

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2125 of 2022

In the matter of:

Petition under Sections 14, 15 and 18 of the Electricity Act, 2003 read with Regulations 4 and 16 of GERC (Distribution License) Regulations, 2005 seeking alteration / modification / amendment of existing distribution license by inclusion of the larger area of Mundra Taluka of District Kutch, Gujarat in the licensed area of the Petitioner MUL.

- Petitioner : MPSEZ Utilities Limited
South Wing, 3rd Floor, Adani Corporate House
Shantigram, S.G. Highway, Ahmedabad – 382421.
- Represented By : Ld. Sr. Advocates Mr. Sanjay Sen and Ms. Deepa Chawan alongwith Advocates Mr. Hemant Singh, Ms. Ankita Bafna, Ms. Reshmarani Nathani & Mr. Mehul Rupera Mr. Anil Rabadia, Mr. Manish Kumar
- Objector No. 1 : Energy & Petrochemicals Department, Govt. of Gujarat
- Represented By : Nobody was present.
- Objector No. 2 : Gujarat Urja Vikas Nigam Limited
- Represented By : Ld. Adv. Ms. Ranjitha Ramachandran with Mr. Saumil Shah.
- Objector No. 3 : Paschim Gujarat Vij Company Limited
- Represented By : Ld. Adv. Ms. Ranjitha Ramachandran with Mr. S. N. Parmar.
- Objector No. 4 : Gujarat Energy Transmission Corporation Limited
- Represented By : Ld. Adv. Ms. Ranjitha Ramachandran with Mr. Shobhraj Jayswal

Objector No. 5 : State Load Dispatch Centre, Gujarat
Represented By : Nobody was present.

Objector No. 6 : Power Grid Corporation of India Limited
Represented By : Nobody was present.

Objector No. 7 : The Collector, Bhuj
Represented By : Nobody was present.

Objector No. 8 : Mundra Nagarpalika, Mundra-Baroi
Municipality , Baroi, Kachchh.
Represented By : Nobody was present.

Objector No. 9 : Gujarat Urja Sanyukt Sankalan Samiti
Represented By : Nobody was present.

CORAM:

Mehul M. Gandhi, Member

S.R. Pandey, Member

Date: 08/10/2025

DAILY ORDER

1. The present matter was listed for hearing on 02.09.2025.
2. Ld. Sr. Adv. Mr. Sanjay Sen on behalf of the Applicant/Petitioner submitted that Applicant/Petitioner MPSEZ Utilities Limited (MUL), has filed an Application/Petition before the Commission on 18.06.2022, under Sections 14, 15 and 18 of the Electricity Act, 2003 read with Regulations 4 and 16 of the GERC (Distribution License) Regulations, 2005 seeking alteration/modification/amendment of existing distribution license by inclusion of the larger area of Mundra

Taluka of Kutch District in the State of Gujarat in the licensed area of the Petitioner MUL.

- 2.1. He submitted that the Commission vide its Order dated 09.10.2023, after considering the submissions of the Applicant, the objections raised, and the material available on the record, has proposed to issue an amendment to the distribution license of the Applicant for the larger area of Mundra Taluka including Mundra-Baroi Municipality area as mentioned / shown in the Map as submitted. The Commission further directed its office to issue a notice in pursuance of Clause (a) of sub-Section 5 of Section 15 of the Electricity Act, 2003, in two local daily newspapers inviting suggestion or objection, if any, to the Commission's intention to grant amendment to the distribution license of the MPSEZ Utilities Limited, stating the name and address of the Applicant. A copy of the said Order and Application also forwarded to GETCO (STU), SLDC, PGCIL (CTU), Energy and Petrochemical Department Government of Gujarat, Mundra Nagarpalika (Village – Mundra, Baroi, Goyarsama), GUVNL, PGVCL and District Collector - Bhuj (Kutch) District.
- 2.2. He submitted that in view of the aforesaid Order dated 09.10.2023, a Public Notice was published given by Commission in Hindustan Times (Mint) Newspaper on 30.10.2023, Sandesh and Divya Bhaskar newspaper on 31.10.2023 and copy of above Order along with copy of the Application was also forwarded to GETCO (STU), SLDC, PGCIL (CTU), Energy and Petrochemical Department (EPD), Government of Gujarat, Mundra Nagarpalika (Village – Mundra, Baroi, Goyarsama), GUVNL, PGVCL and District Collector - Bhuj (Kutch) District.

- 2.3. The last date of filling objections/suggestions as per the said public notice was 30.11.2023. The Commission has received objections / suggestions from the Objector viz., Paschim Gujarat Vij Company Limited.
- 2.4. He submitted that the matter was listed for hearing post publication of Notice by the Commission on 27.10.2023 under Section 15 (5) (a) of the Electricity Act, 2003. The Commission vide the said Notice has recorded that the objections from Gujarat Urja Sanyukt Sankalan Samiti (GUSSS) and Paschim Gujarat Vij Company Limited (PGVCL) had been filed in the matter. After receipt of the objections, the Commission vide the Notice, proposed to issue an amendment to the Distribution Licence of the Applicant/Petitioner for the larger area of Mundra Taluka including Mundra-Baroi Municipality area as mentioned/shown in the Map as submitted as per Section 14 and 18 of Electricity Act 2003 read with Electricity Rules, 2005 read with Regulations 4 and 16 of the GERC (Distribution License) Regulations, 2005.
- 2.5. It was submitted by Applicant that this Commission vide Order dated 09.10.2023, after considering the submissions of the Applicant /Petitioner, PGVCL and GUSSS and the material available on record, observed that the Applicant/Petitioner fulfilled the criteria for seeking amendment/ alteration/modification of Licence area, as laid down for the grant of distribution Licence under Section 14 and 18 of Electricity Act, 2003, Electricity Rules, 2005 and Regulations 4 and 16 of the GERC (Distribution License) Regulations, 2005. In view of this, the Commission in its Order dated 09.10.2023 has granted approval for an amendment to the Distribution Licence of the Applicant/Petitioner.

Pursuant thereto, the aforementioned Public Notice dated 27.10.2023 came to be issued by the Commission thereby inviting objections/suggestions with respect to its proposal of issuing amendment to the Distribution License of MUL. Post publication of the Public Notice, PGVCL had again submitted a similar submissions as that of earlier.

2.6. He further submitted that the Order dated 09.10.2023 passed by the Commission already dealt with the objections raised by PGVCL. It is only after considering such objections, the Commission proposed to issue amendment to the Distribution License of Applicant/Petitioner MUL. Therefore, in the absence of any new objections/suggestions, it is a fit case for the Commission to grant of amendment to the Distribution Licence of the Applicant/Petitioner finally.

2.7. Ld. Sr. Adv. Mr. Sajay Sen on behalf of Applicant Petitioner highlighted the relevant paragraphs of the Order dated 09.10.2023, passed by the Commission wherein the Commission has dealt with the objections of Objectors and taken a view of allowing amendment to the license of MUL while inter-alia holding as under:

- i. The Applicant/MUL is already a holder of second Distribution Licence. Consequently, it already satisfies the minimum requirements, for grant of second license under proviso to Section 14(b) of the Electricity Act. Hence, there is no additional requirement that would remain insofar as the 'minimum area' requirement is concerned.
- ii. The Commission is empowered to grant a Distribution Licence to the applicant for the distribution of electricity through its own distribution system when such applicant fulfils the conditions of

capital adequacy and credit worthiness as prescribed by the Central Government under Rule 3 of Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. The Explanation to Rule 3 has to be read with Rule 3 (1) and Rule 3 (2). Thus, the Explanation to Rule 3 qualifies the “minimum area” for considering the two conditions of creditworthiness and capital adequacy and is to be read with 6th (Sixth) proviso to Section 14. The term “minimum area” is not a stand-alone requirement but has been inserted for computation of the two conditions of credit worthiness and capital adequacy only.

- iii. The license issued to Applicant/MUL is at par with any other distribution licensee which is granted a license under Section 15 of the Electricity Act. Further, the 6th proviso to Section 14 and Section 18 do not create any distinction or restriction qua deemed distribution licensee or SEZ Developer who has been recognized as distribution licensee with respect to grant of or amendment in Distribution Licence. Additionally, in view of Notifications dated 03.03.2010 and 21.03.2012 issued by Central Government, the provisions of Electricity Act, 2003 prevailed and ought to be complied by any party including MUL which falls under proviso to Section 14(b) of the Act. Therefore, the contention of PGVCL that the license of MUL was restricted to the area covered under SEZ and the same cannot be amended to include area beyond SEZ, is contrary to statutory objection of fostering competition as enshrined in the Electricity Act, 2003.

- iv. The Applicant/MUL has fulfilled the requisite criteria and qualifications of capital adequacy, creditworthiness and code of conduct under Rule 3 & 4 of Distribution License Rules of 2005.
- v. That mere existence of a distribution license in a particular area cannot become the basis for refusing a second license.
- vi. With the amendment in existing license of Applicant/Petitioner and thereby enlarging the license area for entire Mundra Taluka by including the Mundra-Baroi Municipality, the consumers of the area shall have choice of supplier of electricity which was earlier not available despite the Act contemplating competition as a salutary objective.
- vii. He said that with respect to the objection of PGVCL that the amendment under Section 18 envisages amendment to the terms and conditions of license and does not contemplate grant of license of a new nature involving addition of non-SEZ area to existing SEZ license area, the Commission held that the alteration or amendment in the license terms and conditions alteration in license area because 'area of supply' is specified in the license whenever a license is granted to the applicant. While granting a license, a map consisting of area of license also has to be approved by the Commission. Therefore, Applicant / MUL can seek amendment in existing license area under Section 18 of the Electricity Act.
- viii. Ld. Sr. Adv. Mr. Sanjay Sen, submitted that the Commission referred the Judgment dated 29.09.2022 passed by the Hon'ble Supreme Court in Civil Appeal No. 3607-3610/2008 in the case of *Jindal Steel and Power Limited Vs. CERC & Ors.* to observe that

the expression “within the same area” in the 6th proviso to Section 14 of the Act (read with the Rule 3 as it stood before amendment) does not require a ‘minimum area’ to be the entire Municipal Corporation or adjoining Revenue Districts, but the area falling within the Municipal Corporation or adjoining Revenue Districts which has been authorized by the Commission. Therefore, any area falling within the area specified in the ‘Explanation’ of Rule 3 which has been authorized by the Commission, shall be the minimum area of supply.

- ix. In view of this, the Applicant/MUL also qualifies the ‘minimum area’ requirement in terms of Explanation to Rule 3 (as amended on 28.11.2022) for the proposed license area, a part of which has been notified as a smaller urban area by the State Government.
- x. The Commission also referred the case of PGVCL wherein it sought amendment of its license area under Section 18 of the Act by including 7 villages which fell within the area of supply of UGVCL, on account of administrative convenience to the consumers. In this case, PGVCL did not establish the minimum area requirement while seeking amendment in distribution license and the same was accordingly allowed by the Commission. In view of this, the contentions of PGVCL are liable to be rejected.

2.8. Ld. Sr. Counsel for the Petitioner submitted that the Commission vide Order dated 09.10.2023 has already taken a view and granted approval to issue an amendment to the Distribution Licence of the Applicant/ MUL for the larger area of Mundra Taluka including

Mundra-Baroi Municipality area as mentioned/ shown in the Map as submitted as per Section 14 and 18 of Electricity Act 2003 read with Electricity Rules, 2005 read with Regulations 4 and 16 of the GERC (Distribution License) Regulations, 2005. As on date, there is nothing new material on record, which is to be dealt with, thus the Commission ought to proceed towards allowing amendment to the license area of MUL.

- 2.9. Further, Ld. Sr. Adv. Mr. Sanjay Sen, while addressing the main objection of PGVCL regarding non-fulfilment of 'minimum area' requirement, submitted that the above in-principle Order dated 09.10.2023 was passed after amendment dated 28.11.2022 carried out in 'Explanation' to Rule 3 of the Distribution License Rules.
- 2.10. He further submitted that on 08.09.2022 the Ministry of Power, Govt. of India, has amended the Distribution of Electricity licence Rules, 2005 wherein the explanation provided under Rule 3(2) was modified. Amended explanation of Rule 3(2) provides that for grant of a license for distribution of electricity within the same area in terms of sixth proviso to Section 14 of the Electricity Act, the area falling within either a Municipal Corporation as defined in Article 243Q of the Constitution or three adjoining revenue districts, or a smaller area as may be notified by the Appropriate Government shall be the minimum area of supply. He further submitted that the Applicant/Petitioner fulfils the criteria provided under the amended explanation to the Distribution of Electricity Rules. He further submitted that as per the amended 'Explanation', any smaller area notified by the Government shall qualify for minimum area. The Applicant has applied for distribution license for the entire Mundra Taluka which includes the

Smaller Urban Area (Mundra-Baroi Municipality) notified by the State Government vide its Notifications dated 25.08.2020. Therefore, the Applicant MUL, who has applied for license for larger area than the said notified smaller area, in any case, qualifies the 'minimum area' requirement under the law. Thus, the Application filed by the Applicant MUL under Section 18 of Electricity Act ought to be allowed.

2.11. He further submitted that the Applicant /Petitioner was granted the status of deemed distribution licensee by Government of India vide Notification dated 03.03.2010 which was endorsed by the Commission vide its Order dated 17.04.2010 in License Application No. 6 of 2008 granting a distribution license to the Applicant for a period of 25 years. Thus, the Applicant/Petitioner hold a distribution license for the Special economic Zone in terms of the proviso added to Section 14 (b) of the Electricity Act, 2003 by way of Notification dated 03.03.2010 issued by the Central Government under Section 49 (1) (b) of the SEZ Act, 2005. He further submitted that once the Applicant is already a holder of a Second distribution license, then the amended explanation is not applicable to the said Applicant, as it already fulfils the minimum requirements, *qua* minimum area for grant of a second license. He further submitted that the Explanation under Rule 3 of the Distribution of Electricity Rule is meant to provide additional support to the dominant object to the Rules in order to make them meaningful and purposeful. The dominant object of the Rule 3 is to prescribe certain additional requirements for grant of a second license under the 6th proviso of Section 14 of the Electricity Act, 2003 and it is in the light that the Explanation provides an indication as to the requirement of a 'minimum area' which can never be construed in a manner by treating the same at par with the statutory provisions.

3. Ld. Adv. Ms. Ranjitha Ramachandran, appearing on behalf of PGVCL submitted that the Applicant who was seeking to amend the distribution license by way of including non-SEZ area to SEZ area for which existing license was granted, should file fresh application under Sections 14 and 15 of the Act for seeking license for the newly proposed area. Thereafter, it is up to the Commission to decide whether the new proposed license area satisfies the minimum area qualification along with other criteria as laid out under 6th proviso to Section 14 of the Act read with Rule 3 of Distribution License Rules.
- 3.1. She further submitted that as per Order dated 03.11.2017 in Petition No. 1633 of 2016, the Commission had amended the license granted to MUL. The status of distribution licensee given to MUL is restricted to the area covered by SEZ and does not cover area outside the SEZ. As per the amendment brought about by the notification under the SEZ Act, there cannot be any area considered which is outside the SEZ defined Area.
- 3.2. She further submitted that the requirement prescribing a minimum area for grant of parallel distribution license has a specific purpose is to prevent licensees from cherry picking customers in specific areas. In the present case, PGVCL is the incumbent distribution licensee having Universal Service Obligation in the supply area where the Applicant has applied for amendment to the existing license. By availing second distribution license in the Mundra Taluka, the Applicant would target to serve high paying cross subsidizing industrial consumers, thereby causing loss of cross subsidized revenue to PGVCL. She further sought two weeks' time to file written submission.

4. In response to the above contentions, Sr. Adv. Ms. Deepa Chawan, on behalf of MUL, reiterated and submitted that with respect to the contention of minimum area requirement, the Applicant has applied for an area which is larger than the minimum area required under law. In any case, this contention has already been dealt by the Commission vide in-principal Order dated 09.10.2023 wherein it was held that the term “minimum area” is not a stand-alone requirement but has been inserted for computation of the two conditions of credit worthiness and capital adequacy only. Therefore, the Applicant is not required to establish the ‘minimum area’ qualification. In any case, the Notification dated 25.08.2020 which declares Mundra and Baroi Village Panchayats as smaller urban area, is in alignment with amended ‘Explanation’ to Rule 3 and by virtue of this, the Applicant MUL duly qualifies the minimum area requirement.
- 4.1. Further, it was submitted that the ‘Explanation’ to Rule 3 of the Distribution License Rules which envisages ‘minimum area’ requirement, is meant to provide additional support to the dominant object of the main Rule in order to make it meaningful and purposeful. The dominant object of Rule 3 is to prescribe the requirements of “capital adequacy” and “credit worthiness”, and it is for the purpose of computation of such requirements, minimum area’ has to be construed and not as a stand-alone qualification which is to be satisfied by an applicant de hors the 6th Proviso of Section 14 of the Electricity Act, 2003.
- 4.2. On the issue of interpretation of an explanation appearing in a statutory provision, the law is fairly well settled, and in this regard, Sr. Adv. Mr. Sanjay Sen relied upon the judgments passed by the Hon’ble

Supreme Court in case of *S. Sundaram Pillai V. V.R. Pattabiraman*, reported in (1985) 1 SCC 591 and submitted that an Explanation is not a substantive provision but act as an aid to support the dominant object of the main provision. It cannot substitute or enlarge the scope of the main provision. Therefore, the Applicant is not required to fulfil the 'minimum area' requirement on stand-alone basis. Even Section 14 (6th proviso) i.e., the parent statute under which Distribution License Rules were framed only contemplates the qualifications in terms of capital adequacy, credit worthiness or code of conduct (which was included by way of an amendment in the Act and applied w.e.f. 27.01.2004). Further, Section 176 (2) (b) of Electricity Act, 2003 confers power upon the Central Government to frame rules only with respect to the additional requirements of capital adequacy, credit worthiness or code of conduct. Therefore, the Act does not confer power upon the Government to introduce new requirement of 'minimum area' through Rules which is to be fulfilled on independent basis. Any Rules, Notification contrary to provisions of Statute Act passed in parliament needs to give effect in case of the repugnancy aroused between them In view of this, Mr. Sanjay Sen submitted that the Applicant/Petitioner, even though it duly qualifies the requirement, is not required to satisfy 'minimum area' criteria.

- 4.3. Sr. Adv. Mr. Sanjay Sen, on behalf of Applicant /Petitioner further submitted that in terms of Rule 3, this Commission while considering the application of Torrent Power Limited (i.e. Licence Application No. 01 of 2021) for grant of distribution license in the area of Mandal – Becharaji SIR, has observed that the Explanation to Rule 3 qualifies the “minimum” area only for the purposes of assessing creditworthiness and capital adequacy. Further submitted that the said explanation is to

be read with 6th (Sixth) proviso to Section 14. The term “minimum” has been inserted solely for computation of the two conditions, namely credit worthiness and capital adequacy only. He further requested the Commission to grant two weeks’ time to file written submission in the matter.

5. Heard the parties. We note that the Counsels appearing for both the Petitioner and Respondents GUVNL, PGVCL & GETCO have completed their arguments and made their submissions in the matter. We note that when the matter was called out, nobody was present on behalf of the Objectors No. 1, 5, 6, 7, 8 & 9 nor any written communication about their inability to remain present has been made despite notice. All the parties are directed to file written submissions, if any, within period of 15 days, from the date of this Order. The matter is now reserved for Order.
6. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.

Date: 08/10/2025.