

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Licence Application No. 1 of 2018

In the matter of:

**Application for Grant of Distribution License in the Area of
Dholera Special Investment Region (SIR), District- Ahmedabad,
Gujarat.**

Applicant: Torrent Power Limited
Samanvay, 600, Tapovan,
Ambawadi, Ahmedabad 380 015

Represented by : Shri Chetan Bundela and Ms. Luna Pal

CORAM:

**Shri Anand Kumar, Chairman
Shri K. M. Shringarpure, Member
Shri P.J.Thakkar, Member**

Date: 21.04.2018

ORDER

1. Torrent Power Ltd. hereinafter referred to as (TPL) filed an Application before the Commission on 01.01.2018 to grant a license for distribution of electricity in the area of Dholera Special Investment Region (DSIR), Dist. Ahmedabad, Gujarat under Section 14 of the Electricity Act, 2003.

2. The Applicant has submitted duly filled in application in the prescribed format as specified in the GERC (Licensing of Distribution of Electricity) Regulations, 2005 along with following documents:
 1. A map of proposed area of license.
 2. Memorandum and Articles of Association.
 3. Annual Accounts for previous three years.
 4. Receipt for payment of specified Application fees as per Commission's Regulations.
 5. Details of group Companies engaged in the business of Generation, Distribution, Transmission and Trading of Electricity.
 6. Brief history of promoters.
 7. Brief note on technical qualification and past experience of the Applicant Company to discharge the obligations under the distribution license.
 8. Certificate of credit rating.
 9. Certificate of Standard Borrowal Account.
 10. Certificate stating that RBI has not classified the Applicant as a willful defaulter

11. Notification No. GHU-14/SIR/112009/253/(1)/I, dated 22nd May, 2009 issued by the Government of Gujarat specifying geographical area of Dholera SIR
12. Original Power of Attorney authorising Shri Chetan Bundela to file the Application.
3. The Commission had vide letter No. GERC/Legal/2018/147 dated 29.01.2018 directed the Applicant to comply with the procedures of Public Notice in accordance with the provisions of Sub-Section (2) of Section 15 of the Electricity Act, 2003 read with Regulation 5 of the GERC (Licencing of Distribution of Electricity) Regulations, 2005 and invite comments and suggestions from the stakeholders/objectors and also host the application on its' website.
4. In compliance to aforesaid directives, the Applicant issued a public notice dated 31st January, 2018 in Gujarati Newspapers namely Divya Bhaskar and Nav Gujarat Samay, Ahmedabad editions and English News Paper viz. Indian Express, Ahmedabad edition and also hosted the application on it's website for inviting objections/suggestions on their License Application within 30 days.

5. In response to the public notice neither the Commission nor the Applicant received any objection/suggestion from any person or stakeholders within 30 days of publication of notice. However, later on UGVCL and GETCO made their submissions on 10.04.2018 and PGVCL on 12.04.2018.

6. The matter was kept for hearing on 15.03.2018. After hearing the parties, the Commission passed Daily Order dated 13.04.2018 and directed the Applicant and DICDL to provide certain details as stated below:

“.....

“The Commission requires the Applicant/DICDL to comply with the following requirements.

(i) Chartered Accountant’s Certificate for Capital Adequacy as per the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.

(ii) Confirmation that DSIR area does not include any part of cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of Government for defence purposes. If any such

establishment exists in the DSIR area, then NOC from such establishments for grant of licence.

(iii) DSIR Map clearly demarcating village site area (Gamtal) of a village Panchayat, Municipal area, Municipal Corporation area and industrial township within DSIR.

(iv) Confirmation about the Actual size of DSIR – whether 879 Sq. Kms. or 920 Sq. Kms. duly authenticated by the concerned Authority.

The Commission directs the Applicant/DICDL to comply with the above requirements within 7 days of this order.

.....”

7. In compliance to aforesaid directives, the Applicant filed an Affidavit along with Certificate issued by Pankaj B. Shah, Chartered Accountant, Ahmedabad regarding the sufficient resources available to fund the equity requirements of approximately Rs. 300 Crore of the Dholera License Area Project. The Certificate issued by the aforesaid Chartered Accountant is reproduced below:

“.....

CERTIFICATE

Based on our verification, and as per the information and explanations given to us, we hereby certify that the Net worth of the M/s Torrent Power

Limited (CIN: L31200GJ2004PLC044068) (“the Company”) is Rs. 6,884.48 Crores. We also certify that the Company has free cash and bank balances and liquid investments of Rs. 747.16 Crores as on 31st March, 2017.

Based on the management representation, we further certify that on consideration of the above networth, free cash and bank balances and liquid investments and free cash accruals (after considering committed investments) during next 5 years, the Company has sufficient resources available to fund the equity requirement of approx.. Rs .300 Crores during next 5 years period for the purpose of funding the Dholera License area project.

This certificate is issued at the request of the Company for submission to Gujarat Electricity Regulatory Commission.

Notes:

1. The figures stated above have been arrived at on the basis of figures extracted from audited standalone financial statements of Torrent Power Limited for the year ended 31st March, 2017.
2. The above ‘Net Worth’ has been calculated as per the definitions provided in Section 2 (57) of the Companies Act, 2013.

<i>Place: Ahmedabad</i> <i>Date: 12.04.2018</i>	<i>For Pankaj R. Shah & Co.</i> <i>Chartered Accountants</i> <i>(Firm Regn. No. 107343W)</i> <i>Pankaj B. Shah</i> <i>Proprietor</i> <i>(Membership No. 17170)</i>
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Thus, the Applicant has complied with the directives given by the Commission vide Daily Order dated 13.04.2018.

8. Further, DICDL has, vide letter dated 19.04.2018, in compliance to the directives by the Commission vide Daily Order dated 13.04.2018 submitted as under:

Sr. No.	Particulars	Response/Compliance
01	Confirmation that DSIR area does not include any part of cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of Government for defence purposes. If any such establishment exists in the DSIR area, then NOC from such establishments for grant of license.	We confirm that Dholera SIR does not include any part of cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of Government for defence purposes. Map of Existing Land Use of Dholera SIR Area duly certified by the Authorized Officer of DSIRDA is enclosed at Annexure 1.
02	(ii) DSIR Map clearly demarcating village site area (Gamtal) of a village Panchayat, Municipal area, Municipal Corporation area and Industrial Township within DSIR.	Dholera SIR Area spread over 19 villages of Dhandhuka Taluka and 03 villages of Barwala Taluka of Ahmedabad District as per the Government of Gujarat Notification dated 22 nd May, 2009 published on 4 th June, 2009. It may kindly be noted that all Survey Numbers of the Villages mentioned in this notification are part of Dholera SIR Area except the Gamtal i.e. village site area of villages, which are not

		part of SIR. Dholera SIR Area Map demarcating village site area (Gamtal), survey plot boundary, village boundary and Dholera SIR boundary is enclosed at Annexure 2.
03	Confirmation about the Actual size of DSIR – whether 879 Sq. Kms. Or 920 Sq. Kms. duly authenticated by the concerned Authority.	As per the Government of Gujarat Notification dated 22 nd May, 2009 published on 4 th June, 2009, the total Dholera SIR Area is 879.3377 Sq. Km. However, as per the Final Development Plan sanctioned by the Apex Authority (GIDB) vide its notification dated 10 th September, 2012, the said area admeasure to 920 Sq.km. based on digitization record. The Copy of SIR Apex Authority Notification along with Final Development Plan report duly certified by the Authorized Officer of DSIRDA is attached for your ready reference at Annexure 3 and 4 respectively.

8.1 Further, in response to Commission's query that whether DICDL intends to have more than one distribution licensee in their area for supply of electricity as the Commission has also received application for licence from MPSEZ Utilities Pvt. Ltd., DICDL clarified that DICDL is a project development agency for Dholera SIR and accordingly, it decides the development for the SIR area including the selection of agency for the development of infrastructure, However, the distribution of electricity is a licensed activity in accordance with the provisions of the Electricity Act, 2003 and powers to grant license to the Applicant is vested with the Commission.

8.2 DICDL can only issue NOC to the parties who express interest to create state of the art distribution network in Dholera SIR so as to approach the Commission for grant of distribution license. The grant of distribution license to applicant(s) falls within the sole discretion of the Commission by giving due consideration to the consumer's interest. The Commission may grant the distribution license to the applicant(s) in accordance with the provisions of the Act and Regulations framed thereunder.

8.3 Thus, DICDL has complied with the directives given by the Commission vide Daily Order dated 13.04.2018.

9. As the Applicant and the DICDL have complied the directives given by the Commission, now we deal with the submissions made by the parties and our decisions thereon.

9.1 Shri. Chetan Bundela, on behalf of the Applicant submitted that the Applicant is a Company incorporated under the Companies Act, 1956 carrying on the business of generation and distribution of electricity in the State of Gujarat.

9.2 Government of India has envisaged development of Delhi-Mumbai Industrial Corridor(DMIC) along the alignment of proposed Multi-Modal

High Axle Load Western Dedicated Freight Corridor(DFC) between Delhi and Mumbai covering an overall length of 1483 kms. Delhi-Mumbai Industrial Corridor Development Corporation Ltd. (DMICDC), a Special Purpose Company (SPC), is incorporated to establish, promote and facilitate development of DMIC project. In phase-1 DMICDC is developing eight industrial cities/nodes, along such corridor and Dholera Special Investment Region (DSIR) is one of the eight such Industrial Cities.

9.3 Dholera Industrial City Development Ltd. (DICDL) has been formed as an SPV under the Companies Act, 2013 with equity participation from State Government through Dholera SIR Development Authority and DMIC Trust (now NICDIT). DICDL is looking after the day to day management of all the projects in Dholera SIR. The total delineated area of Dholera SIR is 920 sq. km. out of which 422 sq.km. is developable area. The said area is further divided into 6 town planning areas (TP-1 to TP-6) and TP-2 comprising of 101 sq.km is to be developed in Phase-1.

9.4 The Applicant is one of the largest private sector power companies in India having strong presence in generation and distribution. In distribution, the Applicant supplies about 15,000 MUs to more than 3

million customers in the cities of Ahmedabad, Gandhinagar, Surat and Dahej SEZ in Gujarat, Bhiwandi in Maharashtra and Agra in UP.

9.5 The Applicant has created world class power distribution infrastructure, including the creation of an extensive underground network, in its area of operation in Gujarat and coupled with its operational excellence has been able to achieve power availability of above 99.9% and T&D losses of 6.09%, which are comparable to global benchmarks.

9.6 DICDL intends to develop DSIR as futuristic smart city with state of the art power distribution infrastructure. The Applicant has the necessary technical and commercial competence and financial strength to create a world class power distribution network at Dholera SIR matching the high overall standards of development planned for the SIR.

9.7 The Applicant has filed an application along with supporting documents for grant of distribution license for Dholera SIR area under Section 14 of the Electricity Act, 2003 read with Section 20 of the Gujarat Electricity Industry(R&R) Act, 2003 and DICDL has agreed to extend all support to the Applicant for availing distribution licence under Section 14 of the Electricity Act, 2003 for Dholera SIR.

9.8 He submitted that Dholera SIR is 100 kms away from Ahmedabad. The total area of Dholera SIR is 920 sq.kms. out of which 580 sq.kms. is a developable area and rest of the area is governed by coastal zone Regulations which is not considered as a part of development. Further, out of 580 kms, agriculture area is 158 sq. kms and balance 422 sq.kms. area is identified for development.

9.9 To trigger development of Dholera SIR, an Activation Area(AA) is carved out, which will act as a catalyst for future investments and attract local and global investors. The Activation Area is approximately 22.5 sq.kms to be developed by 2019. The projects envisaged to come up in the aforesaid area are defence industries, bio-tech industries, auto & ancillaries, electronic industries, pharmaceutical industries, engineering industries etc.

9.10 DICDL had approached the Applicant to lay down the necessary electricity supply network considering the experience and expertise of the Applicant. Various meetings were held between the representatives of DICDL as well as the Applicant. Post such meetings and after exchange of correspondence DICDL issued a letter to the Applicant to approach the

Commission for grant of license. Hence, the Applicant has filed the present Application.

9.11 He further referred Section 29 of the Gujarat Special Investment Region Act, 2009 and submitted that the area within Special Investment Region except the village area (Gamtal) of a village Panchayat, Municipal area and Municipal Corporation area shall be deemed to be an industrial township within the meaning of the provisions of Clause (1) of Article 243Q of the Constitution of India from the date it is so notified in the Official Gazette by the State Government.

9.12 He further referred the notification No. GHU-14/SIR/112009/253/(1)/I dated 22nd May, 2009 and submitted that the Government of Gujarat vide aforesaid notification declared 879.3377 sq.kms geographical area of “Dholera Special Investment Region” which is qualified for the Distribution License area.

9.13 He referred the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005 and submitted that according to aforesaid Rule the Applicant needs to comply the following conditions:

1. Requirement of Capital Adequacy and Credit Worthiness
2. Make available resources for 30% equity on cost of investment on the basis of net-worth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.
3. Requirement of Code of Conduct
4. Fulfilment of License Area specified in the said Rules.

9.14 As regards the technical competence, he submitted that the Applicant is carrying out the business of generation and distribution of electricity in the area of Ahmedabad, Surat, Dahej in Gujarat as well as franchisee area of Bhiwandi and Agra. Moreover, various technical parameters like loss level, SAIFI, SAIDI are better than envisaged in the relevant Regulations notified by the Commission. The power availability is above 99%. The Applicant is having adequate staff to carry out the necessary works in the proposed license area.

9.15 He further submitted that as far as Capital Adequacy and Credit Worthiness is concerned the Petitioner has submitted Annual Accounts for past three years of the Company as well as the Certificate of Credit

Rating, Certificate of Standard Borrowal Account and Certificate stating that RBI has not classified the Applicant as a “wilful defaulter” to substantiate the Capital Adequacy and Credit Worthiness. The Applicant has also submitted the details of Net Worth for the last five years of the Company which was Rs. 6090.29 Crore as on 31.03.2013 increased to Rs. 6844.84 Crore as on 31.03.2017. Similarly, the Turnover of the Applicant which was Rs. 8129.87 Crore in FY 2012-13 increased to Rs. 10014.58 Crore in FY 2016-17. He also referred the certificate dated 27.09.2017 issued by CRISIL reaffirming the long term rating as “AA- /stable” and short term rating as “A1 +”. In this regard, the Applicant has also submitted on Affidavit that he meets the above conditions as per law.

9.16 He referred the certificate No. CAG, A/AMT-1/2017-18/228 dated 6.12.2017 issued by State Bank of India which states that the account of the Applicant in the books of SBI, CAG Brach, Ahmedabad for all the credit facilities availed from the said branch is “Standard” as on the date of issue of the certificate. Further vide certificate No. CAG, A/AMT-1/2017-18/229 dated 6.12.2017 SBI confirmed that the Applicant’s

name does not appear in the “Willful Defaulter” list of RBI on the date of issue of the certificate.

9.17 The Applicant also filed an affidavit dated 12.03.2018 in compliance of Rule 4 of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 stating that the Applicant has not been found guilty or has not been disqualified within the last 3 years from the date of application for grant of licence under various provisions of the Companies Act, 1956, Income Tax Act, 1961, SEBI Act, 1992, Excise Act, 1944, Customs Act, 1962 and that his licence was not suspended or revoked under the Electricity Act, 2003. Further, no Petition for winding up of the company or any other company of the same promoter has been admitted under the Companies Act on the ground of its being unable to pay its debts.

9.18 He further submitted that a map specifying DSIR/the area of license which is a Municipal Corporation area as per Article 243 Q of the Constitution of India and as per Section 29 of the Gujarat Special Investment Regions Act, 2009 has been submitted.

9.19 Thus, the Applicant has fulfilled all the relevant criteria specified in the Distribution of Electricity Licence Rules, 2005.

9.20 He further submitted that the Petitioner is having underground system in the license area of Ahmedabad, Surat and Dahej. The Applicant is having capability and is also adopting State of the Art Technology in the license area where they are supplying the electricity which is the requirement of DICDL.

9.21 On a query from the Commission with regard to the status of the existing licensee in the aforesaid area he submitted that UGVCL is the existing licensee in the said area. He further submitted that it is given to understand from DICDL that UGVCL is not willing to lay underground cable network and install State of the Art Technology as required by DICDL and thus UGVCL is unwilling to take up the work as per the requirement of DICDL.

9.22 With reference to a query from the Commission about the right of GETCO (STU) who has first right to set up the transmission network in any area of the State including the area of DSIR, he submitted that DICDL does not allow the laying of overhead lines in the DICDL area. Further, after

award of distribution license, the Applicant would set up its network in the area of supply.

9.23 On a query from the Commission with regard to letter dated 14th February, 2018 written by DICDL to the Commission that they intend to avail the services of experienced power utilities on various conditions to be incorporated in the application for grant of power distribution licence before granting licence, he submitted that the aforesaid letter is received by the Applicant today, i.e. date of hearing on 15.03.2018 from the representative of the DICDL and submitted that the Applicant is agreed to all the conditions specified in the aforesaid letter. He also clarified that so far as power procurement by the licensee is concerned, the same may be procured through competitive bidding process. The Applicant also agreed to provide the services and quality of power supply at par with international standards by adopting State of the Art Technology and installing the distribution system to meet the with the requirements of a smart city.

10. Shri Bhavin Shah on behalf of the DICDL submitted that DICDL is a Government Company. It is a Special Purpose Vehicle (SPV) i.e. Project Development Agency created to carry out infrastructure development viz.

roads, water supply, sewerage and similar infrastructure in the DSIR area.

10.1 He further submitted that UGVCL was initially invited for laying the necessary electricity infrastructure in the DSIR area with state of the art technology and underground network. However, UGVCL has shown their unwillingness to carry out underground distribution network with SCADA and other state of the art technology. Therefore, DICDL has decided to approach private licensees including the present Applicant.

10.2 On a query from the Commission with regard to whether any villages are situated in the DSIR area and what is the population in such area, he submitted that some villages are situated in a scattered manner. The highest population in some villages is about 5000. He admitted that the electricity in such villages at present is being supplied by UGVCL.

10.3 On a query from the Commission as to how DICDL can assign its responsibility of infrastructure development like construction of road, sewerage system, water supply etc., he submitted that DICDL is assigning the development of infrastructure function to other entities as provided in the Gujarat SIR Act, 2009.

10.4 He further submitted that the Memorandum and Articles of Association of the company provide that any function of DICDL can be assigned to any person by DICDL. Accordingly, DICDL is empowered to assign the function of electricity distribution to any other Utility.

10.5 On a further query from the Commission, he submitted that there is no land acquired by DICDL in DSIR and that no land is owned by DICDL.

10.6 It is envisaged that the infrastructure development in the first phase of DSIR area will be completed by 2019 and hence, the electricity distribution licence is required to be granted at the earliest. On a query from of the Commission as to how they have issued no objection certificate to M/s. TPL and M/s Adani Power Ltd, for obtaining distribution licence, he submitted that the company has issued no objection certificate to both the utilities:

(i) to bring competition amongst the electricity supply players and

(ii) to bring in competition in quality services and tariff which will ultimately benefit the consumers.

- 10.7 He submitted that UGVCL is not inclined to supply the power in the aforesaid area through the creation of state of the art distribution network.
- 10.8 He has undertaken to submit various details as discussed and agreed by him on behalf of DICDL to the Commission in the present matter.
11. We note that the DICDL has submitted various details after hearing on 15.3.2018 along with letter dated 19.03.2018. It is submitted that Dholera Special Investment Region(DSIR) is the flagship project under Delhi-Mumbai Industrial Corridor in the State of Gujarat. It is administered and governed under the legal framework of GSIR Act, 2009. Dholera SIR is notified on 22nd May, 2009.
- 11.1 Gujarat Industrial Development Board (GIDB) established under Section 17 of the Gujarat Industrial Development (GID) Act, 1999 is declared and designated as Special Investment Region Apex Authority for the development of Special Investment Regions/Industrial area within the State.

- 11.2 The Apex Authority is the sanctioning Authority to sanction/approve development plans and town planning schemes submitted by Regional Development Authority/ies with/without modifications.
- 11.3 It is further submitted that Dholera Special Investment Regional Development Authority (DSIRDA) constituted on 16.02.2010 under Section 8 of the GSIR Act, 2009, is responsible to undertake the planning and management of land resource and infrastructure of the DSIR. DSIRDA had prepared a development plan and six Town Planning Schemes for execution of infrastructure within DSIR under the provisions of the GSIR Act, 2009.
- 11.4 DSIRDA had submitted Development Plan and draft Town Planning Scheme for sanctioning to the Apex Authority-GIDB and the same has been sanctioned by the Apex Authority-GIDB.
- 11.5 DICDL, incorporated in January, 2016 under the provisions of the Companies Act, 2013 and the SIR Act, 2009 is a Special Purpose Vehicle (SPV), which is the Project Development Agency (PDA) for Dholera SIR, comprising of 51% stake of Government of Gujarat through DSIRDA and 49 % stake of DMIC Trust.

11.6 As a part of basic services to the city, power distribution is precursor to charge-up the city. Hence, DICDL had approached incumbent distribution licensee UGVCL and its Apex Body in Power Sector – GUVNL and requested them to create the Power Distribution Network (PDN) and undertake distribution business within Dholera SIR. In response, UGVCL through letter dated May 25, 2017 communicated the limitations in construction of PDN without firm power demand and upfront payment from the consumers. UGVCL also communicated its limitations in constructing the PDN of required Smart City Standards and Specifications, benchmarked by DICDL. Therefore, DICDL explored the possibilities to have power distribution services in line with planned timeline of other ongoing infrastructure project. DICDL had issued a letter dated 23rd October, 2017 to M/s. TPL to approach the Commission for grant of licence in order to supply electricity to various consumers in DSIR with specific terms and conditions.

11.7 Further, in addition to the provisions of the Electricity Act, 2003, DICDL also intends to ensure that the desired standards and specifications for construction of power distribution network along with the terms and

conditions are adhered to by the Power Distribution Licensee of Dholera SIR.

11.8 In response to the queries raised by the Commission during the hearing, it is submitted as under:

“.....

<i>Sr. No.</i>	<i>Clarification Asked</i>	<i>Response to the clarification</i>	<i>Supporting Annexed</i>
	<i>Query of Commission</i>	<i>Response of DICDL</i>	<i>Supporting Documents</i>
1.	<i>Is DICDL empowered to transfer Development Rights pertaining to Power Distribution?</i>	<p>1. DICDL may carry out its transactions of business under the provision of Section 20 of the SIR Act, 2009.</p> <p>2. DICDL is Project Development Agency for Dholera SIR, incorporated in January 2016 vide I&M Department GR No. SPV/112015/2499/I dated December 2, 2015.</p>	<p>1. Copy of Extract of the SIR Act, 2009 is placed Annexure 7</p> <p>2. I&M Department GR No. SPV/112015/2499 /I dated December 2, 2015 is placed at Annexure 8</p>
02.	<i>Provision of Development Plan of Dholera SIR with Revenue Survey Numbers.</i>	1. Development Plan of Dholera SIR is sanctioned by Apex Authority vide Notification No. SIRAA/01/2012/525 dated September 10, 2012.	1. Sanctioned Development Plan of Dholera SIR along with the Notification is placed at Annexure 4
03.	<i>Availability of un-encumbered land for the implementation of power Distribution Network.</i>	1. Implementation of proposal as per Development Plan was envisaged through Town Planning Schemes.	1. Notification of Sanctioned Town Planning Schemes are placed at Annexure 05.

		<p>2. Six Draft Town Planning Schemes were prepared by DSIRDA and submitted to Apex Authority - GIDB for sanctioning of the same.</p> <p>3. All six draft Town Planning Schemes are sanctioned by Apex Authority – GIDB vide concerned notifications.</p> <p>4. Under the provisions of Section 48-A and 40(3)(g) of the GTP&UD Act, 1976 in line with Section 17 of the SIR Act, 2009; the land required for physical and social infrastructure; shall vest absolutely in the appropriate authority i.e. DSIRDA free from all encumbrances.</p> <p>5. DSIRDA has transferred such land to the contractors appointed by DICDL to implement the infrastructure work within Activation Area of DSIR.</p> <p>6. More than 40% of physical progress has been achieved so far. The Power duct for power distribution is the component of Roads and Services project.</p>	<p>2. Copy of the Extracts of GTP&UD Act, 1976 and the SIR Act, 2009 is placed at Annexure 06 and Annexure 07 respectively.</p>
04.	Whether DICDL has approached UGVCL – A deemed distribution licensee or not.	<p>1. Yes, DICDL had approached UGVCL in the first place. Kindly refer para 8 of this letter.</p>	<p>1. Copy of the communications are placed at Annexure 09.</p>

.....”

11.9 Further, DICDL has along with its letter No. DICDL/TECH/PWR/GERC/LTR/17-18/90-0136 dated 19th March, 2018 submitted the following documents:

- i. Letter dated 23.10.2017 written by GM, DICDL to Torrent Power Ltd.
- ii. Letter dated 14th February, 2018 of MD, DICDL to Secretary, GERC.
- iii. Notification No. GHU-14/SIR/112009/253(1/I dated 22.05.2009 regarding Dholera SIR.
- iv. Notification No. GHU/10/07/SIR/112010/81450/I dated 16.02.2010 for constitution of Dholera Special Investment Region Authority.
- v. One page containing Chapter III Establishment of Apex Authority of the Gujarat Special Investment Region Act, 2009. Clause 5 of the said Chapter-III says that the Gujarat Infrastructure Development Board (GIDB) established under Section 17 of the Gujarat Infrastructure Development Act, 1999 is declared and designated as Special Investment Region Apex Authority. Clause 6 states about the powers and functions of Apex Authority.
- vi. Notification No. SIRAA/01/2012/544 dated 10.09.2012.

- vii. Notification No. SIRAA/03/2012/566-A and 566-B dated 03.10.2012 for sanction of Dholera Draft Town Planning Scheme No.1 and 2 respectively.
- viii. Notification No. SIRAA/06/2013/439, 440, 441 and 442 dated 24.10.2012 for sanction of Dholera Draft Town Planning Scheme No. 3, 4, 5 and 6 respectively.
- ix. The Gujarat Town Planning & Urban Development Act, 1976
- x. The Gujarat Special Investment Region Act, 2009
- xi. GR No. SPV/112015/2499/I dated 02.12.2015 regarding formation of SPV for the development of DSIR
- xii. Letter No. UGVCL/Project/Dholera SIR/481 dated 29.05.2017 from UGVCL
- xiii. MoA and AoA of DICDL
- xiv. Presentation on Dholera SIR project
- xv. Map of the Dholera SIR

11.10 DIDCL vide its letter dated 09.04.2018 submitted as under:

- (i) DSIR map (with GoG Notification dated 22.05.2009) duly certified by Senior Town Planner, Dholera SIR Development Authority.

- (ii) DICDL has not acquired any land in the DSIR from land owners under the provisions of Land Acquisition Act. DSIRDA is implementing town planning (TP) schemes to develop physical and social infrastructure within DSIR area under the provisions of GSIR Act, 2009 and GTP & UD Act, 1976.
- (iii) DICDL is the project development agency for Dholera SIR area to carry out functions in accordance with the provisions of the GSIR Act, 2009.
- (iv) Dholera SIR Area is spread over 19 villages of Dhandhuka Taluka and 03 villages of Barwala Taluka of Ahmedabad District as per the Government of Gujarat Notification dated 22nd May, 2009 published on 4th June, 2009. Further, all Survey Numbers of the Villages mentioned in this notification are part of Dholera SIR Area.
- (v) As per the Government of Gujarat Notification dated 22nd May, 2009 total Dholera SIR Area is 879.3377 sq.kms. However, as per the Final Development Plan attached to the notification dated 10th September, 2009, the said area admeasures to 920 sq.kms. based on digitization record.

12. UGVCL vide letter No. UGVCL/REGD/Dholera SIR/626 dated 09.04.2018 tendered its apologies as it could not file its submission in time and requested the Commission to consider its submission filed on affidavit dated 09.04.2018 on the present application as under:

- (i) UGVCL is the first and existing distribution licensee in the northern zone area of Gujarat. Around 19 villages in Dholera SIR fall within the licensed area of UGVCL. There are 4162 consumers, 84.1 ckms. HT line, 28 ckms LT line, and 289 transformers. The remaining villages fall within the licensed area of PGVCL.
- (ii) UGVCL shall continue to be an existing distribution licensee and UGVCL should be allowed to continue the business with the existing consumers and to extend its services to prospective consumers inside or outside the area. The existing network of UGVCL should not be altered, changed or removed and should continue as property of UGVCL. Further, the grant of licence to the Applicant shall not in any manner affect the operation and functionality of

UGVCL, including any future expansion or extension of the distribution network of UGVCL.

- (iii) The provisions of the Electricity Act do not in any manner provide for cessation or exclusion of the rights of UGVCL as an existing licensee to distribute electricity in any manner as a result of any licence or deemed licence granted to any other person, including in the present case the Applicant in any part of the license area of UGVCL. The rights of UGVCL as the Distribution Licensee shall continue without any effect including in the said area for which the licence is now sought to be granted. This may be specifically clarified to avoid any doubts.

- (iv) The licence sought by the Applicant is thus a parallel licence under the sixth proviso to Section 14 of the Electricity Act, 2003 and the Applicant is required to fulfill the requirements of capital adequacy, credit worthiness and code of conduct as well as the minimum area of supply as prescribed in the Distribution of Electricity Licence

(Additional Requirement of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.

13. PGVCL also vide affidavit dated 09.04.2018 made its submissions identical to UGVCL's submissions as recorded in para 9.25 above stating that the Paschim Gujarat Vij Company Limited, is also the existing distribution licensee in western zone area of Gujarat and 2 villages in the Dholera SIR fall within its licenced area. PGVCL has also filed an additional affidavit dated 16.04.2018 stating that in earlier affidavit it was mentioned that 2 villages in Dholera SIR fall within the PGVCL licence area which is incorrect, as 3 (three) villages of Dholera SIR area fall within PGVCL license area. Further, at present there are 795 LT consumers in these 3 villages who are being supplied power through 7.95 ckm of LT lines and 15.2 ckm High Tension (11kv) lines. Moreover, there are 5 numbers of 100 KVA, 33 numbers of 25 KVA, 3 numbers of 16 KVA and 2 numbers of 5 KVA transformers in these villages.
14. In response to submissions of aforesaid licensees, the Applicant TPL vide its email dated 10th April, 2018 submitted that the Commission may take appropriate decision on the subject matter in accordance with the provisions of law and allow its application for license area as prayed for.

15. GETCO vide letter No. ACE (R& C)/EE-C/707 dated 09.04.2018 tendered its apologies as it could not file its response on the present application in time and requested the Commission to consider its submissions filed on affidavit dated 09.04.2018 as under:

(i) Gujarat Energy Transmission Corporation Limited (GETCO), is functioning as State Transmission Utility (STU) in the State of Gujarat. It is a deemed licensee in accordance with the provisions of the Electricity Act, 2003. It is the responsibility of GETCO, as STU, to create the transmission assets in the State as per the requirement of the transmission planning approved by the concerned authorities. As STU, GETCO also undertakes the functions specified under Section 39 of the Electricity Act, 2003. These functions extend to the entire State of Gujarat and also coordination with Inter State Transmission Utilities and others and are not and cannot be affected in any manner by virtue of any distribution licence or deemed distribution licence granted to others.

(ii) GETCO, as STU, is having the responsibility of laying the transmission lines in the State of Gujarat including the area of

Dholera SIR for which the Distribution licence is sought by the Petitioner.

(iii) As a part of Transmission Planning, GETCO may be required to create additional transmission infrastructure in the area of Dholera SIR in future. Hence, grant of Distribution Licence to Torrent Power Limited in Dholera SIR should not in any manner affect the operation/functionality of GETCO in the area and if GETCO requires to establish the transmission infrastructure in the SIR area, the applicant should not restrict GETCO on the basis of Right of Way/Use.

(iv) GETCO, as STU, requests the Commission to direct the Applicant to give Right of Way/Use within the Dholera SIR distribution licence area as and when required for the development of the transmission system in the State.

(v) Commission has already considered similar submissions of GETCO during the hearing of application for grant of Distribution Licence in the area of Dahej SEZ, Village: Dahej, Taluka: Vagra,

Dist.: Bharuch to Torrent Energy Limited vide Order dated 17.11.2009 in Licence Application No. 5 of 2008.

(vi) Commission may pass the order for reserving the rights of GETCO, as STU, to lay lines/network within the Dholera SIR area without paying any Right of Way/Use Charges or any other charges to Torrent Power Limited within the license area.

16. The Applicant in response to submissions made by GETCO, filed an Affidavit dated 11.04.2018 and submitted that as GETCO has requested the Commission to direct the Applicant to give Right of Way within Dholera SIR as and when required for the development of Transmission System without paying any ROW/Use Charges or any other charges, GETCO is required to approach the DICDL for laying the network in accordance with the applicable law. The cost/charges, if any, applicable for laying of such network is to be borne by the user of that ROW. The Commission may take appropriate decision in this regard.

17. We have considered the submissions made by the Applicant and representative of DICDL. We also note that the Applicant has submitted the Distribution License application along with all the required documents as stated in para-2 above and later on submitted Affidavits

dated 12.03.2018, 16.03.2018, 10.04.2018, 11.04.2018, 17.04.2018 and other documents on 26.03.2018 and 12.04.2018. The Commission had directed the Applicant to upload the application on their website and also issue a public notice in two Gujarati Newspapers and One English Newspaper for inviting objections/suggestions from the stakeholders. In compliance to the aforesaid directives the Applicant had issued a public notice in two Gujarati daily newspapers viz. Divya Bhaskar and Nav Gujarat Samay and one in English Newspaper viz. Indian Express on 31st January, 2018. The aforesaid Public Notice is mandatory as per Section 15(2) of the Electricity Act, 2003 and Regulation 6 of the GERC (Licensing of Distribution of Electricity) Regulation, 2005, which are reproduced below:

“...Section 15 of the Electricity Act, 2003 : Procedure for grant of license:

(2) Any person who has made an application for grant of licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted -

(i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of the notice as aforesaid;

(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.

.....”

Regulation 6 of the GERC (Licensing of Distribution of Electricity) Regulation, 2005.

“.....Regulation 6: Public Inspection of Application and Documents:

(i) From the date of publication of notice in accordance with Regulation 5 above, the Applicant shall make available at its own office and the office/s of its agents (if any) and also with every local authority as may be specified by the Commission from time to time, copies of the application and all the documents submitted therewith.

(ii). The Applicant shall furnish, to all persons applying, printed copies of its application, together with the attachments thereto, at the reasonable cost of photocopying such material.”

The Applicant has complied with the provisions of Section 15(2) of the Electricity Act, 2003 and Regulation 6 of the GERC (Licensing of Distribution of Electricity) Regulation, 2005.”

17.1 In response to the public notice issued by the Applicant, no objections/suggestions have been received either by the Applicant or the Commission from any stakeholders within 30 days of public notice.

17.2 The sixth proviso to Section 14 of the Electricity Act, 2003 is relevant in this case which reads as under:

Section 14 - sixth Proviso

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (relating to the capital adequacy,

creditworthiness, or code of conduct) as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose.

According to aforesaid provision, the Commission may grant licence for distribution of electricity through their own distribution system to two or more persons who fulfill the necessary requirements (as stipulated in the above provisions of the Act) in the existing distribution license area. Thus, the second licensee has to create its own distribution network for distribution of electricity in the same area where the existing licensee has its own electricity distribution system.

17.3 As the Applicant has filed the present Application for grant of Distribution License, it is necessary for the Applicant to comply with the provisions of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, which are reproduced below:

“

*THE DISTRIBUTION OF ELECTRICITY LICENCE (ADDITIONAL
REQUIREMENTS OF CAPITAL ADEQUACY, CREDITWORTHINESS
AND CODE OF CONDUCT) RULES, 2005*

G.S.R. 188 (E). - In exercise of the powers conferred by sub-section (1) of, and clause (b) of sub-section (2) of, section 176 of the Electricity Act, 2003 (Act 36 of 2003), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement: - (1) These rules may be called the Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions - In these rules, unless the context otherwise requires, -

(a) 'Act' means the Electricity Act, 2003;

(b) Words and expression used and not defined in these rules but defined in the Electricity Act, 2003 (36 of 2003), shall have the meanings respectively assigned to them in that Act.

3. Requirements of capital adequacy and creditworthiness. - (1)

The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.

(2) The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of networth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.

Explanation: - For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply.

4. Requirement of Code of Conduct. - The applicant for grant of licence shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of the application for the grant of licence:

(a) section 203, section 274, section 388B or section 397 of the Companies Act, 1956;

(b) section 276, section 276B, section 276BB, section 276C, section 277 or section 278 of the Income tax Act, 1961;

(c) section 15C, section 15G, section 15H or section 15HA of the Securities and Exchange Board of India Act 1992;

(d) clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act 1944;

(e) section 132 or section 135 of the Customs Act 1962,

and that the applicant is not a person in whose case licence was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:

Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443 (e) of the Companies Act, 1956 on the ground of its being unable to pay its debts.

....”

17.4 Now we deal with the issues as to whether the Applicant has complied with the aforesaid provisions or not.

17.5 The Applicant has submitted Certificate No. 04-44068, dated 08.02.2006 for incorporation issued by the Registrar of Companies, Gujarat, Dadra and Nagar Haveli certifying that Torrent Power Private Limited originally incorporated on 29.04.2004 under the Companies Act, 1956 and under the name of Torrent Power Trading Pvt. Ltd. having duly passed the necessary Resolution on 01.02.2006 in terms of Section 31/44 of the

Companies Act, 1956, the name of the said Company is this day changed to Torrent Power Limited.

17.6 The Applicant has also submitted Memorandum and Articles of Association of the Applicant Company along with the application.

17.7 The Applicant has submitted the original Power of Attorney dated 29th December, 2017 authorising Shri Chetan Bundela to do in their name or behalf all such acts, deeds and things necessary in connection with or incidental to obtain license for distribution of power in Dholera SIR.

17.8 The Applicant has submitted a copy of PAN Card bearing No. AACCT0294J dated 29.04.2004 issued by Income Tax Department, Government of India.

17.9 The Applicant has submitted certificate no. CAG, A/AMT-1/2017-18/229, dated 06.12.2017 signed by AGM and RM(AMT-1) of the State Bank of India, Corporate Accounts Group Branch, Navrangpura, Ahmedabad stating that the Applicant Torrent Power Limited has availed various credit facilities from State Bank of India, Corporate Accounts Group Branch, Ahmedabad and confirmed that the name of the

Applicant Torrent Power Ltd. does not appear in the Willful Defaulter list of Reserve Bank of India as on the date of issue of the said certificate.

17.10 The Applicant has submitted certificate no. CAG, A/AMT-1/2017-18/228, dated 06.12.2017 signed by AGM and RM(AMT-1) of the State Bank of India Corporate Account Group Branch Navrangpura, Ahmedabad stating that the Applicant Torrent Power Ltd. has availed various credit facilities from State Bank of India, Corporate Accounts, Group Branch, Ahmedabad and confirmed that the account of the Borrower in the books of SBI Corporate Accounts Group Branch, Ahmedabad is “Standard” on the date of issue of the Certificate.

17.11 From the above it is apparent that the Applicant is not a “willful defaulter” and its Account is “standard” as on the date of issue of certificate by State Bank of India.

17.12 The Applicant has submitted the Annual Reports of the Applicant Company for FY 2014-15, 2015-16 and 2016-17 to substantiate the Net-Worth and Annual Turnover of the Applicant Company as stated below:

Net-worth and Annual Turnover for immediate past 5 (five) financial years. i.e. FY 2012-13 to FY 2016-17:

NET WORTH		TURNOVER	
As on	Amount (Rs. Crore)	FY	Amount (Rs. Crore)
31 st Mar, 17	6,884.48	2016-17	10,014.58
31 st Mar, 16	6,458.48	2015-16	11,661.59
31 st Mar, 15	5,912.11	2014-15	10,273.90
31 st Mar, 14	6,176.56	2013-14	8,575.62
31 st Mar, 13	6,090.29	2012-13	8,129.87

Above table indicates that the Net-worth of the Applicant Company which was Rs. 6090.29 Crore as on 31.03.2013 increased to Rs. 6884.48 Crore on 31.03.2017-, a rise of 13% over a period of 5 years.

Above table also indicates that the Annual Turnover in FY 2012-13 was Rs. 8129.87 Crore increased to Rs. 10014.58 Crore in FY 2016-17, an increase of 23% over a period of 5 years.

17.13 The Applicant has also submitted a certificate issued by CRISIL vide their letter No. AHMELEC/186061/BLR/091701287, dated September 27, 2017 for ratings of total bank loan facilities of Rs. 12,600 Crore availed/proposed by the Company as on date which is reproduced below:

“

September 27, 2017

<i>Total Bank Loan Facilities Rated</i>	<i>Rs. 12600 Crore (Enhanced from Rs. 12000 Crore)</i>
<i>Long-Term Rating</i>	<i>CRISIL AA-/Stable (Reaffirmed)</i>
<i>Short-Term Rating</i>	<i>CRISIL A1+ (Reaffirmed)</i>

.....”

17.14 We also note that the Applicant has submitted an affidavit dated 12.03.2018 which is reproduced below:

“.....THE APPLICANT ABOVE NAMED RESPECTFULLY SUBMITS AS UNDER:

1. *Torrent Power Limited (hereinafter referred to as TPL or the Applicant), is a Company incorporated under the Companies Act, 1956 carrying on the businesses of generation and distribution of electricity in the State of Gujarat.*
2. *TPL has filed an application for grant of distribution licensee on 1st January, 2018 for Dholera SIR area under Section 14 of the Electricity Act, 2003 read with Section 20 of the Gujarat Electricity Industry (R&R) Act, 2003.*
3. *Now in furtherance to the above, TPL would like to submit that in compliance to the Rule 4 of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005; the Applicant, being a company, has not been found guilty or has not been disqualified under any of the following*

provisions within the last three years from the date of application for grant of license:

- a) Section 203, Section 274, Section 388B or Section 397 of the Companies Act, 1956;*
- b) Section 276, Section 276B, Section 276BB, Section 276C, Section 277 or Section 278 of the Income Tax Act, 1961;*
- c) Section 15C, Section 15G, Section 15H or Section 15HA of the Securities and Exchange Board of India Act, 1992;*
- d) Clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of Section 9 of the Excise Act, 1944;*
- e) Section 132 or Section 135 of the Customs Act, 1962,*

and that Applicant is not a person in whose case license was suspended under Section 24 or revoked under Section 19 of the Act, within the last three years from the date of application.

4. Further, TPL, being a company, no petition for winding up of the company or any other company of the same promoter has been admitted under Section 443(e) of the Companies Act, 1956 on the ground of its being unable to pay its debts.”

Ahmedabad

Dated 12.03.2018

Authorised Signatory

.....”

Thus, the Applicant has confirmed that it has not been found guilty and has not been disqualified under any of the relevant provisions of the Companies Act, 1956, Income Tax, 1961, Securities and Exchange Board of India Act, 1992, Excise Act, 1944 and Custom Act, 1962. It is further stated that license issued to the Applicant has not been suspended under Section 24 or revoked under Section 19 of the Act, within the last three

years from the date of application. It is also certified that no Petition for winding of the company or any other company of the same promoter has been admitted under Section 443(e) of the Companies Act, 1956 on the ground of its inability to pay its debts. Thus the Applicant has complied with the criteria of Code of Conduct specified in the Distribution of Electricity Licence (Additional Requirement of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.

17.15 Now, we deal with the issue pertaining to fulfilment of minimum licence area. In this regard, we refer to Clause 5.4.7 of National Electricity Policy, which reads as under:

“5.4.7 One of the key provisions of the Act on competition in distribution is the concept of multiple licensees in the same area of supply through their independent distribution systems. State Governments have full flexibility in carving out distribution zones while restructuring the Government utilities. For grant of second and subsequent distribution licence within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in the Article 243(Q) of Constitution of India (74th Amendment) may be considered as the minimum area. The Government of India would

notify within three months, the requirements for compliance by applicant for second and subsequent distribution licence as envisaged in Section 14 of the Act. With a view to providing benefits of competition to all section of consumers, the second and subsequent licensee for distribution in the same area shall have obligation to supply to all consumers in accordance with provisions of section 43 of the Electricity Act 2003. The SERCs are required to regulate the tariff including connection charges to be recovered by a distribution licensee under the provisions of the Act. This will ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers.”

Aforesaid provision stipulates that for grant of second and subsequent distribution license within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for smaller urban area or a Municipal Corporation for a larger urban area as defined in Article 243(Q) of the Constitution of India may be considered as the minimum area.

17.16 In view of aforesaid provision in the National Electricity Policy, it is necessary to refer the explanation contained in the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005, which reads as under:

“.....

“Explanation: For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the Article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply.”

The aforesaid explanation to Clause 3 provides that the area for grant of Distribution Licensee in terms of 6th proviso to Section 14 of the Act, the area falling within a Municipal Council or Municipal Corporation as defined in the Article 243(Q) of the Constitution of India or Revenue District shall be the minimum area of supply. It is therefore necessary to refer Article 243(Q) of the Constitution of India, which is reproduced below:-

Article 243Q Constitution of Municipalities:

(1) There shall be constituted in every State, -

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

The Proviso to Article 243Q of the Constitution of India states that a Municipality may not be constituted in such urban area or its part if the Governor by a public notification specify it to be an Industrial Township, having regard to the size of the area and municipal services being provided or

proposed to be provided by an industrial establishment in that area as he may deem fit.

17.17 The Applicant and DICDL have submitted that DSIR is an Industrial Township as per Section 29 of the Gujarat Special Investment Region Act, 2009. Hence, it is necessary to refer the same which is reproduced below:

“.....29 (1) The area within the Special Investment Region except the village site area (gamtal) of a Village Panchayat, Municipal area and Municipal Corporation area shall be deemed to be an industrial township within the meaning of the provisions of clause (1) of article 243Q of the Constitution of India from the date it is so notified in the Official Gazette by the State Government.

(2) Subject to the prior permission and any general or special orders which the State Government may make in this behalf, the Regional Development Authority may act as the authority for taking decisions and steps for assessment, imposition and recovery of taxes under this section.”

As per aforesaid provisions, the area within SIR except the village site area (gamtal) of Village Panchayat, Municipal area and Municipal Corporation area shall be deemed to be Industrial Township area within the meaning

of provisions of Clause (1) Article 243(Q) of the Constitution of India from the date it is so notified in the State Government Gazette. Thus, from the date as notified in the Official Gazette by the State Government SIR area qualifies under Article 243(Q) (1) of the Constitution of India as Industrial Township.

17.18 Government of Gujarat vide its notification No.GHU-14/SIR/112009/253/(1)/I dated 22.05.2009 declared the area of SIR as Industrial Township under Clause 1 of Article 243(Q) of the Constitution of India. The aforesaid Notification is reproduced below:

**“.....Part IV-B
Rules and Orders (other than those published in Part I, I-A
and I-L) made by the Government of Gujarat under the
Gujarat Acts.
INDUSTRIES AND MINES DEPARTMENT
Notification**

Sachivalaya, Gandhinagar, 22nd May, 2009

GUJARAT SPECIAL INVESTMENT REGION ACT, 2009.

No. GHU-14/SIR/112009/253/(1)/I:- *In exercise of the powers conferred by section 3 read with section 4 of the Gujarat Special Investment Region Act, 2009 (Guj. 20 of 2009), the Government of Gujarat hereby,-*

- (i) Declares the areas specified in column 4 of the Schedule appended hereto to be the Special Investment Region which shall be known as “Dholera Special Investment Region”; and*
- (ii) Determines the areas within the boundaries of revenue villages specified in column 4 of the said Schedule to be the geographical area of the said Special Investment Region, measuring 879.3377 sq. kms in total.*

SCHEDULE**SCHEDULE**

Sr. No.	Name of the District	Taluka	Name of the Revenue Village			
			Sr. No.	Name of Village	Total survey nos.	Total Area of lands in sq.km.
1	Ahmedabad	1. Dhandhuka	1	Bavaliyari	1204	111.2724
			2	Bhadiyad	1908	49.7331
			3	Bhangadh	620	83.0777
			4	Bhimtalav	223	7.4042
			5	Dholera	969	45.8145
			6	Gorasu	1219	31.1763
			7	Kadipur	648	27.3509
			8	Khun	227	38.2968
			9	Mahadevpura	179	22.5431
			10	Mingalpur	261	33.0813
			11	Mundi	316	17.8054
			12	Otariya	801	18.0975
			13	Panchi	360	13.9638
			14	Rahatalav	336	63.4464
			15	Sandhida	517	18.6401
			16	Zankhi	389	22.0941
			17	Ambli	1084	55.2044
			18	Cher	464	16.2436
			19	Gogla	385	55.4426

GUJARAT GOVERNMENT GAZETTE, 4-6-2009

PART IV-B

Sr. No.	Name of the District	Taluka	Name of the Revenue Village			
			Sr. No.	Name of Village	Total survey nos.	Total Area of lands in sq. km.
1	Ahmedabad	2. Barwala	1	Hebatpur	1086	72.6594
			2	Sangasar	790	35.4928
			3	Sodhi	588	40.4975
		Total			14574	879.3377

By order and in the name of the Governor of Gujarat,

MAHESHWAR SAHU,

Principal Secretary to Government”

As per aforesaid provision of the Gujarat Special Investment Region Act, 2009, the area within SIR except the village site area (gamtal) of Village Panchayat, Municipal Area and Municipal Corporation Area shall be deemed to be industrial township within the meaning of the provisions of Clause (1) Article 243(Q) of the Constitution of India from the date it is so notified. Government of Gujarat vide notification dated 22.05.2009 which was published in the Official Gazette on 4th June, 2009 declared 879.3377 sq. kms to be Dholera Special Investment Region. Thus, from the date of Official Gazette Dholera SIR area qualified as industrial township under Article 243(Q) (1) of the Constitution of India.

17.19 We, are, therefore of the view that the area of Dholera Special Investment Region is an Industrial Township as per the provisions of Section 29 of the GSIR Act, 2009 and subsequent notification dated 22.05.2009 issued by the Government of Gujarat thereunder and published in The Gujarat Government Gazette on 04.06.2009.

17.20 We are of view that the Applicant has complied with the requirement as specified in the Distribution of Electricity License (Additional

Requirement of Capital Adequacy, Credit worthiness and Code of Conduct) Rules, 2005 and also the provisions of the GERC (Licensing of Distribution of Electricity) Regulations, 2005. DICDL vide letter No. DICDL/TECH/PWR/GERC/LTR/18-19/90-0025 dated 19.04.2018 submitted the map of DSIR with clear demarcation of village site area (gamtal) of Village Panchayat, Municipal Area and Municipal Corporation within the DSIR duly authenticated by Senior Town Planner, Dholera Special Investment Regional Development Authority.

17.21 Further, we note that DICDL has vide its submission dated 19.04.2018 confirmed that Dholera SIR does not include any part of cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of Government for defence purposes.

17.22 With regard to query of the Commission that UGVCL being an existing licensee in the proposed licensee area, what is its stand in this regard, the representatives of Applicant and DICDL submitted that UGVCL has shown their unwillingness to create the necessary state of the art distribution infrastructure as required by DICDL to supply the electricity to the consumers in the DSIR through underground cable etc. It is

necessary to refer the letter dated 29.05.2017 of UGVCL as submitted by the DICDL with its submission dated 21.03.2018, which is reproduced below:

“.....

UTTAR GUJARAT VIJ COMPANY LIMITED
Regd. and Corporate office, Mehsana
CIN – U40102GJ2003SGC042906

No. UGVCL/Project/Dholera SIR/481

29-05-2017

To,
General Manager (Technical)
Dholera Industrial City Development Ltd
Udhyog Bhavan, Block: 1-2, Sixth Floor, Sector-11, Gandhinagar – 382017
Sub: Power Distribution for Activation area of Dholera SIR

Ref 1: Discussion of Last Meeting on 13.04.2017

Dear Sir,

In reference to above, it is to mention that regarding power distribution for Activation Area of Dholera SIR, possibility of various model are discussed in last meeting. Each model has its own merit and demerits. As far as JV model is concern, it may present opportunity to share resources, cost, responsibilities and risk among the partners. However, it requires separate license and tariff structure which is a deviation from existing statutory set up and regulation. Hence, setting up a JV model will be time consuming as it requires approval from UGVCL Board, GUVNL Board, Govt. of Gujarat & GERC.

Under the circumstances UGVCL as host DISCOM can provide power distribution in the activation area of Dholera SIR with under groundwork as per prevailing practice & norms on receipt of expenditure to supply of electricity for specific demand provided GETCO takes the responsibility for EHV network (above 11kv) and required Substations as per existing norms.

Further, it is also quote that as far as implementation of SCADA and Advance Distribution Management System (ADMS) Solution for monitoring, operation, maintenance and control with data exchange with other system like GIS (Geographical System), OMS (Outage Management System), EMS (Energy

Management System) and AMI (Advance Management System) is concern, the concepts are yet at pilot level in Indian power sector environment.

Yours faithfully,

(A K Mangal)

Chief Engineer (Op)

.....”

The aforesaid letter of UGVCL is addressed with regard to the discussion at the meeting held on 13.04.2017 and stated that setting up of JV model will be time consuming as various approvals are required. It is also stated that UGVCL as host DISCOM can provide power distribution in the activation area of Dholera SIR with underground network as per prevailing practice and norms on receipt of expenditure to supply electricity for specific demand provided GETCO takes responsibility for EHV network and required sub-station as per the norms. It is also stated that the implementation of SCADA, ADMS, GIS, OMS, EMS and AMI concepts are at pilot level in the Indian power sector environment.

17.23 We also note that the representative of DICDL has admitted that there are some existing villages in the area of DSIR and some of the villages

are having population of 5000 or more in the said area. UGVCL is an existing distribution licensee and therefore, it is the Universal Service Obligation (USO) of UGVCL under Section 43 of the Act to give connections and supply power to the consumers of the area as and when requested by them within the stipulated time period. We note that UGVCL has filed its submissions belatedly i.e. on 10.04.2018 reiterating its rights as an existing licensee and allowing it to serve its existing consumers, release new connections, maintain existing distribution system and also create new infrastructure in the DSIR area.

17.24 We also note that GETCO and PGVCL have made their submissions on 10.04.2018 and 12.04.2018 respectively with further submission by PGVCL on 16.4.2018. Except these, no other person filed any objection nor made any submissions against the present Application.

17.25 We have considered the submissions of the UGVCL, PGVCL and Applicant, Torrent Power Ltd. (TPL). We note that as per the submissions of PGVCL and UGVCL, they are the existing licensees in the licence area of Dholera SIR where the Applicant has applied for a licence. As per their submissions UGVCL and PGVCL have their distribution network in the

distribution licence area and are supplying power to the existing consumers. As per the Universal Service Obligation of providing service, they shall not only continue to serve the existing consumers but release new connections also even by extending the network. We note that both UGVCL and PGVCL have shown their willingness to continue their existing business in the proposed licence area for supplying electricity to the existing consumers and adding new consumers even by extending their distribution network. We, therefore, decide that the existing licensees viz. PGVCL and UGVCL shall continue to be the licensees as per their terms of licence and shall continue to serve their existing consumers. We also decide that the existing network of the aforesaid licensees should not be altered, changed or removed and should continue to be the property of the aforesaid licensees. The grant of licence to the Applicant shall not in any manner affect the operations/functionality of the aforesaid licensees including release of new connections, expansion or extension of the network. We note that it is the Universal Service Obligations of UGVCL and PGVCL as an existing distribution licensee to provide electricity supply as and when any person in their existing licence area requires them to provide the same. Hence, UGVCL and PGVCL are empowered to supply the electricity to the existing

consumers in the licence area of Dholera SIR. Further, UGVCL and PGVCL also have the right to extend the distribution network in the said license area by creating their own network and infrastructure as may be required. They shall not be debarred in carrying out aforesaid activities by the Applicant as well as Authorities of Dholera SIR on any ground other than they are restrained as per the provisions of the Electricity Act, 2003 and Rules and Regulations framed under it as they are the existing licensees in the aforesaid licence area prior to notification of Dholera SIR by the State Government and governed by the provisions of the Electricity Act, 2003. We also decide and declare that there is no provision for cessation or exclusion of the rights of PGVCL and UGVCL to distribute the electricity in any manner as a result of any second licence granted to any other person as per the provisions of the Electricity Act, 2003. Therefore, we are of the view that if the Applicant is granted second licence in the proposed area with the aforesaid conditions, it will not affect the rights of the existing licensees viz. UGVCL and PGVCL.

17.26 We note that GETCO, a State Transmission Utility (STU) in the State of Gujarat, is a deemed licensee in accordance with provisions of the Electricity Act, 2003. A duty is cast upon GETCO, as STU, to undertake

transmission of electricity through intra-state transmission system, discharge all functions of planning and coordination relating to intra-state transmission system, ensure development of an efficient, coordinated and economical system of intra-state transmission lines for smooth flow of electricity from a generating station to the load centres as stipulated in Section 39 of the Electricity Act, 2003. These are the statutory functions which GETCO is bound to carry out and they cannot be restrained in any manner by virtue of grant of second distribution licence to the Applicant. We also note that it is the responsibility of GETCO, as STU, to lay down the transmission lines in the State of Gujarat including the Dholera SIR area for which the Applicant has sought a distribution licence. We, therefore, decide that the grant of Distribution License to the Applicant in Dholera SIR shall not in any manner affect the operations/functionality of GETCO in the area. We also decide that if GETCO requires to establish the transmission infrastructure (transmission system) in the Dholera SIR area, the Applicant TPL as well as Dholera SIR shall not restrict GETCO on the basis of Right of Way/Use. We also decide and declare that GETCO reserves its rights as STU to lay lines/network within the Dholera SIR area as per prevailing law.

17.27 We also note that DICDL has vide its letter dated 14.02.2018 informed the Commission that they desire to avail the services of the Power Utilities with certain terms and conditions as stated in the said letter. However, we make it clear that the Commission cannot stipulate such conditions as there are beyond the scope of the Regulations notified by the Commission for grant of licence. The licensee shall follow the provisions of the Electricity Act, 2003 and Rules and Regulations framed thereunder.

18. On consideration of the material available on the record, the Applicant fulfills the criteria laid down for grant of distribution licence in the Dholera SIR area. We therefore, propose to issue a distribution licence to the Applicant for the DSIR area as notified by the Government of Gujarat under GSIR Act, 2009 and Notification dated 22.05.2009. As far as map of licence area is concerned, we decide that the area specified in the map qualify for licence is only as per the provisions of Section 29 of the GSIR Act, 2009. Any area in the said map which is excluded from the Industrial Township as per Section 29 of GSIR Act, 2009 shall be construed as outside the proposed licence area of the Applicant. We, therefore, direct the Office of the Commission to issue a Notice under clause (a) of sub-section (5) of the

Section 15 of the Electricity Act, 2003. As the Commission proposes to issue a license to the Applicant, a copy of this order shall also be sent to PGVCL, UGVCL, GETCO, CTU and Government of Gujarat.

19. We order accordingly.

Sd/-	Sd/-	Sd/-
[P. J. THAKKAR]	[K. M. SHRINGARPURE]	[ANAND KUMAR]
Member	Member	Chairman

Place: Gandhinagar

Date: 21.04.2018