

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2125 of 2022

In the matter of:

Application / Petition 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 MPSEZ Utilities Limited (MUL).

Petitioner : MPSEZ Utilities Limited (MUL)
South Wing, 3rd Floor, Adani Corporate House, Shantigram, S.G. Highway, Ahmedabad - 382421.

Represented by : Ld. Sr. Advocate Shri Sanjay Sen along with
Ld. Advocate Shri Hemant Singh, Ld. Advocate Shri Chetan Garg, Ld. Advocate Ms. Mandakini Ghosh, Shri Mehul Rupera, Shri Anil Rabadia and Shri Sanjay Mittal

Objector No.1 : Gujarat Urja Sanyukt Sankalan Samiti

Represented by : Shri J.R. Shah

Objector No.2 : Paschim Gujarat Vij Company Limited

Represented by : Ld. Advocate Ms. Harini Subramani and Shri J.J Gandhi

CORAM:

**Anil Mukim, Chairman
Mehul M. Gandhi, Member
S.R. Pandey, Member**

Date: 10/01/2023

DAILY ORDER

1. The matter was heard on 06.12.2022. On that day Shri J.R. Shah on behalf of Objector No. 1, Gujarat Urja Sanyukt Sankalan Samiti submitted that the objector has filed their objections in the present matter. The same may be considered since the Objector for the present does not desire to add anything further in addition to objections submitted earlier.
2. Ld. Adv. Ms. Harini Subramani, on behalf of the Objector No. 2, Paschim Gujarat Vij Company Limited, submitted that the objector, Paschim Gujarat Vij Company Limited (PGVCL), has filed its objections on record of this matter, which may be considered by the Commission. She further submitted that the present Petition is filed under sections 14, 15 and 18 of the Electricity Act, 2003 as amended, read with GERC (Distribution License) Regulations, 2005.
 - 2.1 Section 14 of the Electricity Act, 2003 provides that the Commission may grant a license to two or more persons for distribution of the electricity within the same area subject to fulfilment of the conditions/requirements relating to minimum area of supply, capital adequacy, credit worthiness and Code of Conduct etc. as specified under the provisions of the Act, Rules and Regulations framed under it. The Petitioner/Applicant shall require to prove the same, prior to granting the same.
 - 2.2 She referred section 18 (2) (b) of the Electricity Act, 2003, and submitted that before any alterations or amendments is allowed in the license area, it is necessary to verify that the proposed alterations or modifications in area of supply comprises in whole or any part of the Cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purpose and in case if any such area is found than the Appropriate Commission shall not make any alterations or modifications in the licensee area except with the consent of the Central Government. The prayer of the Petitioner for amendment/modification in

the existing distribution license area of SEZ is of seeking addition of other area in existing licensee area to be granted by the Commission. Such addition in license area of the licensee and any modification therein is not permissible as per law, because the minimum area defined in the Act and Rules is either Revenue District area or Municipal Corporation etc. as specified under Act, Rules and Regulations, which is not fulfilled in the present case. The additional area is not qualified as SEZ area while the Petitioner is deemed licensee in specified SEZ area. Therefore, any area that is outside of the SEZ, which is neither a SEZ nor a Revenue District area or Municipal Corporation area does not qualify for license area as per the provision of the Electricity Act, Rules and Regulations framed thereunder as desired by the Applicant/Petitioner

- 2.3 It is further submitted that the Petitioner is deemed distribution licensee in the SEZ area. The area outside of the SEZ area of the Applicant's existing license area desired to be added by the Applicant/Petitioner is license area of the PGVCL i.e. objector who supplies power to its consumers in the additional area proposed by the Applicant licensee. Hence, the prayer of the Petitioner to extend the license area is not permissible. Therefore, the same may not to be granted. Further it is neither SEZ area nor Revenue District area or Municipal Corporation area, fulfilling necessary criteria of minimum license area of supply. Moreover, the procedure specified in section 15 needs to be followed.
3. Learned Senior Advocate Shri Sanjay Sen, on behalf of the Petitioner MPSEZ Utilities Limited submitted that the Petitioner has made detailed submissions in the previous hearing held on 13.09.2022 and the same are recorded by the Commission in its Daily Order dated 26.09.2022. Hence, for sake of brevity, the same are not repeated by the Applicant/Petitioner.
- 3.1 As regard to clarification sought/directives given by the Commission vide Daily Order dated 26.09.2022, the Petitioner has complied the same and submitted the details vide affidavit dated 11.10.2022.

- 3.2 He further submitted that in so far as the objections raised by two Objectors i.e. 1) Gujarat Urja Sanyukt Sankalan Samiti and 2) Paschim Gujarat Vij Company Limited (PGVCL) are concerned, the said objections have been filed by the Objectors after the completion date of filing of objections/suggestions and also after previous hearing completed by the Commission. Therefore, the same is not permissible. However, the Petitioner/Applicant has filed detailed reply to the objections raised by the aforesaid Objectors. He submitted that the objections raised by both the Objectors are not sustainable and maintainable.
- 3.3 Referring to section 18 of the Electricity Act, 2003 he submitted that the said section provides that whenever alteration/modification to be made in the license area of the licensee, an approval of the Appropriate Commission is required. Further section 14 of the Act states that the Commission may grant more than one license for distribution of the electricity to the persons on fulfilment of the necessary conditions specified in the Act, Rules and Regulations framed under. Therefore, when the statute itself has recognized multiple licensees in the same area of supply there is no reason for objecting the application. The said section also does not discriminate amongst the licensee i.e. licensee based on SEZ i.e. deemed licensee or licensee to whom license is granted by the Commission after following procedure under the Act. Once 'License' is granted to more than one person than all of them are at par. Therefore, the objections/contentions of the Objectors are not valid and hence not permissible.
- 3.4 Referring to Section 15 of the Act, it is further submitted that the said section provides regarding procedure that is required to be followed on the application made by the Applicant for license. The objections are required to be invited by the applicant as per the directive of the Commission, on such license application by way of pre-publication i.e. issuance of Public Notice and inviting comments and suggestions from the stakeholders. The Commission after considering the objections, if any, issues an order

specifying that whether the Commission 'In-principle' agrees to grant the application for issuance of the license or amendment or alteration in license or not or reject the application filed by the Applicant for any of above purpose. If the Commission approves and agrees to issue new license or amendment in the existing license including adding/amending/altering the existing area of the license etc. as the case may be the Commission itself issues a notice under section 15(5) of the Electricity Act, 2003, specifying that the Commission desires to issue the license to the Applicant/Petitioner and invite comments and suggestions from the stakeholders/objectors.

3.5 In the present case the Petitioner has already issued public notice and invited comment and suggestions on the Petition/Application filed by it as per requirement of Section 15 of the Act and in compliance of the directives by the Commission. In response to the public advertisement, the Petitioner had initially not received any objection but later on two objections were received from the Objectors as stated above. The Petitioner after receipt of said objections raised by the objectors has also provided copy of the Application/Petition along with necessary documents etc. He submitted that the Applicant/Petitioner has stated on affidavit that the Petitioner has fulfilled the provisions of the Electricity Rules, 2005 so far as Creditworthiness as well as Capital Adequacy and Code of Conduct etc. are concerned Thus, the Petitioner has provided all relevant details and documents in the present matter, which may be considered by the Commission.

3.6 He further submitted that Section 18 (1) of the Act provides that the Commission has power to amend/alter/modify the terms & conditions of the license including area if the Commission find the same to be permissible as per law on the application made by the licensee. The Commission may see that such amendment/alteration/modification is in public interest or not.

3.7 The first proviso of the Section 18 (1) provides that no amendment or alteration shall be made with consent of the Licensee unless such consent in

the opinion of the Appropriate Commission has been unreasonably withheld.

3.8 Section 18 (2) provides that before any alterations or amendments in the license following steps are required to be carried out:

- a) Licensee shall publish a notice of such application with such particulars and in such manner as may be specified. Thus, the Licensee shall require to publish notice for alterations or amendments if it so desires in its license.
- b) In the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building for defence purpose, the Appropriate Commission shall not make any alterations or modifications except with the consent of the Central Government.
- c) Where any alterations or modifications in a license are proposed to be made otherwise than on the Application of the Licensee, the Commission shall publish the proposed alterations, or modifications with such particulars and in such manner as may be specified.

3.9 The above provisions are similar to the provisions of Section 15 (5), where before granting any license, the Commission shall require to publish the same by issuing public notice stating that the Commission is 'In-principle' agree to grant license. The same procedure is required to be followed as per Section 18 (2) (c) of the Act by the Appropriate Commission when it is of the view to in principle allow the amendment or alteration or modifications in the existing license of the Licensee with its particulars by publishing the same.

3.10 Section 18 (2) (d) of the Electricity Act provides that Appropriate Commission shall not make any alterations or modifications unless all suggestions or objections received within thirty days from the date of the first publication of such Notice. Thus, a public notice is required to be issued for inviting objections and suggestions within 30 days and also required to

be considered by the Appropriate Commission and thereafter the amendment, if any, be allowed by the Commission.

- 3.11 The above section provides that the procedure needs to be followed by the Commission on an application by the Licensee for alteration or amendments or modifications, in the terms and condition of the License.
- 3.12 He submitted that the Petitioner is a distribution licensee in the Special Economic Zone (SEZ) area recognized by the Commission and granted the license to the Petitioner/Applicant. Further, the Commission has later on also granted amendment in the License area of the Petitioner/Applicant.
- 3.13 He submitted that the Petitioner has submitted all necessary details regarding compliance to fulfilment of the provisions of the Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules and amendment made in it from time to time.
- 3.14 In response to the contention raised by the Objectors that the Petitioner is not fulfilling the necessary condition of minimum area of license is concerned, Ld. Sr. Advocate Shri Sanjay Sen referred the Rules notified by the Ministry of Power on the said subject matter and submitted that it is not necessary that minimum license area has to be the Revenue district or Municipal Council or Municipal Corporation. In support of the same, he relied upon the recent decision of the Hon'ble Supreme Court in September-2022 wherein the minimum area specified in the Act and Rules has been interpreted. He referred the decision/order dated 29.09.2022 of the Commission in the License Application No. 1 of 2021 filed by the Torrent Power Limited (TPL) and submitted that the Commission has granted parallel distribution license in the area of Mandal Becharaji SIR (MBSIR) to the Torrent Power Limited (TPL) falling under the existing UGVCL Licensee area wherein the Commission has dealt and decided regarding the minimum license area. The Petitioner also relies on the same in the present case.
- 3.15 He further submitted that the Petitioner has already on affidavit stated that

there is no whole or part of cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purpose.

3.16 Based on above he submitted that the Commission may pass appropriate order and grant in principle approval for amendment in the distribution license as proposed by the Petitioner.

3.17 He also submitted that the Commission may grant time to file written submissions in the matter.

4. Heard the parties.

4.1 The present Petition has been filed by the Petitioner seeking amendment/alteration in its existing distribution license area by inclusion of larger area of Mundra Taluka, District Kutch, Gujarat in the existing license area of the MPSEZ Utilities Limited, to whom deemed distribution license is granted by the Commission.

4.2 The Petitioner has submitted that it has fulfilled all necessary provisions with regard to alteration/modifications and amendments in the distribution license area as per the provisions of the Act, Rules and Regulations framed under it. The Petitioner has claimed that it has complied with the criteria of minimum area specified in the Rules, as there is no limitation that the license area is a minimum of Revenue district or Municipality or Municipal Corporation as per amended notifications issued by the Ministry of Power. Moreover, the Hon'ble Supreme Court has also decided regarding minimum area of license in its recent Judgement.

4.3 We note that the Objectors have filed their objections and Petitioner has also filed its submissions on the objections raised by the Objectors. As the Petitioner and the Objectors have completed their arguments on admissibility and maintainability of the Petition for grant of amendment/alteration in its existing distribution license area by inclusion of larger area of Mundra Taluka, District Kutch, Gujarat in the existing license

area of the MPSEZ Utilities Limited and sought liberty to file submissions, if any, within 15 days from the date of order, we allow the same.

5. Thereafter, the matter would be reserved for order.

6. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar
Date: 10/01/2023

