5.28. We also direct the Petitioner to ensure about modifications/amendments/additions as directed in this Order while aligning the same in Draft PPA/Power Sale Agreement to executed with the DGVCL/PTC India Limited.
- 5.29. We also note that the deviations proposed by the Petitioner in the Petition wherein certain changes have been proposed by the Petitioner to be approved by the Commission. We note that the said deviations are verified by the Bid Evaluation Committee as constituted by the Petitioner who recommended that such deviations are not affecting the proposed power procurement by the Petitioner through Deep Portal wherein PCBL is selected as successful bidder, seems valid and just.

5.30. We note that Clause 11 titled 'Dispute Resolution Mechanism' of the Draft Power Sale Agreement filed by the Petitioner with PTC India Limited filed with the present Petition reads as under:

".....

11. DISPUTE RESOLUTION MECHANISM

Any dispute or difference, arising under, out of, or in connection with this contract, shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, rules, bye laws and business rules of the Exchange and any statutory modifications thereto. Notwithstanding the existence of any disputes and differences referred to arbitration, the parties hereto shall continue to perform their respective obligations under this Agreement.

The decision of the Arbitrator shall be subject to the exclusive jurisdiction of competent court at New Delhi only.

....."

5.31. The above Clause provides regarding Arbitration and Conciliation proceedings, rules, bye laws and business rules of the Exchange and any statutory modifications whereas if any dispute or difference, arising under, out of, or in connection with the contract, the same shall be referred to arbitration and the decision of the Arbitrator shall be subject to the exclusive jurisdiction of competent court at New Delhi only.

5.32. In this regard, it is necessary to refer Section 86 of the Electricity Act which confers the power and jurisdiction of the Commission, is reproduced as under:

".....

86. Functions of State Commission, --

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

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

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

.....

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

.....”

As per the aforesaid provisions, the Commission has to regulate the power procurement of the Distribution Licensees, including the procurement process, the price at which electricity shall be purchased from the generating company or the Licensees or through other sources through agreement for purchase of power for distribution and supply within the State. As per Section 86(1)(f) of the Electricity Act 2003, State Electricity Regulatory Commission is empowered to adjudicate upon disputes between licensees and generating companies, and inter-se between the licensees and generating companies.

- 5.33. We note that the Commission vide Order dated 11.10.2012 in License Application No. 7 of 2012 has granted distribution license to the Petitioner. Accordingly, in the present case, the Petitioner is distribution licensee and M/s PTC India is an Inter-State trading licensee. On perusal of above Clause 11 of the draft Draft Power Sale Agreement, it transpires that any dispute, difference or disagreement between the parties arising under the PPA, the same shall be referred to arbitration and the decision of the Arbitrator shall be subject to the exclusive jurisdiction of competent court at New Delhi only.
- 5.34. We therefore decide that the above Clause 11 of the Draft Power Sale Agreement cannot be approved. We direct the Petitioner that the aforesaid Clause 11 of the Draft Power Sale Agreement need to be removed and the said Clause should be aligned with the provision of Section 86(1)(f) of the Electricity Act, 2003. The Petitioner will ensure that the same is suitably changed/amended in the Power Sale Agreement / PPA to be executed between the Petitioner and M/s PTC India Limited by removing the Clause 11 of the Draft Power Sale Agreement.
- 5.35. We note that the Ministry of Power had notified the Electricity (Late Payment

Surcharge and Related Matters) Rules, 2021 on 22.02.2021. The said Rules are superseded by the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 on 03.06.2022. The aforesaid Rules, 2022 provide that these Rules are in supersession of the earlier Electricity (Late Payment Surcharge and Related Matters) Rules, 2021 except as respects things done or omitted to be done before such supersession. The said Rules would apply for the outstanding dues of generating companies, Inter-State transmission licensees and electricity trading licensees after the notification of the Rules on 03.06.2022. It is stated in the said Rules, 2022 that the Central Government in exercise of powers conferred by Section 176 (1) of the Electricity Act, 2003 and in supersession of the Electricity 13 (Late Payment Surcharge) Rules, 2021 except as respects things done or omitted to be done before the supersession has notified Electricity (Late Payment Surcharge) Rules, 2022 which has to come in force on the date of its publication in the Official Gazette. i.e., from 03.06.2022 onwards. Hence, we are of view that the Electricity (Late Payment Surcharge) Rules needs to be incorporated appropriately by the Petitioner JIL in the PPA to be signed with DGVCL and M/s PTC India Limited. We also note that as the Petitioner is yet to sign the PPA with the Respondent, we direct that the Electricity (Late Payment Surcharge) Rules notified by the Ministry of Power to be incorporated correctly by the Petitioner in the PPA to be signed with the Respondent.

- 5.36. Now we deal with a prayer of the Petitioner that the Commission may as an interim arrangement allow the Petitioner to charge consumers in its licence area at the Tariff applicable to respective categories of DGVCL's consumers as the ceiling tariff till the Petitioner ARR and tariff finalised by the Commission. We note that the Petitioner has been granted licence by the Commission. However, they have started the licence activity recently by way of procurement of power from different sources to supply its consumers. Further, we note that the Petitioner is a second licensee in the area of DGVCL. We also note that the Petitioner has not filed any ARR and tariff determination of consumers in its licence area till date. Further, it is a first year of licence activity initiated by the Petitioner in its licence area granted by the Commission. We also note that the

Commission has decided the ARR and determined the tariff of DGVCL consumers in its Order dated 31.03.2023 in Petition No. 2166/2022 for FY 2023-24. Thus, the Commission has determined the tariff rate applicable to the consumers of DGVCL in aforesaid Order.

- 5.37. The first proviso of Section 62 provides for tariff rates applicable in the parallel licence area is stated below:

.....“Provided that in case of distribution of electricity in the same area by two or more distribution licensee, the appropriate Commission may, for promoting competition amongst distribution licensee, fix only maximum ceiling of tariff for retail sale of electricity”.....

- 5.38. The aforesaid proviso state that whenever there is two or more licensee operating in same area of supply in that case the Commission may fix ceiling of tariff for retail sale of electricity.

- 5.39. In the present case as recorded in earlier para the DGVCL and Petitioner are operating as parallel licensee in the area of licence of the Petitioner. Further, the Commission has determined ARR and tariff of DGVCL in aforesaid Order dated 31.03.2023 in Petition No. 2166/2022. We, therefore, decide that as the Commission has not determined ARR, and tariff of the Petitioner the Tariff Rate determined for the consumers of DGVCL be applicable to the Petitioner consumer as ceiling tariff.

6. We note that the PPAs are yet to be signed by the Petitioner with the successful bidder although the Petitioner has filed Draft PPA/Power Sale Agreement with the Petition to be executed with the DGVCL/successful bidder. Therefore, the Petitioner is directed to execute the PPA with the DGVCL/successful bidder as per decision in this Order. We note that the Petitioner is also required to submit the copies of the signed PPAs and therefore, the Petitioner is directed to submit copies of duly executed PPAs to the Commission within period of 30 days, alongwith an affidavit stating that the Articles/provisions of the PPAs executed are as per the directions as stated above, provisions of Act, Rules, bidding guidelines and deviations approved by the Commission from time to time and that there are no other deviations

undergone by the Petitioner in the bidding documents other than those earlier approved by the Commission. We also direct the Petitioner that for the purpose of transparency, after execution of the PPAs, to publicly disclose the name (s) of the successful bidder(s) and the tariff quoted by them together with the breakup with the component, for 30 days on its website in terms of Clause 10.3 of the bidding guidelines as amended for knowledge and information of the stakeholders.

7. Considering the above, the present Petition succeeds as per aforesaid decisions.
8. Order accordingly.
9. With this Order, the present Petition stands disposed of.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar
Date: 03/08/2023

