

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1859 of 2020.

In the Matter of:

Petition for adjudication under Section 86 (1) (f) and other applicable provisions of the Electricity Act, 2003 read with the GERC (Terms and Conditions for IntraState Open Access) Regulations, 2015 for the unlawful denial of Medium Term Open Access from J.B. Renewable LLP to J.B. Ecotex LLP.

Petitioner	:	J. B. Renewable LLP
Co-Petitioner	:	J. B. Ecotex LLP
Represented By	:	Ld. Adv. Arijit Mitra
		V/s.
Respondent No. 1	:	Dakshin Gujarat Vij Company Limited
Represented By	:	Ld. Adv. Ms. Shrishti Kindaria along with Mr. K.B. Varsana
Respondent No. 2.	:	Gujarat Energy Transmission Corp. Limited
Represented by	:	Ld. Adv. Ms. Shrishti Kindaria along with Mr. Shobhraj Jaiswal.
Respondent No. 3.	:	Gujarat Urja Vikas Nigam Ltd.
Represented by.	:	Ld. Adv. Ms. Shrishti Kindaria along with Mr. Kishor Lakhani
Respondent No. 4.	:	Madhya Gujarat Vij Company Ltd.
Represented by.	:	Nobody remain present
Respondent No. 5.	:	Energy and Petrochemical Department, Govt. of Gujarat

Represented by. : Nobody remain present

CORAM:

Mehul M. Gandhi, Member

S.R. Pandey, Member

Date: 11/07/2025.

DAILY ORDER

1. The matter was kept for hearing on 01.07.2025.
2. Ld. Adv. Arijit Mitra appearing on behalf of the Petitioner and Co-Petitioner submitted that the present Petition is filed for adjudication under Section 86 (1) (f) and other applicable provisions of the Electricity Act, 2003 read with the GERC (Terms and Conditions for Intra-State Open Access) Regulations, 2015 for the unlawful denial of Medium Term Open Access from J.B. Renewable LLP to J.B. Ecotex LLP.
 - 2.1. He further submitted that the said wind farm was earlier owned by Suzlon and there was 'Bulk Power Transmission Agreement' (BPTA) signed between them. There was wheeling agreement also between the Petitioner Suzlon and the wheeling agreement existed between the parties. In the present case when the ownership of the said power Plant is changed than the Respondent has refused to sign the wheeling agreement.
 - 2.2. He further submitted that the power plant was commissioned on 12.07.2018 during the applicability of the Gujarat Wind Power Policy, 2016. He further

referred GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011, read with Section 42 of the Electricity Act, 2003 where there is no restriction prescribed for 50% of contract demand at consumption end. It is further submitted that there is no such provision in the said Regulations which contemplates a restriction that has been placed by way of the impugned letter dated 30.08.2019 of the Respondent No. 1 DGVCL.

2.3. He further submitted that the denial of the Long / Medium Term Open Access on the ground that wheeling of 2.10 MW exceeds capacity restriction of 50% of contract demand at consumption end.

2.4. He further submitted that the Respondent No. 1 has erroneously applied the provisions of Clause 18.3 of the Gujarat Wind Solar Hybrid Policy, 2018 which is only applicable to Hybrid Power projects. The said Policy, provides that for third party model, the power contracted with the hybrid project shall be 50% of the sanctioned load of the consumer for each solar and wind power project respectively. The Petitioner's power project is not a hybrid project, hence it should not be applicable to the Petitioners.

2.5. He further submitted that the impugned letter dated 30.08.2019 is contrary to the said Policy of 2018 and is liable to be set aside on the said ground. He also submitted that the aforesaid Policy of 2018 is not binding on the Commission. He submitted that the Solar Policy is also not applicable as the Petitioner's power plant is a Wind based power plant.

2.6. He further referred the contention of the Respondent that the said claim is barred by the limitation, and submitted that the relief sought by the Petitioners is a consequential relief and is in continuing in nature, hence, the law of limitation is not applicable.

2.7. He further referred the contention of the Respondent that the SEA accounts would be required to be revised and that would effect to other consumers at large, he submitted that the decision is always impacting to some parties, so this contention cannot stand as a ground for not granting the relief.

2.8. He submitted that the Commission had already allowed the amended Petition vide Order dated 26.11.2024, hence, the substantial part is already been allowed by the Commission.

3. Ld. Adv. Shrishti Kindaria on behalf of the Respondent No. (s) 1, 2 and 3 submitted that the Commission had allowed the amended in a limited manner. She referred Para 21 of the said Order dated 26.11.2024, wherein the Commission has permitted to carry out the amendments with the note of without going into the merit of the issues being raised by the Respondents against the admissibility and maintainability of the amendments in the Petition and also reserving the rights of the Respondents intact. Therefore, the amendment is not allowed in *toto* by the Commission and the Respondents still have the Right to contend in the Petition. The amendment sought by the Petitioner is not maintainable, also in the said Order dated 26.11.2024, the Commission while allowing the amendment has kept the issue of

maintainability and admissibility of the proposed amendments. She further referred the Judgement of Hon. Supreme Court of India (2009) 10 SCC and submitted that the decision on application to amendment cannot be undertaken casually.

3.1. She further submitted that the second issue of bills is the consequential effect of the first issue and it is depending on the first issue of deciding the issue of applicability of the Policy of 2016 which provides for the benefit to wind turbine generators but recognizes that the capacity should not be more than 50% of the sanction load/contract demand of the consumer. The said Policy of 2016 is been considered by the Commission in its Order No. 02 of 2016 dated 30.08.2016.

3.2. It is further submitted that the interpretation of the Policy of 2016 is inclusion of the capacity having ceiling of 50% of Sanctioned load / contracted demand for industrial and commercial consumers are being cross subsidizing other cross subsidized category of consumers such as BPL, Agricultural consumers etc. She further submitted that the load factor for such non-residential consumers, in general, is about 20% which is equivalent to capacity utilization factor of the solar capacity and the consumers can meet 50% of their requirement from distribution licensees and hence contribute towards cross subsidization to other categories.

3.3. She further submitted that the argument of placing the reliance on Section 42 of the Electricity Act, 2003 is constrained. She further submitted that the Co-

Petitioner J. B. Ecotex LLP is a HT consumer of DGVCL bearing consumer number 62789 having contract demand of 5000 KVA under the jurisdiction of DGVCL. As per the policy and the restriction of 50%, the Petitioner No. 2 is entitled to wheeling of power of 2.25 MW (50% capacity of contract demand considering 0.9 PF), the Co-Petitioner has already executed the wheeling agreement for its 2.10 MW capacity wind turbine generator for captive use. Now the Petitioners are seeking the wheeling of additional 2.10 MW which means that the total capacity is 4.20 MW which is much more than 50% of the contract demand, hence it cannot be permitted under the Govt. of Gujarat Policy. She further submitted that the wheeling agreement for 2.10 MW cannot be executed hence the Respondent DGVCL has accordingly informed the Petitioners about the same through its letter dated 30.08.2019.

3.4. She referred to the claim of the Petitioner regarding set off of the energy injected into the grid, the said contention of the Petitioner is contrary to the Policy issued by Govt. of Gujarat and Open Access Regulations. On the contrary the Respondents can claim that due to the injection of the inadvertent energy the grid could have been damaged.

3.5. She further submitted that the amendments cannot be considered since the application has been filed by the Petitioners after the parties were already heard which amounts to trial being commenced and the Petitioner has not fulfilled the criteria of Proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908. The proceedings were in advance stage when the IA was

filed, hence the pleadings were already completed and in fact the Petitioner as well as the Respondents were already being heard on 13.10.2021. The Order VI Rule 17 provides for the amendment which is necessary for the adjudication. The additional ground placed by the Petitioners such as set off is a new issue and it cannot be raised at later stages. The Petitioner had chosen not to raise the issue of set off in the original Petition. She referred the Judgement of Hon. Supreme Court of India as in Jayaram Reddy, (1979) 3 SCC 578 it was held that where a point has been wilfully or deliberately abandoned by the party when it was relevant, it cannot afterthought raise the same point.

3.6. She further submitted that the Petition is barred by the laches and delay, the period within limitation is 3 years from the date of filing and the principles of delay, laches and acquiescence would apply as recognised by in Probhakar Vs. Sericulture Deptt. (2015) 15 SCC 1. The accounts for the period are already settled and at this stage to require any adjustment would be inequitable and would affect other entities also. She further submitted that the Petitioner cannot claim any equitable consideration bona fide when there is delay on its part and cannot be permitted now to unsettle the accounts which are already stand settled. The Petitioner is seeking to raise its claim in May 2023 based on the events related to energy from September 2019 to February 2020 which was based on denial of LTOA dated 30.08.2019 by the Respondent No. 1, it has been more than three years since the denial of Open Access and three years even from the period for which the set off is being claimed by the Petitioner.

3.7. She further submitted that the Petitioner has not sought the amendment in the present Petition it is filing of the fresh Petition with fresh grounds. Hence the amendment is barred and set off also cannot be allowed.

4. Ld. Adv. Arijit Mitra for Petitioners submitted that the Commission has already allowed the amendment vide its Order dated 26.11.2024 and thereafter the matter was heard on 28.11.2024 and Daily Order was issued on 30.05.2025. He further submitted that the Commission has allowed the all the amendments in the Petition. On merits there is nothing much to be allowed.

4.1. He further submitted that the principle of 'Balance of Convenience' should be adopted and the Petition should be allowed as it will not prejudice to the Respondents.

4.2. He further submitted that the Order VI Rule 17 of Code of Civil Procedure does not apply to the Commission also when the pleadings are yet to completed then how the trial has been started. He requested the Commission to pass the Final Order in the Petition.

5. On the argument of inapplicability of the Code of Civil Procedure, 1908, Ld. Adv. Shrishti Kindaria for Respondents submitted that it is applicable to the Commission and there are various Judgements of Hon. APTEL on the said applicability.

6. Heard the parties. We note that the present Petition is filed by the Petitioner for adjudication under Section 86 (1) (f) and other applicable provisions of the

Electricity Act, 2003 read with the GERC (Terms and Conditions for IntraState Open Access) Regulations, 2011 for the unlawful denial of Medium Term Open Access from J.B. Renewable LLP to J.B. Ecotex LLP. We note that the parties have argued the matter at length.

6.1. We also note that the Respondent No. 4 and 5 neither remain present nor expressed any written communication of their inability to remain present.

6.2. We also note that the Petitioner has requested to keep the matter for final Order as the parties have completed arguments. The parties are at liberty to file their written submissions, if any, within three weeks' time with a copy to others.

7. The matter is now reserved for Orders.

8. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 11/07/2025.