

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No.1723/2018.

In the Matter of:

Petition under the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its (First Amendment) Regulations, 2014 for revision in Renewable Power Purchase Obligation (RPPO).

Petitioner : M/s Aspen Infrastructures Limited,
5th Floor, Godrej Millennium,
9 Koregaon Park Road,
Pune - 411011, Maharashtra.

Represented by : Shri M.B. Kaka

CORAM:

Shri Anand Kumar, Chairman

Shri P. J. Thakkar, Member

Date: 12/10/2020.

ORDER

1. The Petitioner M/s Aspen Infrastructures Limited (AIL) has filed the present petition under the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its (First Amendment) Regulations, 2014 for revision in RPO and also seeking the following prayers:
 - (i) To admit the petition;
 - (ii) To exempt the Petitioner from the RPO obligation till 2020-21;
 - (iii) To remove the Petitioner from the list of obligated entities till the time Petitioner is procuring the power from MGVCL;
 - (iv) To afford the reasonable opportunity of personal hearing to the Petitioner before passing any order in the matter;
 - (v) To allow amendments/alterations/changes/modifications to the submissions;

- (vi) To condone any inadvertent omissions/errors/shortcoming;
- (vii) To grant any other relief/s as the Hon'ble Commission deems fit and appropriate under the circumstances of this case and in the interest of justice.

2. The facts mentioned in the Petition are stated briefly as under:

- 2.1. The Petitioner is a company incorporated under the provisions of the Companies Act, 1956 having its registered Office at 5th Floor, Godrej Millennium, 9 Koregaon Park Road, Pune, Maharashtra.
- 2.2. The Petitioner was formerly known as M/s Synefra Engineering & Construction Limited and even prior to that it was known as M/s Suzlon Infrastructure Limited. The Petitioner has developed a sector specific SEZ for High-tech Engineering products and related services at Village Alwa and Pipaliya, Taluka Waghodia, District Vadodara, Gujarat under Section 3 of the SEZ Act, 2005.
- 2.3. The Petitioner has been notified as developer of the SEZ by the Ministry of Commerce and Industry (Department of Commerce), Government of India, vide its Notification No. S.O. 1084 (E) dated 03.07.2007 and granted deemed distribution licensee status by the Commission vide its Order dated 16.12.2009.
- 2.4. The Commission (GERC) vide its Notification dated 17.04.2010 had notified the GERC (Procurement of Energy from Renewable Energy Sources) Regulations, 2010 and the said Regulation has been amended vide Notification dated 04.03.2014. As per Regulation 4.1 of the RPO Regulations, each Distribution Licensee is required to purchase minimum stipulated percentage of the total consumption of energy by its consumers including Transmission & Distribution ("T&D") losses during each financial year from renewable energy sources. The minimum prescribed percentages are as under:

Year	Wind	Solar	Others	Total
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%

- 2.5. The Commission vide its daily order dated 28.02.2018 in Petition No. 1688 of 2017 has decided as under:

“.....2.3. We note that on completion of FY 2016-17, GUVNL filed present Petition No. 1688 of 2017, Torrent Power Limited filed Petition No. 1689 of 2017 for Ahmedabad, Gandhinagar and Surat license area and Petition No. 1690 of 2017 for its Dahej License area and MPSEZ Utilities Pvt. Limited has filed Petition No. 1677 of 2017 for their RPO compliance of FY 2016-17. We also note that the other distribution licensees viz, Kandla Port Trust, Aspen Infrastructure Private Limited, Jubilant Infrastructure Limited and GIFT Power Company Limited have not filed any petition before the Commission for compliance of RPO of FY 2016-17. We, therefore, decide to initiate Suo-motu proceedings for compliance of RPO by these entities and direct them to follow the procedure for inviting comments and suggestions from the stakeholders as stated in para 3.2 above by publishing a public notice and hosting the petition on their respective websites. The Office of the Commission is also directed to initiate necessary actions in this regard.....”

- 2.6. Further, the Commission has initiated Suo-Motu proceedings vide Petition No. 1713 of 2018 dated 04.04.2018 for compliance of RPO, wherein the Commission directed as under:

“.....9. We, therefore, direct the Respondent distribution licensees to submit the reasons for partial/non-compliance of RPO, if any, and action taken for fulfilment of their obligations along with an affidavit in support thereof in five copies. Further, the distribution licensees are directed to follow the procedures of inviting comments and suggestions from the stakeholders by publishing public notice and hosting the petition with all the relevant documents on their respective website....”

It is submitted that in compliance with the Commission's directives, the Petitioner has filed the present petition before the Commission.

- 2.7. It is submitted that the Petitioner had been granted deemed distribution licensee by the Commission vide its Order dated 16.12.2009. The Petitioner does not have any tie-up power and is not procuring power directly from generator(s) through any Power Purchase Agreement (PPA). The Petitioner is procuring power to meet its requirements through Madhya Gujrat Vij Company Limited (MGVCL) as a consumer at retail HT Tariff as notified by the Commission.

2.8. The Petitioner is complying all the necessary regulatory accountabilities on timely basis like ARR filing etc. The Commission vide its Order dated 30.06.2017 in Petition No. 1638 of 2017 of Tariff Order, Truing up for FY 2015-16, Approval of Final ARR for FY 2016-17, Approval of Multi-Year ARR for FY 2016-17 to 2020-21 and Determination of Tariff for FY 2017-18 for Petitioner has held as under:

".....Commission's Analysis:

In normal course, the distribution licensee shall procure power through competitive bidding process as per the guidelines issued by the Ministry of Power, GOI. Since Aspen does not have any tie-up power, the proposal of Aspen to procure power from MGVCL as a HT consumer is provisionally approved. However, Aspen has to explore the possibility of getting power at competitive rates. The Commission considers the average rate of power purchase as per the tariff decided by the Commission in the MGVCL's Tariff Order no. 1624 of 2016 dated 31.03.2017.

Table 5.8: Power Purchase Cost approved for FY 2016-17 to 2020-21

Particulars	2016-17	2017-18	2018-19	2019-20	2020-21
<i>Power Purchase (Units)</i>	1,03,89,419	1,09,08,018	1,14,52,548	1,20,24,303	1,26,24,647
<i>Power Purchase Cost (Rs. Lakhs)</i>	779.21	809.37	842.91	891	925.39
<i>Cost Per Unit (Rs./kWh)</i>	7.5	7.42	7.36	7.41	7.33

2.9. It is submitted that the present petition is filed with respect to the RPO compliance by the Petitioner as the deemed distribution licensee. Further, in this regard, the Petitioner has relied upon a Judgement dated 16.04.2015, passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 258/2103 and 21/2014 & IA- 28 /2014 where SEZ (deemed licensee) are exempted from RPO compliance. The relevant extract of the said Judgement is reproduced below:

"....

63. It is seen that the State Commission has exempted the SEZ (deemed licensee) from RPO compliance for FY 2010-11 and 2011-12 and again during 2012-13, they were exempted even though they did not make any efforts to fulfill their respective RPO. Low energy consumption of the distribution licensee, increase in tariff due to

purchase of renewable energy as per the RPOs, nascent stage of operation etc. cannot be the reasons for which their RPO should have been reduced to zero. Smaller entities will have low energy consumption but their RPO will also be low as RPO is fixed as a percentage of energy consumption. These reasons are not related to supply constraints or beyond the control of the licensee and do not qualify for revising of the RPO under Section 4.2. However, we do not find any infirmity in finding of the State Commission to relax the RPO obligation of those distribution licensees who purchase power from GUVNL and its four distribution licensees to meet their energy consumption at the retail supply tariff determined by the State Commission and their energy consumption is included in the RPO obligation of the supplying company.

.....”

2.10. It is submitted that the Commission also opined the same in its Order Dated 16.01.2015 passed in Suo-Motu Petition No. 1442 of 2014. The relevant para of the said Order is reproduced as under:

”.....23.18 M/s Kandla Port Trust, Mis. Jubilant Infrastructure Pvt. Ltd. and Mis. Synefra Engineering & Construction Co. Ltd. have submitted that they are procuring power from other distribution licensees of the State and their consumption is included in the consumption of respective licensees. Thus, the quantum of renewable power procured by the above distribution licensees be considered as fulfilment of RPO percentage of the aforesaid licensees. Any further imposition of RPO on the above distribution licensees will lead to double counting of quantum of power for RPO percentage. We, therefore, decide that the RPO obligation is not applicable to the above distribution licensee till they are procuring power from the other licensees as consumer. Hence, the Commission decides to exempt these licensees from the RPO obligations fulfilment for the FY 2013-14. Once the above licensees start procurement of power from other sources or the same source as a distribution licensee, the provisions of RPO will be applicable...”

2.11. It is submitted that the same outlook was carried out by the Commission vide its Order dated 31.12.2016 in Suo-Motu Petition No. 1542 of 2015. The relevant para of the said Order is reproduced as under:

"15. We also note that Jubilant Infrastructure Limited, GIFT Power Company Limited and Aspen Infrastructure Limited and Kandla Port Trust are procuring the power from the DGVCL, UGVCL, MGVCL and PGVCL respectively, which consists of the renewable energy component also. Therefore, we exempt them from the renewable purchase obligations specified by the Commission."

- 2.12. It is submitted that the Petitioner is purchasing/procuring the power from one of the Distribution licensee MGVCL as consumer at retail supply tariff determined by the Commission and that the Petitioner's energy consumption is included in the RPO obligation of MGVCL being the supplying company. Thus, even though the Petitioner has a distribution license, it does not fall in the category of obligated entity until the Petitioner starts procuring power from generators directly or through open access.
3. The matter was earlier heard by the Commission on 06.06.2018.
- 3.1. The matter was relisted on 07.08.2020 for mentioning/directions on account of change in quorum through Video Conferencing, physical presence being not insisted on account of prevailing COVID 19 pandemic and containing its spread. The Petitioner was intimated regarding the said hearing through letter dated 20.07.2020 and email dated 21.07.2020. During the hearing held on 07.08.2020, Shri M.B. Kaka, on behalf of the Petitioner AIL, submitted that the Petitioner has already filed the submissions in the matter and has nothing more to add in the matter. He further requested that the Commission may accordingly decide the matter considering the submissions already made earlier and based on record of the present Petition.
- 3.2. We have considered the submissions made by the Petitioner. We note that the present petition has been filed by the Petitioner seeking exemption of RPO compliance till FY 2020-21 and accordingly also sought the removal of the Petitioner from the list of obligated entities till the time Petitioner is procuring power from MGVCL. The Petitioner also sought RPO compliance exemption till FY 2020-21 on the basis that the Petitioner is procuring power from MGVCL.
- 3.3. M/s Aspen Infrastructure Limited has been notified as a Special Economic Zone (SEZ) by the Ministry of Commerce & Industry, Government of India, vide notification No. 1084 (E) dated 03/07/2007. Further, the Department of Commerce, Government of India issued a notification

No. 528 (E) dated 03.03.2010, under Section 49 of the SEZ Act, 2005 which stipulates that the SEZs are deemed distribution licensee under the Electricity Act, 2003.

- 3.4. The Petitioner (formerly known as M/s. Suzlon Infrastructure Limited) is a company incorporated under the Companies Act, 1956 has filed an application on 04.07.2008 before the Commission under Sections 14(b), 15 of the Electricity Act, 2003 and as per the provisions of the Licensing of Distribution of Electricity Regulations notified by the Commission for grant of distribution license in the area of SEZ notified by the Ministry of Commerce and Industry, (Department of Commerce), Govt. of India, vide Notification No.S.O.1084(E) dated 03.07.2007 which falls within the geographical area of the Madhya Gujarat Vij Company Limited.
- 3.5. The Commission vide Order dated 16.12.2009 in License Application No. 04 of 2008 has granted the license to the Petitioner for engaging/carrying out the business of distribution and retail supply of electricity in the SEZ area notified by the Ministry of Commerce, Government of India, vide Notification No. S.O.11 1084 (E) dated 03.07.2007 and subsequent notification dated 11.07.2008 and 21.05.2009 as per the Terms & Conditions of Licensee for 25 years. The said licence still continue and held by the Petitioner.
- 3.6. The Commission from time to time directed all the distribution licensees including the Petitioner in the State to provide the details in the respect of compliance of the fulfilment of its Renewables Power Obligation for respective years and the Commission has also been monitoring the same on quarterly basis during the respective financial year. Therefore, the Commission vide letter No. GERC/Legal/2017/1171 dated 05.07.2018 directed the Petitioner to file petition with respect to the RPO compliance for FY 2017-18 as per the GERC (Conduct of Business) Regulations, 2004.
- 3.7. We also note the submissions of the Petitioner that the Petitioner is receiving power supply from MGVL as its consumer at retail supply tariff determined by the Commission and the Petitioner's energy consumption is included in the RPO obligation of MGVL. Therefore, even though the Petitioner has a distribution license, it does not fall in the category of obligated entity until it is procuring power from generators directly or through open access.
- 3.8. The Commission has notified GERC (Procurement of Energy from Renewable Sources) (Second Amendment), 2018 which, inter-alia stipulate the Renewable Purchase Obligation (RPO) to be fulfilled by the Distribution Licensees in the State of Gujarat during the period of 2010-11 to

2021-22. Regulation 4 of the Principal Regulations viz. GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and GERC (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014, reads as under:

4. "Quantum of Renewable Purchase Obligation (RPO) 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.

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

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total	Wind	Solar	Others (Biomass, Bagasse, MSW, etc.)
2010-11	5.0	4.5	0.25	0.25
2011-12	6.0	5.0	0.5	0.5
2012-13	7.0	5.5	1.0	0.5
2013-14	7.0	5.5	1.0	0.5
2014-15	8.0	6.25	1.25	0.5
2015-16	9.0	7.0	1.5	0.5
2016-17	10.0	7.75	1.75	0.5

Table - II

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasse, MSW and Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2017-18	7.75	1.75	0.5	10.00
2018-19	7.95	4.25	0.5	12.70
2019-20	8.05	5.5	0.75	14.30
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.0	0.75	17.00

4) Substitution of para 2 of 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.

.....”

From the above, it is noted that for FY 2017-18 the RPO has been fixed at 10% which consists of 7.75% for Wind, 1.75% for Solar and 0.5% from other Renewable Sources (Biomass, Bagasse, MSW and Hydro) for the obligated entities of the State. Therefore, it is necessary for the obligated entities including the Petitioner to comply with the above RPO % as envisaged and decided by the Commission.

- 3.9. We note that as regards the RPO compliance by the Petitioner as distribution licensee, the Commission in its Order dated 26.12.2019 in Suo-Motu Petition No. 1637 of 2017 regarding monitoring the RPO compliance of the obligated entities for the FY 2015-16 had decided at para 13.5.3 that as long as the Petitioner continue to purchase power from MGVL only, the Petitioner is not required to comply with the RPO requirement on standalone basis.
- 3.10. We also note that as per the submission given by the Petitioner that the Petitioner is purchasing power from MGVL as a consumer during FY 2017-18. As the licensee is procuring the power from MGVL, which includes the renewable energy component also, they comply with the RPO requirement to the extent of RPO compliance by MGVL for the FY 2017-18 and accordingly, the Commission exempts the Petitioner for the RPO compliance of FY 2017-18. We note that the Petitioner has prayed for granting RPO exemption till FY 2020-21. In this regard, we note that the Commission has to decide RPO compliance of FY 2018-19 and FY 2019-20 of different distribution licensees in pending Petitions before the Commission and therefore, the prayer of the Petitioner to grant the RPO exemption till FY 2020-21 is not decided by the Commission in present Petition being premature at present. However, it will be incumbent upon the Petitioner to submit to the Commission and GEDA documents substantiating the purchase of power from MGVL in quarterly RPO compliance monitoring by the Commission and Annual RPO compliance undertaken by the Commission. We decide that the said dispensation shall continue and they shall be required to submit the requisite details regarding quarterly RPO compliance monitoring by the Commission to GEDA as well as the Commission and also submit relevant details for Annual RPO compliance undertaken by the Commission either by filing Petition before the Commission or through filing affidavit/reply in case of any Suo - motu proceedings initiated by the Commission.
- 3.11. We note that the prayer of the Petitioner to remove the name of the Petitioner from the list of obligated entities till the time the Petitioner is procuring the power from MGVL. In this regard,

it is to note that the Commission vide Order dated 16.12.2009 in License Application No. 04 of 2008 has granted the license to the Petitioner for engaging/carrying out the business of distribution and retail supply of electricity in the SEZ area notified by the Ministry of Commerce, Government of India, vide Notification No. S.O.11 1084 (E) dated 03.07.2007 and subsequent notification dated 11.07.2008 and 21.05.2009 as per the Terms & Conditions of Licensee for 25 years. The said licence still continue and held by the Petitioner. Therefore, the provisions of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its subsequent amendments thereto, shall be applicable to all the distribution licensees in the State of Gujarat. Hence, the prayer of the Petitioner to remove the name of the Petitioner from the list of obligated entities, is not accepted and the same is rejected.

4. We Order accordingly.
5. With this Order the present Petition stands disposed of.

Sd/-
[P. J. THAKKAR]
Member

Sd/-
[ANAND KUMAR]
Chairman

Place: Gandhinagar.

Date: 12/10/2020.