

BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No. 1785 of 2019

In the matter of:

Petition for compliance of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Energy Sources) Regulations, 2010 and its subsequent amendments notified by the Commission.

Petitioner: MPSEZ Utilities Private Limited,
Adani House, Near Mithakhali Circle,
Navrangpura, Ahmedabad 380 009.

Represented by: Shri Nirav Shah and Shri Anil Rabadia

CORAM:

Shri Anand Kumar, Chairman

Shri P. J. Thakkar, Member

Date: 31/08/2020

ORDER

1. The present Petition has been filed by M/s MPSEZ Utilities Private Limited (hereinafter referred to MUPL) under the GERC (Procurement of Energy from Renewable Sources), Regulations, 2010 as amended for its license area regarding compliance of the percentage targets of purchase from renewable energy sources for FY 2017-18 with following prayers:

- (a) To revise the percentage target of purchase from renewable energy sources for FY 2017-18 keeping in view the supply constraint and the factors beyond the control of the licensee;
- (b) To allow carrying forward the Solar RPO for FY 2017-18 considering suspension of Solar RECs in FY 2017-18.

2. Facts mentioned in the Petition are detailed below:

2.1. The Petitioner, MPSEZ Utilities Private Limited, is a company incorporated under the Companies Act, 1956.

2.2. The Commission in exercise of the powers conferred under Sections 61, 66, 86 (1) (e) and 181 of the Electricity Act, 2003 notified the GERC (Procurement of Energy from Renewable Source) Regulations, 2010 for promoting the sale of power from renewable energy sources and procurement of energy from renewable sources by distribution licensee within the State of Gujarat vide Notification No. 3 of 2010 dated 17.04.2010. The said Regulations specify the minimum percentage for procurement of power from Wind, Solar and Other Sources.

2.3. Subsequently, the Commission issued the GERC (Procurement of Energy from Renewable Source) (First Amendment) Regulations, 2014 vide Notification No. 2 of 2014 dated 04.03.2014. Subsequently, the Commission notified the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 vide Notification No. 01 of 2018 dated 21.04.2018 and as per the said Regulations, the Renewable Power Purchase obligations of the obligated entities for FY 2017-18 are as under:

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total	Wind	Solar	Biomass, Bagasse and Others
FY 2017-18	10.00	7.75	1.75	0.50

2.4. The Petitioner has opted to purchase Renewable Energy Certificate (RECs) in view of Regulation 5.1 of GERC (Procurement of Energy from Renewable Source) Regulations, 2010 and subsequent amendments thereto.

2.5. It is further stated that the Petitioner also uses renewable attribute of Solar Project for captive consumption, referred as Case 1 under the tab of 'RPO' in Clause 9.2 of Gujarat Solar Policy 2015 to fulfill the Renewable Purchase Obligation during FY 2017-18.

2.6. The status of RPO compliance during FY 2017-18 is as under:

Particular	FY 2017-18		Total RPO (MUs)	Renewable Energy Purchased (MUs)		
	293.93			RECs Purchased	RPO Attribute	Total
Energy (MUs)	293.93					
Non Solar RPO	%	8.25%	24.25	24.22	0.00	24.22
	MUs	24.25				
Solar RPO	%	1.75%	5.14	0.35	2.03	2.38
	MUs	5.14				

2.7. The Petitioner has decided to fulfill RPO target by purchasing RECs in place of renewable power due to following reasons:

- a) The Renewable Purchase Obligation (RPO) of MUPL is very less due to small consumer base/demand and therefore, no seller has approached the Petitioner for tie-up of renewable power for such a small quantum.
- b) The majority of the customers of the Petitioner are bulk consumers who can easily migrate to other power sources through open access. In case, the Petitioner will succeed in tie-up of renewable energy through long term agreement, then in the event of migration of bulk consumers to other power

sources, financial burden on the other consumers of the Petitioner will increase.

- c) The bulk consumers of the Petitioner have started to install Solar PV panels on rooftops for their captive use under Gujarat Solar Policy - 2015. The Renewable attributes of such projects have been used by the Petitioner to fulfil the RPO target. The total capacity addition on account of Roof Top Solar projects is 3.32 MW out of which 1.79 MW is installed till 31.03.2018.

2.8. The Hon'ble Supreme Court has stayed Central Electricity Regulatory Commission (CERC) order dated 30.03.2017, in the matter of determination of Forbearance and Floor Price for RECs framework to be applicable with effect from 01.04.2017, vide Order dated 08.05.2017 in Appeal No. 6083/2017. Accordingly, trading of Solar and Non-Solar RECs had been suspended by the Indian Energy Exchange (IEX) after issuance of directive from the CERC. Subsequently, Hon'ble Supreme Court vide Order dated 14.07.2017 modified the previous Order dated 08.05.2017 and thereafter allowed trading of Non-Solar RECs at previous rate till the time Hon'ble APTEL renders the final decision in the matter. In accordance with directives of the Hon'ble Supreme Court, CERC vide letter dated 20.07.2017 directed IEX to commence trading of Non-Solar RECs and to continue with suspension of Solar RECs till further order and Hon'ble APTEL has not issued any final order in this matter till 31.03.2018.

2.9. Due to suspension of Solar RECs as per directive of the Hon'ble Supreme Court, the Petitioner was not able to purchase enough Solar RECs to fulfill its 100% RPO during FY 2017-18 but was only able to fulfill Solar RPO up to 46.20%.

2.10. The Petitioner has made efforts to fulfill its obligation by procuring Non-Solar RECs on regular basis as evident from the quarterly RPO monitoring reports submitted with GEDA & the Commission. But in the month of March-2018, the Petitioner was not able to fulfill the Non-Solar RPO target due to shortage of RECs in the market,

Hence, the Petitioner has achieved the overall Non-Solar compliance percentage at the tune of 8.24% for FY 2017-18.

- 2.11. The Petitioner deposited the RECs purchased during FY 2016-17 to the Commission in view of Regulation 5.3 of GERC (Procurement of Energy from Renewable Source) Regulations, 2010 and subsequent amendments thereto.
- 2.12. The Petitioner has also submitted RPO Monitoring Status Report of FY 2017-18 to Gujarat Energy Development Agency (GEDA) vide its letter No. MUPL/GEDA/RPO/2017-18/Q4/14052018 dated 14.05.2018.
- 2.13. Regulation 4.2 of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Source) Regulations, 2010 provides that:

"4.2 The Commission may, suo-motu or at the request of a licensee, revise the percentage targets for a year as per Clause 4.1 of these Regulations keeping in view supply constraints or other factors beyond the control of the licensee."
- 2.14. The RPO Regulation also confers powers on the Commission to revise the RPO based on the request of the licensee on account of supply constraint or for the other factors beyond the control of the licensee.
- 2.15. Based on above, the Commission is requested to revise the minimum percentage target for purchase of power from Wind and Other renewable energy sources except Solar for FY 2017-18 due to supply constraint and factors beyond the control of the Petitioner and to allow carrying forward the shortfall quantity of Solar RPO of FY 2017-18, considering suspension of Solar RECs trading in FY 2017-18.
3. The Commission vide Daily Order dated 09.06.2020 for the hearing on 08.06.2020, after noting the submissions made by the Petitioner admitted the present Petition and was of the view that since the subject matter of the present Petition is pertaining to the compliance of RPO by the Petitioner as specified in the GERC

(Procurement of Energy from Renewable Sources) Regulations, 2010 and subsequent amendments thereto, a public hearing is required to be conducted to take into account the comments of stakeholders before granting approval and therefore, directed the Petitioner to issue a public notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State/National level and also upload the present Petition with all the relevant documents on its website and invite comments and suggestions from the stakeholders on the Petition on affidavit within 30 days from the date of issuance of public notice. The staff of the Commission was also directed to upload the present Petition on the website of the Commission and invite comments/suggestions from the stakeholders. The relevant portion of the said Daily Order reads as under:

“.....

3.1 We note that the Hon'ble APTEL in its judgement dated 25.04.2014 in Appeal No. 24 of 2013 and IA No. 39 of 2013 directed the State Commission that after completion of the financial year, the State Commission has to review the actual performance in respect of RPO and pass necessary directions as per the Regulations either suo-motu or on a petition filed by an obligated entity. Such review should be subjected to public notice to invite suggestions and objections from all the stakeholders. Thus, for annual review of RPO or otherwise by the State Commission either suo-motu or on application from an obligated entity, the suggestions and objections of the public are required to be invited.

3.2 According to the Hon'ble APTEL's directions, it is necessary to issue a public notice and invite suggestions/objections from all the stakeholders in the matter pertaining to compliance of RPO by the obligated entities. As the present petition is filed for compliance of RPO percentage from renewable energy sources for FY 2017-18 and to carry forward the Solar RPO of FY 2017-18 considering suspension of Solar RECs in FY 2017-18, we decide and direct the Petitioner to issue a public notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State/National level stating that they have filed Petition No. 1785 of 2019 before the Commission for compliance of RPO target for FY 2017-18 under the provisions of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its

*amendment Regulations, 2014 and Regulation, 2018. The Petitioner is also directed to upload the present petition with all the documents on its website and invite comments and suggestions from the stakeholders on the petition on affidavit within 30 days from the date of issuance of public notice. The Petitioner shall state in the public notice that the stakeholders/objectors are required to file their objections/suggestions in the present petition to the Secretary of the Commission in five copies alongwith affidavit in support of their submissions. The staff of the Commission is also directed to upload the petition along with all relevant documents on the website of the Commission after compliance affidavit of issuing public notice and uploading of petition is filed by the Petitioner along with copy public notices issued by the Petitioner is provided to the Commission and invite comments/suggestions from the stakeholders.
.....”*

4. In compliance to the above directives by the Commission, the Petitioner vide affidavit dated 19.06.2020 submitted that the Petitioner has published the notice on 14.06.2020 in following newspapers inviting objections / suggestions from various stakeholders on its Petition for RPO compliance of FY 2017-18 and filed the copies of the newspaper in which notice was published:
 - (i). The Indian Express (Ahmedabad edition)
 - (ii). Kutch Uday (Bhuj edition)
 - (iii). Divya Bhaskar (Bhuj edition)

The Petitioner vide aforesaid affidavit also submitted that as per the directives of the Commission the Petitioner have uploaded the public notice and Petition on its website (www.adaniports.com) for inviting objections/suggestions on present Petition. Thereafter, the Petition was also uploaded on the website of the Commission in accordance with the Commission’s directives.

5. Subsequently, the Petitioner through its letter also informed the Commission that no objections/suggestions from any of the stakeholders is received by them.

6. Subsequent to the hearing on 08.06.2020, the matter was heard by the Commission on 07.08.2020. During the hearing on 07.08.2020, Shri Nirav Shah on behalf of the Petitioner submitted that the present Petition has been filed by the Petitioner for compliance of RPO for FY 2017-18 against the RPO specified by the Commission in the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 as amended vide GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 with prayer clause to revise the percentage target of purchase from renewable energy sources for FY 2017-18 keeping in view the supply constraint and the factors beyond the control of the licensee and to allow carrying forward the Solar RPO of FY 2017-18 considering the suspension of Solar RECs in FY 2017-18.
7. He further submitted that the Petitioner has complied with the directions of the Commission given in Daily Order dated 09.06.2020 by publishing a public notice on 14.06.2020 in two Gujarati and one English newspaper and uploading the present Petition along with public notice on its website for inviting the objections and suggestions from the stakeholders for which compliance affidavit dated 19.06.2020 is filed. Moreover, he submitted that the Petitioner has not received any comments or suggestions from the stakeholders and the Commission may decide the matter considering the submissions of the Petitioner and based on record of the present Petition.
8. We have carefully considered the submissions made by the Petitioner. The present Petition has been filed by the Petitioner requesting to consider its RPO fulfillment for FY 2017-18 as per the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and subsequent amendments thereto and to revise the percentage target of purchase from renewable energy sources for FY 2017-18 keeping in view the supply constraint and the factors beyond the control of the Petitioner as well as to allow carrying forward the Solar RPO of FY 2017-18 considering the suspension of Solar RECs in FY 2017-18.

- 8.1. We note that the Petitioner is a distribution licensee in Mundra SEZ area and accordingly is an obligated entity in terms of the GERC (Procurement of Energy from Renewable Source) Regulations, 2010 as amended. Accordingly, the Petitioner is required to comply with the RPO percentage specified in the GERC (Procurement of Energy from Renewable Source) (Second Amendment) Regulations, 2018. The issue emerged in the present case is with regard to shortfall in RPO compliance by the Petitioner distribution licensee who is an obligated entity seeking revision in the percentage targets of purchase from renewable energy sources for FY 2017-18. We note that the Petitioner has complied with the directions of the Commission in Daily Order dated 09.06.2020 regarding issuing public notice in newspaper and uploading the present Petition along with public notice on its website for inviting the objections and suggestions from the stakeholders. We note that the Petitioner has not received any comments or suggestions from the stakeholders. The Petition was also uploaded on the website of the Commission in accordance with the Commission's directives and even office of the Commission has not received any comments/objections/suggestions in the present Petition from any stakeholders pursuant to the said public notice.
- 8.2. The Petitioner has referred Circular No. IEX/MO/242/2017 dated 26.05.2017 of Indian Energy Exchange in support of its contention regarding suspension of trading of Renewable Energy Certificates (RECs), which reads as under:

“.....

Suspension of REC trading session

Dear Members,

The Honorable Central Electricity Regulatory Commission has advised the Exchange to suspend the trading sessions in RECs until the stay is vacated by the Honorable Supreme Court.

As such the REC trading session shall remain suspended till further notice from Hon'ble CERC. Members are requested to kindly take note of the same. Any further developments will be intimated separately to the members.

*For and on behalf of
Indian Energy Exchange Limited
.....”*

- 8.3. Further, as regards the decision of Hon'ble Supreme Court vide Order dated 14.07.2017 modifying the previous Order dated 08.05.2017, allowing trading of Non-Solar RECs with the condition that price of Non-Solar RECs prevalent earlier and the difference between the said floor price and the floor price determined by the CERC vide Order dated 30.3.2017 in Petition No. 2/SM/2017 to be deposited with the CERC during the pendency of Appeal No. 105 of 2017 before the Hon'ble APTEL whereas, trading in Solar RECs to remain suspended until further orders, the Petitioner has referred letter dated 20.07.2017 from Secretary, CERC directing Indian Energy Exchange to commence trading of Non-Solar RECs and to continue with the suspension of Solar RECs, which reads as under:

“.....”

Sub.: Supreme Court Order dated 8.5.2017 in Civil Appeal Nos. 6083/2017 and 6334/2017 regarding CERC order dated 30.3.2017 on REC Floor & Forbearance Price

Sir,

This is in continuation of this Office letter dated 24.05.2017 (copy attached) under which the IEX was advised to suspend the trading session in both Solar and Non-Solar REC in view of the stay granted by Hon'ble Supreme Court on the Commission's order dated 30.03.2017 in Petition No 2/SM/2017 vide order dated 8.5.2017 in Civil Appeal Nos. 6083/2017 and 6334/2014.

2. Hon'ble Supreme Court in its order dated 14.7.2017 while disposing the Civil Appeal No. 6083/2017 has substituted the interim order dated 8.5.2017 by granting the following prayer of the Appellant, namely, Indian Wind Power Association:

“(c) in the alternative, direct the Respondents to ensure that any obliged entity purchasing RECs at the floor price determined vide the order dated 30.3.2017 shall deposit the difference between the earlier floor price and the present floor price with the Respondent No. 1, Central Commission during the pendency of the Appeal No. 105 of 2017 before the Appellate Tribunal.”

3. In terms of the above order, trading of non-solar RECs shall resume at the floor price of non-solar RECs prevalent earlier and the difference between the said floor price and the floor price determined by the Commission vide order dated 30.3.2017 in Petition No. 2/SM/2017 shall be deposited with the Commission during the pendency of Appeal No. 105 of 2017 before the Appellate Tribunal for Electricity. Accordingly, it has been decided to resume the trading in non-Solar RECs subject to the following conditions: -

(a) Obligated Entities/Power Exchanges shall deposit the difference between floor price prevalent earlier (i.e. Rs. 1500/MWh) and the floor price as determined vide order dated 30.3.2017 (Rs. 1000/MWh) with the Commission in SB A/c No. 209900301170005, Bank: Corporation Bank, Branch: K. G. Marg, New Delhi — 110001, Bank IFSC: CORP000102099, Branch Code: 2099.

(b) Deposit of the differential amount shall be subject to the outcome of the Appeal No. 105/2017 by the Appellate Tribunal for Electricity and further order of the Commission in this regard.

4. Trading in Solar RECs shall remain suspended until further orders, since stay order dated 8.5.2017 in Civil Appeal No. 6334/2017 filed by Green Energy Association in case of Solar REC is still in operation.

5. A copy of the judgement of Hon'ble Supreme Court is enclosed.

6. This issues with the approval of the Commission.

.....”

8.4. We also note that as regards shortage of RECs during March-2018 in the market, the Petitioner has relied on report of Indian Energy Exchange which reads as under:

*“IEX SEES RECORD HIGH TRADE OF 93.29 LAC RECs IN FISCAL 2017-18
MARKET SEES SHORT-SUPPLY OF RECs IN MARCH'18 TRADING SESSION*

With Govt. of India proactively pursuing obligated entities to fulfil their Renewable Purchase Obligation, the Non-Solar REC inventory has exhausted significantly. On 1 April 2017, the total Non-Solar inventory was 129 lacs while the closing inventory was only 14.95 lacs RECs on 28 March and going forward the REC Market is expected to see shortage situation on the sell-side.

This fiscal year the Indian Energy Exchange has accomplished record high trade of 93.29 Lac compared to 46.19 lac RECs traded in previous fiscal representing 102% increase year on year basis. This commendable achievement was realized only on the strength of trade in Non-Solar RECs while the trade Solar REC continued to be under Stay order from the Honorable Supreme Court.

In the trading session held on 28th March 2018, IEX saw trade of 20.79 lac Non-Solar RECs with reversal in buy-sell bids after almost six years. The sell bids at 20.79 lacs were short by almost 1.77 lac RECs with the buy bids at 22.56 lacs and therefore the volume cleared was 20.79 lacs.

The distribution companies from States such as: Delhi, Maharashtra, Bihar, Union Territories and Goa; the utilities such as DVC, BEST, Tata Power, Torrent as well as open access consumers and captive industries came forward to fulfil their RPO compliance in fiscal year 2017-18.

REC TRADING SESSION (NON-SOLAR) ON 28 MARCH 2018

The 28th March trading session being the last one in fiscal 2017-18 saw an increase of 433% over Feb'18 when 3,90,158 Non-Solar RECs were traded and 263% increase over March'17 when 5,72,357 Non-Solar RECs were traded.

A total of 1062 participants traded in the 28 March 2018 trading session. Overall, a total of 3518 participants are registered in the REC segment at IEX. Of this, 742 are Eligible Entities (RE Generators), 2755 are Obligated Entities (DISCOMs, Open Access Consumers & Captive Generators) and 21 are registered as Voluntary Entities.

<i>Highlights of the Non-Solar REC Trading Session held on 28 March'18</i>	
<i>Trade Volume</i>	<i>20,79,799</i>
<i>Buy Bid</i>	<i>22,56,422</i>
<i>Sell Bid</i>	<i>20,79,799</i>

<i>No. of Participants</i>	1062 <ul style="list-style-type: none"> • <i>Eligible Entities (Sellers): 575</i> • <i>Obligated/Voluntary Entities (Buyers): 487</i>
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.....”

8.5. Based on the above, the Petitioner submitted that efforts to fulfill its Non-Solar RPO obligation were made by procuring Non-Solar RECs on regular basis, but the Petitioner has not been able to fulfill the Non-Solar RPO target due to shortage of RECs in the market. As regards the Solar RPO target, the Petitioner submitted that it was not able to purchase enough Solar RECs to fulfill its Solar RPO during FY 2017-18 due to suspension of Solar RECs as per directives of the Hon'ble Supreme Court. Accordingly, it is contended by the Petitioner that the shortfall is due to factors beyond the control of the Petitioner and as per the provisions of the RPO Regulations, the Commission has powers to revise the percentages of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee.

8.6. We note that the Commission has issued the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 dated 21.04.2018 vide Notification No. 01 of 2018 notified on 23.04.2018. As per the aforesaid Regulations, the RPO obligation of the obligated entities for FY 2017-18 is as under:

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total	Wind	Solar	Biomass, Bagasse and Others
FY 2017-18	10.00	7.75	1.75	0.50

8.7. The details submitted for the RPO compliance by the Petitioner for the FY 2017-18 from various renewable energy sources, i.e. Solar, Wind and Others is considering 'Non-Solar' RPO percentage target as 8.25% consolidating the 'Wind' RPO target of

7.75% and 'Others' RPO target of 0.50% but taking into account the total power purchase requirement of 293.93 MUs it works out as under:

RPO Status	Wind	Solar	Others	Total
Total Energy (MUs)	293.93			
Percentage energy required to be procured as per Regulation	7.75%	1.75%	0.50%	10.00%
Energy in MUs required to be procured	22.780	5.144	1.470	29.393
Renewable Energy / REC Purchased (MUs)	24.220	2.380	0.000	26.600
Renewable Energy Purchased (%)	8.24%	0.81%	0.00%	9.05%
Shortfall (+) / Excess (-) (MUs)	(-) 1.440	2.764	1.470	2.793
Shortfall (+) / Excess (-) (%)	(-) 0.49%	0.94%	0.50%	0.95%

The aforesaid compliance submitted by the Petitioner is also supported by GEDA, the nodal agency for monitoring the compliance of the RPO by the obligated entities.

- 8.8. We note that the Petitioner has considered 'Non-Solar' RPO percentage target as 8.25% consolidating the 'Wind' RPO target of 7.75% and 'Others' RPO target of 0.50% and accordingly purchased Non-Solar RECs of 17.04 MUs against which achievement of 'Non-Solar' RPO is submitted as 8.24% resulting in shortfall of 0.01%. From the above table, it transpires that the Petitioner purchased 24.22 MUs of Non-Solar RECs achieving RPO compliance of 8.24% for 'Wind' RPO against the Wind RPO target of 7.75% resulting in surplus of 1.44 MUs i.e. 0.49%. It is also apparent from above table that even after considering such surplus of 1.440 MUs against the target of 1.47 MUs towards 'Others' RPO, there remains shortfall in 'Non-Solar' category of 0.029 MUs. As far as 'Solar' RPO target of 1.75% is concerned, the Petitioner has purchase Solar RECs of 0.35 MUs and 2.03 MUs of Solar energy totaling to 2.38 MUs against requirement of 5.144 MUs and thereby able to achieve 0.81% 'Solar' RPO resulting in shortfall of 2.764 MUs i.e. 0.94%. Accordingly, as per the status of compliance of the Renewable Purchase Obligation submitted by the Petitioner based on the source wise minimum percentage for

RPO specified by the Commission for Solar and Non-Solar category, the Petitioner has achieved 8.24% 'Non-Solar' RPO and 0.81% 'Solar' RPO and thereby the 'Total' RPO percentage achieved is 9.24%.

8.9. We also note that during the hearing on 08.06.2020, the Petitioner submitted that as against the above shortfall in Solar RPO compliance during FY 2017-18, the Commission may permit the Petitioner to utilize the surplus of 4 MUs of 'Non-Solar' RPO of 4% during FY 2016-17. However, the Commission vide its Daily Order dated 09.06.2020 in present Petition, rejected the aforesaid adjustment sought by the Petitioner. The relevant portion of the aforesaid Daily Order is reproduced hereunder:

“.....

3.4 As regards the submission made by the Petitioner that the Commission in its Order dated 27.05.2020 in Petition No. 1677 of 2017 revised the Non-Solar RPO target to 6.10% from 8.25% and accordingly, based on such revised Non-Solar RPO target of 6.10% and actual Non-Solar RPO achieved by the Petitioner during FY 2016-17, there is surplus of around 4 MUs during FY 2016-17 and if the Commission permits the Petitioner to utilise this surplus Non-Solar RPO of FY 2016-17 against the shortfall in the Solar RPO of the Petitioner during FY 2017-18 so that the cost of supply can be optimised to end users we make it clear that the same cannot be permitted in terms of Regulation 7.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010, which reads as under:

“.....

7. Distribution Licensee

7.1 Each distribution licensee shall indicate,

However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year

.....”

The present proceeding is for compliance of RPO targets for FY 2017-18 whereas the excess Non-Solar RPO allegedly sought for adjustment by the Petitioner is of FY 2016-17. The above referred provision clearly states that credit for excess purchase from renewable energy sources would not be adjusted in the ensuing

*year. Therefore, the plea advanced by the Petitioner to permit adjustment of surplus Non-Solar RPO of FY 2016-17 for compliance of RPO during FY 2017-18 is without any merit and cannot be sustained. Therefore, the same is rejected.
.....”*

8.10. In the aforesaid background, we deal with the issue as to whether the GERC (Procurement of Energy from Renewable Sources), Regulations, 2010 and amendments thereto permit the revision of RPO as per actuals and exempt the obligated entities from the requirement of transferring the funds to a designated account against the shortfall in Non-Solar RPO and/or Solar RPO compliance due to factors beyond the control of the obligated entities. The Petitioner submitted that the shortfall in compliance of Non-Solar RPO is due to shortage of RECs in the market and Solar non-compliance during FY 2017-18 is due to suspension of Solar RECs as per directives of the Hon'ble Supreme Court. Accordingly, it is contended that the shortfall is due to factors beyond the control of the Petitioner and as per the provisions of the RPO Regulations, the Commission has powers to revise the percentages of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee.

8.11. It is therefore necessary to refer relevant provisions of Regulation 7 read with Regulation 9 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendments thereto, under which the Commission has powers to revise the RPO percentage targets and/or the requirement of transferring the funds to a designated account against the shortfall in RPO compliance due to factors beyond the control of the Petitioner, which are reproduced below:

“.....

7.1 If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.

7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations.

.....”

The aforesaid Regulations recognize that the Commission may carry forward the shortfall of RPO percentage, if the obligated entity faced genuine difficulty and whenever the carry forward of RPO percentage is allowed by the Commission, the same has been added to the RPO requirement of the next year as per the Regulations. It also provides that whenever there is excess purchase of renewable energy by the obligated entity, no set-off is to be given for such surplus energy against the RPO percentages of the next year. It also provides that when the RPO target is not met by the obligated entity, despite availability of renewable energy sources, the Commission may impose penalty on the obligated entities.

8.12. Regulation 9.1 states about the penalty to be imposed for non-fulfillment of RPO and compensation required to be paid by the obligated entity, which reads as under:

“.....

9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:

.....”

It is also necessary to refer the fifth and sixth proviso of the aforesaid Regulation 9.1, which read as under:

“.....

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from

renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.

.....”

It is apparent from the above that the fifth proviso provides for carry forward of RPO when genuine difficulty is faced by the obligated entity in fulfillment of RPO. Similarly, the sixth proviso provides that when carry forward is allowed by the Commission, in such case no regulatory charges shall be applicable to the obligated entities.

- 8.13. Regulation 12 of the said Regulations pertains to ‘Power to remove difficulties’, which reads as under:

“12.1 The Commission shall suo-motu or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.”

Thus, the Commission is empowered for removal of difficulty, when there is an application made by any person generating electricity from the renewable energy sources or a distribution licensee or suo-motu.

- 8.14. From the combined reading of the above Regulations, it transpires that the Commission is empowered to (i) revise the RPO target, (ii) carry forward the RPO to the next year, (iii) impose penalty on the obligated entities due to non-compliance of the RPO, (iv) grant exemption from payment of regulatory charge for non-compliance of the RPO, and (v) add, amend or alter the RPO Regulations as a part of removal of difficulties by passing an appropriate order.

- 8.15. The Petitioner has submitted that Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 provides for revising the RPO targets in case of supply constraints or factors beyond the control of the concerned obligated entity and as per the provisions of RPO Regulations, the Commission has power to give relaxation as may be deemed necessary in the scenario of RE supply constraints or other factors not attributable to concerned distribution licensee.
- 8.16. In this regard it is necessary to refer Regulation 4.1 and Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010, the GERC (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014, and the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018, as under:

GERC (Procurement of Energy from Renewable Sources) Regulations, 2010:

“4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.

The defined minimum percentages are given below in the Table 1.

Table 1

Year (1)	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.50%	0.50%
2012-13	7%	5.5%	1.00%	0.50%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.

Provided further that such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by the obligated entity concerned:

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.

4.2 The Commission may, suo-motu or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these Regulations keeping in view supply constraints or other factors beyond the control of the licensee.”

GERC (Procurement of Energy from Renewable Sources) First Amendment, Regulations, 2014:

“4) Substitution of Table 1 of Regulation 4.1

The table 1 provided in Principal Regulation 4.1 shall be substituted by following table 1

	<i>Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)</i>			
<i>Year</i>	<i>TOTAL</i>	<i>Wind</i>	<i>Solar</i>	<i>Others (Biomass, Bagasse, MSW, etc.)</i>
<i>2010-11</i>	<i>5.00</i>	<i>4.50</i>	<i>0.25</i>	<i>0.25</i>
<i>2011-12</i>	<i>6.00</i>	<i>5.00</i>	<i>0.50</i>	<i>0.50</i>
<i>2012-13</i>	<i>7.00</i>	<i>5.50</i>	<i>1.00</i>	<i>0.50</i>
<i>2013-14</i>	<i>7.00</i>	<i>5.50</i>	<i>1.00</i>	<i>0.50</i>
<i>2014-15</i>	<i>8.00</i>	<i>6.25</i>	<i>1.25</i>	<i>0.50</i>
<i>2015-16</i>	<i>9.00</i>	<i>7.00</i>	<i>1.50</i>	<i>0.50</i>
<i>2016-17</i>	<i>10.00</i>	<i>7.75</i>	<i>1.75</i>	<i>0.50</i>

.....”

GERC (Procurement of Energy from Renewable Sources) (Second Amendment), Regulations, 2018

“3) Substitution of Table I of Regulation 4.1:

Table I provided in the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 is substituted by following Table - I and II:

TABLE - I

	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
Year	Wind	Solar	Others (Biomass, Bagasse, MSW, etc.)	Total
(1)	(2)	(3)	(4)	(5)
2010-11	4.50	0.25	0.25	5.0
2011-12	5.00	0.50	0.50	6.0
2012-13	5.50	1.00	0.50	7.0
2013-14	5.50	1.00	0.50	7.0
2014-15	6.25	1.25	0.50	8.0
2015-16	7.00	1.50	0.50	9.0
2016-17	7.75	1.75	0.50	10.0

TABLE - II

	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
Year	Wind	Solar	Others (Biomass, Bagasse, MSW, etc.)	Total
(1)	(2)	(3)	(4)	(5)
2017-18	7.75	1.75	0.50	10.00
2018-19	7.95	4.25	0.50	12.70
2019-20	8.05	5.50	0.75	14.30
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.00	0.75	17.00

3) Substitution of para 2 of the Principal Regulation 4.1:

If the above mentioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5.

.....”

As per second amendment in RPO Regulation, the RPO trajectory stipulated under 'Table-II' is applicable for the period from FY 2017-18 to FY 2021-22. As provided in the above 'Table-II', the RPO for 2017-18 has been fixed at 10% consisting of 7.75% from Wind, 1.75% from Solar and 0.50% from Other Renewable Sources. Further, the aforesaid amended Regulation 4.1 provides that in case of non-availability of Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) renewable energy, in a particular year, shortfall of such energy, be made good through the energy available either from Solar or Wind or Other sources of energy including Biomass, Bagasse etc., whereas; Regulation 4.2 provides that keeping in view supply constraints or other factors beyond the control of the licensee, the Commission may suo-motu or at the request of a licensee, revise the percentage targets as per the aforesaid Regulation 4.1 for a year.

- 8.17. We further note that the Hon'ble APTEL in Appeal No. 24 of 2013 filed by the Appellant, Indian Wind Energy Association V/s. GERC & others has dealt with aforesaid aspects in its judgment dated 25.04.2014 and recorded as under:

".....

63. *Summary of our findings:*

- (i). *Appeal filed by the association of wind energy project developers against the impugned order of the State Commission allowing relaxation in Renewable Purchase obligation of the distribution licensees is maintainable.*
- (ii). *Since the present case is the first suo-motu review of compliance of the RPO obligations after the notification of the RPO Regulations and in view of the fact that there was no specific regulation for public notice for such reviews, we do not want to hold that the absence of public notice in the suo motu proceeding was illegal. However, we feel that in the proceedings before the State Commission either suo motu or on a petition by a party, regarding review of RPOs in which consequential directions for relaxation or carry forward of RPO or creation of regulatory fund are given, public*

notice inviting suggestions and objections of the stakeholders is necessary. We have given some directions for future under paragraphs 29 and 30.

- (iii). We do not find any infirmity in the State Commission revising the RPO for FY 2010-11 by exercising its power under Regulation 4.2 of the RPO Regulations, 2010, in view of the reasons beyond the control of the distribution licensees.*
- (iv). We do not see any infirmity in the distribution licensee setting priority to procure renewable energy by entering into PPAs with the renewable energy generators to meet their RPO targets when the State is endowed with adequate renewable energy sources. However, if the distribution licensees are not able to make arrangements to procure adequate renewable energy to meet the RPO targets, then they have to resort to alternate mechanism of REC specified in the Regulations to meet the shortfall in RPO. The aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission properly. On one hand, it decided that the GUVNL and its subsidiary distribution licensees did not make efforts to purchase REC and on the other hand it held that adequate REC were not available. No reason was given to come to conclusion that adequate REC were not available.*
- (v). FY 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during 2011-12 to 2012-13 the objective of meeting the RPO obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPO during FY 2011-12. We have, however, given some guidelines to the State Commission for future under paragraph 55(A) to (D).*
- (vi). We do not find any infirmity in the State Commission exercising its powers under Regulation 4.2 for adjustment of excess solar energy procured against Non-Solar RPO in the circumstances of the present case.*

64. *In view of above, the Appeal is partly allowed to the extent as indicated above. We have also given some directions/guidelines to the State Commission to be followed in future. No order as to cost.*

.....”

8.18. The said aspect is also dealt in Appeal No. 258 of 2013 filed by the Indian Wind Power Association before the Hon’ble APTEL and the Hon’ble APTEL vide Order dated 16.04.2015 decided as under:

“.....

71. *Summary of our findings:*

- (i) *The National Tariff Policy and the Regulation of the Central Commission and the State Commission recognize REC as valid instrument for fulfilling Renewable Purchase Obligation cast upon the obligated entities under Section 86(1)(e) of the Electricity Act, 2003. Purchase of REC would be deemed as purchase of energy from renewable energy source for fulfilling RPO obligation. When a legal fiction has been created by a statute, the same should be given full effect.*
- (ii) *An obligated entity has option to fulfill its RPO either by procuring renewable energy in physical form or by REC or partly by REC and partly by physical renewable energy. However, a distribution licensee has to exercise the option based on economic principles. An obligated entity other than the distribution licensee may also opt for purchase of REC for fulfilling its RPO obligation to avoid the issues involved in banking, open access, sale of surplus power, etc., or if the RPO requirement is too small.*
- (iii) *Renewable energy generators like conventional generators have been given freedom under the Electricity Act in respect of choice of site, choice of counter-party buyer, freedom from tariff regulation when the generating company supplies to a trader or directly to a consumer. So far, the renewable energy generators were not able to exercise this freedom due to various constraints. The REC mechanism has opened up the market for renewable energy generators helping in expeditious exploitation of renewable energy potential in the country thus, serving the object of the Electricity Act, 2003. Thus, REC mechanism has to be encouraged. By treating REC as a valid instrument for discharge of mandatory RPO as set out in the Regulations, the State commission has only followed the*

mandate of the Electricity Act, 2003 under Section 86(1)(e) for promotion of renewable sources of energy in the State.

- (iv) The State Commission can revise the RPO before or during a year or after passing of year under Regulation 4.2 of RE Regulation 2010 as explained under paragraphs 47 to 51 above. If the distribution licensee has not made efforts to procure requisite renewable energy to fulfill the RPO and also has not procured REC, the State Commission should not revise RPO under Regulation 4.2. However, while revising the RPO targets, the State commission has to ensure that such revision should not defeat the object of the Electricity Act and the Regulations.*
- (v) If the RPO targets are revised under Regulation 4.2 due to inadequate capacity addition in a resource rich State, such reduction has to be uniform for all the entities.*
- (vi) Under 5th proviso to Regulation 9, if the Commission is convinced that the obligated entity has faced genuine difficulty in meeting the RPO due to non-availability of power from renewable sources or the REC, it may allow carry forward the compliance requirement to the next year. However, before exercising power under Regulation 9, the State Commission has to satisfy itself that there was difficulty in meeting the RPO from purchase of REC. Therefore, non-availability of REC is a pre-condition for carry forward under Regulation 9.*
- (vii) Admittedly there was substantial reduction in capacity addition of wind energy and other sources of renewable energy in the State during FY 2012-13 due to reasons beyond the control of the distribution licensee. Under such a condition the State Commission can reduce RPO targets for the wind energy and other energy. However, such reduction due to capacity constraints has to be uniform for all the obligated entities in the State.*
- (viii) In the present case, the State Commission has revised the RPO targets for various distribution licensees as per the actual. This way the State Commission has set up different RPO targets for four States owned distribution license, Torrent Power Surat and Ahmedabad at different levels for the same reason of inadequate capacity addition. This is not permissible. The State Commission has incorrectly revised the RPO for the deemed distribution licensees to zero or nearly negligible amount due to*

financial impact, low energy consumption, nascent stage of operation etc., in contravention to the Regulations.

- (ix) We find that RPO compliance of GUVNL for wind energy was satisfactory but compliance of biomass and other non-solar energy was quite low due to which there was default in fulfilling the non-solar RPO. Thus, during FY 2012-13 there appeared to be inadequate generation of biomass and other non-solar energy sources in the State. The State Commission has to examine the reasons for the same and take necessary measures for accelerating capacity addition of biomass and other sources of renewable energy in the State.*
- (x) We remand the matter to the State Commission to reconsider the whole issue afresh in light of our findings in this judgment. The State Commission is empowered to reduce the RPO targets for all the entities uniformly in view of reduction in capacity addition of wind energy and other sources in the State during the FY 2012-13. However, the consequences of shortfall with respect to the revised RPO for different distribution licensees/deemed distribution licensees has to be decided by the State Commission according to Regulation 9.*
- (xi) We do not find any infirmity in the State Commission relaxing the RPO for those deemed distribution licensees who purchase energy from GUVNL/distribution licensees at retail supply tariff and their consumption is included in determining the RPO of the supplying distribution licensee.*
- (xii) In the circumstances of the case, we do not want to interfere with the decision of the State Commission to set off the shortfall in non-solar energy purchase with excessive solar energy procured during FY 2012-13. However, we have given certain directions in this regard for future in paragraph 68 above.*
- (xiii) As regards public hearing for review of RPO, we have already given the necessary directions in our judgment in Appeal No. 24 of 20013 which have been reproduced under paragraph 27.*

.....”

8.19. From the aforesaid decisions of the Hon'ble APTEL, it is clear that Hon'ble APTEL had recognized that revision of the RPO targets before or during a year or after passing of the year by exercising its power under Regulation 4.2 of the RPO

Regulations, 2010 by the Commission, in view of the reasons beyond the control of the distribution licensees or due to inadequate capacity addition in a resource rich State is permissible.

8.20. We also note that the Hon'ble APTEL in the judgment dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 at para 48 recorded as under:

“.....

48. *RE Regulation, 2010 dated 17.4.2010 specified RPO for three years (2010-11 to 2012-13) with increasing quantum of RPO every year. Under Regulation 4.2, the RPOs can be revised before the beginning or during a financial year for that year if the State Commission is convinced that the targets set up by it are unrealistic and cannot be achieved. For example, on the basis of the experience of FYs 2010-11 and 2011-12, if the State Commission feels that the targets set up by the Commission for FY 2012-13 are high and unrealistic, it may revise the same at the beginning of FY 2012-13 or during FY 2012-13. The State Commission may also revise the targets during a year due to force majeure such as natural calamity occurring during the year due to which it becomes impossible to achieve the RPO targets.*

.....”

Thus, the Hon'ble Appellate Tribunal while interpreting Regulation 4.2 read with Regulation 4.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 has recorded with clear findings on the powers of the Commission to revise the Renewable Purchase Obligation targets, if the same are found unrealistic considering the availability of renewable energy in the State.

8.21. Further, the finding recorded in para-49 of the Order dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 by the Hon'ble Appellate Tribunal is reproduced below:

“.....

49. *The State Commission may also revise the targets after the completion of financial year under Regulation 4.2 due to supply constraints or factors beyond the control of the licensee which may be due to reasons such as:*

- i) *Actual renewable energy generation is below normative generation from tied up renewable energy sources due to reasons beyond the control of the distribution licensee.*
- ii) *Force majeure such as natural calamity resulting in supply constraints.*
- iii) *Inadequate capacity addition in the State and RECs could not be purchased due to non-availability of REC despite efforts made by the distribution licensee. In a resource rich State where the State Commission had set up RPO targets keeping in view the anticipated capacity addition in the State, the State Commission may also revise the targets due to inadequate renewable capacity addition in the State.*
- iv) *Minimum energy purchase obligation for renewable sources of energy was fixed on estimated energy consumption of the licensee in the ARR based on estimated growth but the actual consumption has been much lower due to slow growth or negative growth or due to forced majeure. Thus, percentage RPO on actual energy consumption was met but minimum energy purchase target fixed in the ARR based on anticipated energy consumption could not be met.*
- v) *A distribution licensee has proposed to meet a part or full RPO by purchase of REC but REC could not be purchased, despite efforts made by the licensee, due to non-availability of REC.*

.....”

As per the above decision of the Hon’ble Appellate Tribunal for Electricity, the Commission has powers to revise the Renewable Purchase Obligation targets under Regulation 4.2 in case the State Commission finds it necessary to revise the target due to inadequate Renewable Capacity Addition.

8.22. In the event of such revision in the Renewable Purchase Obligation targets set up under Regulation 4.1, there cannot be any further consideration of the availability of Renewable Energy Certificates. In this regard, para 51 of the Hon’ble Tribunal’s

judgement dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 is reproduced below:

“

51. *We want to add that non-availability of REC may not always be a pre-condition for exercise of power to revise under Regulation 4.2. For Example, if the distribution licensees had tied up adequate capacity at preferential tariff but due to actual generation being lower than the normative generation due to reasons beyond the control of the distribution licensee or there is natural calamity in the State and energy consumption in the State has gone down or renewable energy generation in the State has been affected due to natural calamity then shortage of REC may not be a pre-condition to revise RPO targets set up under Regulation 4.1. Further, if in a resource rich State, the State Commission has set up RPO targets keeping in view anticipation of capacity addition in the State, the State Commission may also revise the targets due to inadequate capacity addition in the State due to reasons beyond the control of the distribution licensee.*

.....”

The Hon’ble APTEL decided that non-availability of RECs may not always be a pre-condition for exercise of powers under Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010. The Commission may also revise the RPO targets in case of actual generation being lower than the normative generation due to reasons beyond the control of the Distribution Licensee or there is a natural calamity or inadequate capacity addition in the State.

8.23. We note that in the present case, the non-availability of RECs was on account of suspension of both Solar and Non-Solar REC in view of the stay granted by the Hon’ble Supreme Court vide its Order dated 08.05.2017 in Civil Appeal Nos. 6083/2017 and 6334/2014 on the Central Electricity Regulatory Commission's Order dated 30.03.2017 in Petition No 2/SM/2017 and accordingly, IEX was advised to suspend the trading session of RECs by the CERC and accordingly, the trading of RECs was suspended by IEX vide its Circular dated 26.05.2017. Although, trading of Non-Solar RECs resumed pursuant to Order dated 14.07.2017 of the Hon’ble

Supreme Court, substituting its interim order dated 08.05.2017 while disposing the Civil Appeal No. 6083/2017, the trading in Solar RECs remain suspended, since stay Order dated 08.05.2017 in Civil Appeal No. 6334/2017 remained in operation. Accordingly, the trading in Solar RECs remain suspended and was resumed by IEX from 25.04.2018 after a gap of almost one year apropos an advisory from CERC subsequent to judgment dated 12.04.2018 by Hon'ble APTEL in Appeal No. 95 of 2017 and allied matters. Thus, plea advanced by Petitioner regarding non-availability of Solar RECs due to stay by Hon'ble Supreme Court post 26.05.2017 appears to be correct. So far as shortage of Non-Solar REC in market is concerned, it emerges from the Report of IEX for the trading session held on 28.3.2018 filed by the Petitioner, 20,79,799 Non-Solar RECs were traded since 'Sell Bid' were only 20,79,799 against 'Buy Bid' of 22,56,422 with reversal in buy-sell bids after almost six years. The sell bids at 20.79 lacs were short by almost 1.77 lac RECs with the buy bids at 22.56 lacs and therefore the volume cleared was 20.79 lacs, which shows shortage of Non-Solar REC on the last day of trading for FY 2017-18.

- 8.24. We now need to examine the issue of whether capacity addition of renewable energy sources during FY 2017-18 was adequate or not because cogent reading of para 49 (iii) and 51 of Hon'ble APTEL's judgment, which clearly establishes that in resource rich State, the Commission can revise the RPO targets in case of inadequate capacity addition, irrespective of the fact whether RECs are available or not. The inadequate addition of renewable energy capacity is independent ground for revision of Renewable Purchase Obligation targets of the entity concerned. Regulation 4.1 notified by the Commission prescribes the RPO targets for compliance by the obligated entities. Regulation 4.2 empowers the Commission to revise the targets. Regulation 5 says that renewable energy certificate is an instrument for fulfillment of RPO. Therefore, while deciding the issue, whether there was a supply constraint or not and for revision of RPO, para 51 of the above referred judgment of the Hon'ble APTEL wherein it is held that non-availability of RECs is not a condition precedent to revise the RPO targets and in a resource rich

State, the State Commission is empowered to revise the targets due to inadequate RE capacity addition and reasons beyond control of the Distribution Licensees. The said judgment nowhere restricts the powers of this Commission to consider “relevant factors” for revision of the RPO targets. The Hon’ble Tribunal in the aforesaid judgment decided that revision of the RPO targets applies uniformly for all licensees on the basis of lower availability of RE capacity addition.

- 8.25. In view of above, the availability of renewable energy sources needs to be ascertained prior to revising the RPO targets or allowing carry forward or imposing penalty on the obligated entity. The availability of renewable energy sources is dependent on the potential of renewable energy generation in the State and outside.
- 8.26. Prior to deciding the requirement of revision of the RPO targets, it is necessary to verify as to whether there was adequate renewable capacity addition in the State or not for fulfillment of RPO targets by the obligated entities and whether the generation from such capacity was available to the obligated entities during the year. Accordingly, capacity addition in respect of various renewable sources of generation, i.e. Wind and Solar within the State as well as at the national level was verified by the Commission as tabulated below:

Addition of Wind Capacity

Sr. No	Financial Year	Gujarat (MW)	Nationwide (MW)	Percentage (%) addition in Gujarat
1	2014-15	190	2312	8.22%
2	2015-16	391	3423	11.42%
3	2016-17	1303	5526	23.58%
4	2017-18	512	2706	18.92%
Total		2396	13967	17.15%

(Source: http://mospi.nic.in/sites/default/files/publication_reports/Energy_Statistics_2019.pdf)

Addition of Solar Capacity

Sr. No	Financial Year	Gujarat (MW)	Nationwide (MW)	Percentage (%) addition in Gujarat
1	2014-15	116	1112	10.43%
2	2015-16	124	3019	4.11%
3	2016-17	130	5413	2.40%
4	2017-18	398	12024	3.31%
Total		768	21568	3.56%

(Source: http://mospi.nic.in/sites/default/files/publication_reports/Energy_Statistics_2019.pdf)

- 8.27. From the aforesaid table of 'Addition of Wind Capacity', it transpires that Wind capacity added during FY 2017-18 both at the State level as well as National level has reduced during FY 2017-18 as compared to previous FY 2016-17. Wind capacity addition during FY 2017-18 was only 39.29% of previous year Wind capacity addition in Gujarat whereas; at National level the same was 48.97%. It also transpires that 2396 MW of Wind capacity was added in Gujarat as compared to 13967 MW capacity addition at the National level during the period of 4 years from FY 2014-15 to FY 2017-18. Moreover, on comparison of addition in wind capacity from FY 2014-15 to FY 2016-17, it shows upward trend, both at the State level as well as at the National level, but during FY 2017-18 there is significant reduction in Wind capacity addition.
- 8.28. We note that the increase in RPO percentage is required to be considered taking into account the incremental consumption of the licensees in the State while comparing the incremental capacity of wind energy generation in the State as well as at the National Level. The Renewable Purchase Obligation specified as per Regulations of the Commission of Wind energy for FY 2015-16 was 7.00% and for FY 2016-17 & FY 2017-18 it was 7.75%. It is also necessary to record that the energy consumption as per the trued-up figures approved by the Commission in its different Tariff Orders of the distribution licensees within the State viz. PGVCL, DGVCL, UGVCL, MGVCL, TPL-D (Ahmedabad & Surat), TPL-D (Dahej) and MUPL in FY 2015-16 was 90797 MUs, for FY 2016-17 was 91345 MUs and FY 2017-18 was

99401 MUs. This shows year on year increase in total consumption in the distribution licensees area during these three years. The total consumption in the distribution license area within the State has increased significantly by 8.80% i.e. 8056 MUs during FY 2017-18 as compared to previous FY 2016-17. It is, therefore, necessary to factor such incremental consumption, although the target RPO specified for Wind energy is same for FY 2016-17 and FY 2017-18 i.e. 7.75%, while deciding the issue. It is also observed that the Wind capacity addition during FY 2017-18 at National level and State level has reduced compared to previous year. As noted above, the addition in Wind Capacity during FY 2017-18 is only around 39% of previous year whereas that at National level is around 49% and was not adequate leading to lower wind power.

8.29. As far as Solar capacity addition is concerned, it transpires from the table of 'Addition of Solar Capacity' above that there was total addition of 768 MW of Solar capacity in Gujarat as compared to 21568 MW capacity addition at the National level during the period of 4 years from FY 2014-15 to FY 2017-18. Moreover, on comparison of addition in Solar capacity from FY 2014-15 to FY 2016-17, it shows uniform trend at the State level with marginal increase on year-on-year basis whereas at the National level there is upward trend. The capacity addition of Solar power is ranging from 116 MW to 130 MW at the State level during these years. However, during FY 2017-18, the Solar capacity addition at the State level and National level is noteworthy. Simultaneously, as noted above total consumption in the distribution license area within the State shows increasing trend with significant increase of 8056 MUs during FY 2017-18.

8.30. As noted above, the Petitioner submitted that it has not been able to meet the RPO targets due to factors beyond the control of the Petitioner and accordingly, seeking revision of RPO targets for FY 2017-18.

- 8.31. We note that Torrent Power Limited filed Petition No. 1754 of 2018 for its license area of Ahmedabad/Gandhinagar and Surat submitting its RPO compliance for FY 2017-18 as against the RPO targets stipulated under 'Table II' of Regulation 4.1 of the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 considering total energy requirement as 11452.15 MUs during FY 2017-18 while seeking adjustment of surplus Solar RPO against shortfall in Non-Solar RPO in terms of para 2 of Regulation 4.1 of the aforesaid Regulations.
- 8.32. We also note that M/s ASPEN Infrastructure Limited and M/s Jubilant Infrastructures Limited have respectively filed Petition No. 1726 of 2018 and Petition No. 1742 of 2018 pertaining to their respective RPO compliance and revision/exemption of Renewable Purchase Obligation.
- 8.33. We further note that since no Petitions were filed regarding RPO compliance for FY 2017-18 by GUVNL on behalf of its subsidiary distribution licensees viz. PGVCL, UGVCL, MGVCL & DGVCL as well as by Torrent Power Ltd. for its license area of Dahej, Deendayal Port Trust (DPT) and GIFT Power Company Limited (GIFT), the Commission decided to initiate suo-motu proceedings for compliance of RPO of FY 2017-18 vide Suo-motu Petition No. 1872 of 2020 for these licensees as party Respondents including GEDA. We also note that in the RPO Status Report of Obligated Entities for FY 2017-18 mentioned at Annexure-I of the Suo-motu Petition 1872 of 2020 regarding renewable energy procured in respect of GUVNL for Non-Solar (Wind and Others) is considered as 6433 MUs and for Solar as 1551 MUs. However, in the reply filed by GUVNL in Suo-motu proceedings it has submitted that renewable energy procured by GUVNL from Wind, Solar and Other renewable sources is 6671 MUs, 1744 MUs and 76 MUs respectively. We also note that the other Respondents in aforesaid Suo-motu Petition viz. TPL (Dahej), DPT, GIFT and GEDA have also filed their submissions in the matter.

8.34. Accordingly, the RPO targets for FY 2017-18 and compliance thereof submitted by the Petitioner and other distribution licensees is as under:

Particulars	UOM	FY 2017-18		
		Target RPO	Achieved	Surplus (-) / Shortfall (+)
GUVNL				
Energy Required		84679.00		
Wind	%	7.75%	7.88%	-0.13%
	MUs	6562.623	6671.000	-108.378
Solar	%	1.75%	2.06%	-0.31%
	MUs	1481.883	1744.000	-262.118
Others	%	0.50%	0.09%	0.41%
	MUs	423.395	76.000	347.395
Total	%	10.00%	10.03%	-0.03%
	MUs	8467.900	8491.000	-23.100
TPL Ahmedabad & Surat				
Energy Required		11452.15		
Wind	%	7.75%	8.24%	-0.49%
	MUs	887.542	944.050	-56.508
Solar	%	1.75%	2.59%	-0.84%
	MUs	200.413	296.960	-96.547
Others	%	0.50%	0.00%	0.50%
	MUs	57.261	0.000	57.261
Total	%	10.00%	10.84%	-0.84%
	MUs	1145.215	1241.010	-95.795
TPL Dahej				
Energy Required		322.51		
Wind	%	7.75%	8.80%	-1.05%
	MUs	24.995	28.370	-3.375
Solar	%	1.75%	3.22%	-1.47%

	MUs	5.644	10.380	-4.736
Others	%	0.50%	0.00%	0.50%
	MUs	1.613	0.000	1.613
Total	%	10.00%	12.02%	-2.02%
	MUs	32.251	38.750	-6.499
MPSEZ				
Energy Required		293.93		
Wind	%	7.75%	8.24%	-0.49%
	MUs	22.780	24.220	-1.440
Solar	%	1.75%	0.81%	0.94%
	MUs	5.144	2.370	2.774
Others	%	0.50%	0.00%	0.50%
	MUs	1.470	0.000	1.470
Total	%	10.00%	9.05%	0.95%
	MUs	29.393	26.590	2.803

8.35. We note that GUVNL has worked out its above RPO compliance considering the total power purchase requirement of 84679 MUs and submitting that it has successfully achieved the RPO Compliance of 10.03% against the target RPO of 10% for FY 2017-18. However, as per various details submitted in tariff determination and True-up for FY 2017-18 by GUVNL, the actual trued-up total energy requirement is 87332 MUs instead of 84679 MUs considered by GUVNL for working out the RPO compliance for FY 2017-18. Accordingly, the percentage of renewable energy procured and Shortfall/Surplus against the RPO targets of above licensees including GUVNL as per above table stands revised as under:

Particulars	UOM	FY 2017-18		
		Target RPO	Achieved	Surplus (-) / Shortfall (+)
GUVNL				
Energy Required		87332.00		

Wind	%	7.75%	7.51%	0.24%
	MUs	6562.623	6357.000	205.623
Solar	%	1.75%	1.83%	-0.08%
	MUs	1481.883	1551.000	-69.117
Others	%	0.50%	0.09%	0.41%
	MUs	423.395	76.000	347.395
Total	%	10.00%	9.43%	0.57%
	MUs	8467.900	7984.000	483.900
TPL Ahmedabad & Surat				
Energy Required		11452.15		
Wind	%	7.75%	8.24%	-0.49%
	MUs	887.542	944.050	-56.508
Solar	%	1.75%	2.59%	-0.84%
	MUs	200.413	296.960	-96.547
Others	%	0.50%	0.00%	0.50%
	MUs	57.261	0.000	57.261
Total	%	10.00%	10.84%	-0.84%
	MUs	1145.215	1241.010	-95.795
TPL Dahej				
Energy Required		322.51		
Wind	%	7.75%	8.80%	-1.05%
	MUs	24.995	28.370	-3.375
Solar	%	1.75%	3.22%	-1.47%
	MUs	5.644	10.380	-4.736
Others	%	0.50%	0.00%	0.50%
	MUs	1.613	0.000	1.613
Total	%	10.00%	12.02%	-2.02%
	MUs	32.251	38.750	-6.499
MPSEZ				
Energy Required		293.93		

Wind	%	7.75%	8.24%	-0.49%
	MUs	22.780	24.220	-1.440
Solar	%	1.75%	0.81%	0.94%
	MUs	5.144	2.370	2.774
Others	%	0.50%	0.00%	0.50%
	MUs	1.470	0.000	1.470
Total	%	10.00%	9.05%	0.95%
	MUs	29.393	26.590	2.803

- 8.36. From the above table it is apparent that GUVNL is also unable to comply the Non-Solar RPO as well as total RPO targets specified by the Commission for FY 2017-18. While in case of TPL-Ahmedabad & Surat and TPL-Dahej there is surplus of 95.795 MUs and 6.499 MUs of renewable energy after meeting the total RPO target.
- 8.37. As noted in earlier para's of this Order the capacity addition of wind energy was quite low during the FY 2017-18 in the country as well as in the State of Gujarat. We are also aware that no significant capacity addition has taken place of 'Other' renewable sources, i.e. Small hydro, Biomass, Bagasse, etc. in the State. Solar capacity has remained almost uniform at the State level from FY 2014-15 to FY 2016-17, although during FY 2017-18, the Solar capacity addition at the State level is noteworthy. However, simultaneously the total consumption in the area of distribution licensees has also increased from 86129 MUs in FY 2014-15 to 99401 MUs in FY 2017-18 i.e. increase of 13272 MUs in past four years. Thus, Renewable Energy addition and availability for RPO compliance is inadequate as against considerable increase in total consumption in the area of distribution licensees during past four years. The GERC (Procurement of Energy by Renewable Sources) (Second Amendment) Regulations, 2018 provide separate RPO for Wind, Solar and Others. The availability of the renewable energy in the State was lower, which affected the requirement of the Distribution Licensees, which are obligated entities to meet their RPO requirements.

8.38. From the above observations we are of view that there were supply constraints of renewable energy in the State of Gujarat during FY 2017-18. Accordingly, the Commission decides to consider the actual level of achievement for the State to arrive at the weighted average of RPO compliance level. We, therefore, decide to revise the RPO of the distribution licensees of the State by adopting the weighted average formula in which the renewable energy actually procured towards the RPO compliance for FY 2017-18 by the distribution licensees is considered and decide to revise the RPO target in percentage and the status of RPO compliance by the Petitioner and other obligated entities during F.Y. 2017-18 as under:

Particulars	UOM	FY 2017-18		
		Target RPO	Achieved	Surplus (-) / Shortfall (+)
GUVNL				
Energy Required		87332.00		
Wind	%	7.75%	7.51%	0.24%
	MUs	6562.623	6357.000	205.623
Solar	%	1.75%	1.83%	-0.08%
	MUs	1481.883	1551.000	-69.117
Others	%	0.50%	0.09%	0.41%
	MUs	423.395	76.000	347.395
Total	%	10.00%	9.43%	0.57%
	MUs	8467.900	7984.000	483.900
TPL Ahmedabad & Surat				
Energy Required		11452.15		
Wind	%	7.75%	8.24%	-0.49%
	MUs	887.542	944.050	-56.508
Solar	%	1.75%	2.59%	-0.84%
	MUs	200.413	296.960	-96.547
Others	%	0.50%	0.00%	0.50%

	MUs	57.261	0.000	57.261
Total	%	10.00%	10.84%	-0.84%
	MUs	1145.215	1241.010	-95.795
TPL Dahej				
Energy Required		322.51		
Wind	%	7.75%	8.80%	-1.05%
	MUs	24.995	28.370	-3.375
Solar	%	1.75%	3.22%	-1.47%
	MUs	5.644	10.380	-4.736
Others	%	0.50%	0.00%	0.50%
	MUs	1.613	0.000	1.613
Total	%	10.00%	12.02%	-2.02%
	MUs	32.251	38.750	-6.499
MPSEZ				
Energy Required		293.93		
Wind	%	7.75%	8.24%	-0.49%
	MUs	22.780	24.220	-1.440
Solar	%	1.75%	0.81%	0.94%
	MUs	5.144	2.370	2.774
Others	%	0.50%	0.00%	0.50%
	MUs	1.470	0.000	1.470
Total	%	10.00%	9.05%	0.95%
	MUs	29.393	26.590	2.803

Weighted Average RPO on the basis of compliance achieved:

RPO Category		Target RPO	RPO Achieved
Wind	%	7.75%	7.71%
	MUs	7703.546	7667.640
Solar	%	1.75%	2.07%
	MUs	1739.510	2053.720

Others	%	0.50%	0.08%
	MUs	497.003	76.000
Total	%	10.00%	9.86%
	MUs	9940.059	9797.360

8.39. As far as the RPO for Solar energy is concerned, we observe that the weighted average RPO on basis of actual RPO achieved works out to 2.07% as against 1.75% specified by the Commission in RPO Regulation. We note that there is shortfall in Solar RPO compliance by the Petitioner on account of non-availability of Solar RECs due to stay by Hon'ble Supreme Court. However, the trading of RECs was suspended by IEX vide its Circular dated 26.05.2017 and therefore, trading of RECs was taking place during the period from 01.04.2017 till the same was suspended on account of stay by Hon'ble Supreme Court during which the Petitioner had the opportunity to purchase the same. We further note that in order to fulfil its Solar RPO target, as per submissions made by the Petitioner, it is availing the Renewable attributes of around 1.79 MW Solar PV panels installed on rooftops by bulk consumers located in MUPL license area for their captive use and according to Petitioner's submission the same is likely to increase upto 3.32 MW. As regards the balance Solar RPO target it is submitted that, the Petitioner is purchasing RECs in place of renewable power since its obligation is very less due to small consumer base/demand, majority of its customers are bulk consumers who can easily migrate to other power sources through open access and in case renewable energy is tied up through long term agreements then financial burden on other consumers will increase. It is further submitted that no seller has approached the Petitioner for tie-up of renewable power for such a small quantum. We are not inclined to accept aforesaid reasons advanced by the Petitioner because irrespective of consumer base or their demand, the Petitioner needs to make appropriate arrangements for fulfilling its obligation of renewable energy as specified by the Commission. The Petitioner after accounting for renewable attribute that can be availed from the

Solar PV panels installed on rooftops by bulk consumers may tie-up balance power. Although, REC is a valid instrument for discharging the renewable obligation, it is fact that no tie up of Solar power made by the Petitioner when adequate Solar capacity is available in the State and that the weighted average Solar RPO on basis of actual Solar RPO achieved works out to 2.07% for the State. As regards revising the Solar RPO upward from 1.75% to 2.07%, we note that if the Solar RPO is revised from 1.75% to 2.07%, it would further burden the licensees as well the consumers.

8.40. The preamble of the Electricity Act, 2003, Tariff Policy and National Electricity Policy mandate the State Electricity Regulatory Commission to protect the interest of the consumers as specified under Section 61(d) and 94 of the Act and also promote co-generation and generation of electricity from the renewable energy sources as specified under Section 61 (h) and 86 (1) (e) of the Act. Thus, the role of the Commission is to balance the interest of the consumers as well as the promotion of renewable energy. We are, therefore, of the view that the Solar RPO need not be revised to 2.07% and therefore, we decide to maintain the Solar RPO at the level of 1.75% as stipulated in the Regulations. The Petitioner and other obligated entities shall be required to fulfill the Solar RPO @ 1.75% of their energy consumption of FY 2017-18. We also make it clear that the Solar RPO compliance @ 1.75% is to be fulfilled after adjustment of carry forward of Solar energy, if any, of previous years.

9. On the basis of above, we decide to revise the Renewable Purchase Obligations for the 'Wind' and 'Others' category as under:

RPO Category	RPO as per the Regulations notified by the Commission	Revised RPO Percentage
Wind	7.75%	7.71%
Others	0.50%	0.08%
Total Non-Solar	8.25%	7.79%

As regards Solar RPO, the same shall be 1.75% as decided above.

- 9.1. Considering the above, the compliance of Non-Solar RPO, Solar RPO and Total RPO for FY 2017-18 of the Petitioner works out as under:

RPO Category	UOM	Revised RPO Target	RPO Achieved	Surplus (-) / Shortfall (+)
Non-Solar	%	7.79%	8.24%	-0.45%
	MUs	22.897	24.220	-1.323
Solar	%	1.75%	0.81%	0.94%
	MUs	5.144	2.380	2.764
Total	%	9.54%	9.05%	0.49%
	MUs	28.041	26.600	1.441

- 9.2. We note that the Petitioner, MUPL has complied with the Non-Solar RPO target as revised by the Commission with surplus of 1.323 MUs (0.45%) but there is shortfall of 2.764 MUs (0.94%) in Solar RPO compliance of 1.75%.
- 9.3. Based on the above and allowing the adjustment of excess Non-Solar energy purchased by the Petitioner against shortfall in fulfillment of Solar RPO as per Regulation 4.1 of the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018, there is still shortfall in Solar RPO compliance. Moreover, the Petitioner has only achieved total RPO of 9.05% as against the total RPO requirement of 9.54%. Accordingly, we decide that the Petitioner has fulfilled the RPO for Non-Solar for FY 2017-18 but has not fulfilled the Solar RPO target of 1.75%, since there is shortfall of 1.441 MUs even after adjustment of Non-Solar surplus energy of 1.323 MUs against shortfall of 2.764 MUs Solar energy.
- 9.4. Considering the above, we decide and direct that the Petitioner, MPSEZ Utilities Pvt. Limited is required to comply with the shortfall of 1.441 MUs in Solar RPO

within FY 2020-21. It is also made clear that procurement of this quantity of Solar renewable energy or Solar REC shall be in addition to the Solar RPO specified by the Commission for the current year, i.e. FY 2020-21.

10. We order accordingly.
11. With this Order the present petition stands disposed of.

Sd/-
[P. J. THAKKAR]
MEMBER

Sd/-
[ANAND KUMAR]
CHAIRMAN

Place: Gandhinagar.
Date: 31/08/2020.