

**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. Advocates Ms. Deepa Chawan, Ms. Reshma Nathani &
Mr. Chetan Garg along with Mr. Anil Rabadia

CORAM:

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

Date: 26/09/2022

DAILY ORDER

1. The matter was heard on 13.09.2022.
2. Ld. Adv. Ms. Deepa Chawan, on behalf of the Petitioner MPSEZ Utilities Limited (MUL), submitted that the present Application / Petition pertains to licensing and is filed by the Applicant / Petitioner, being an existing licence holder of the specified Special Economic Zone (SEZ) area issued by this Commission and in terms of the prayer clause in present Petition, the Applicant MUL is now seeking alteration / modification / amendment of its existing distribution license by inclusion of the larger area of Mundra Taluka of Kutch District in the State of Gujarat in the existing licensed area of the Petitioner.

- 2.1. It is submitted that this Commission had earlier issued two Orders regarding the existing licence of the Petitioner, whereby; through its first Order, the Commission issued distribution license to the Petitioner thereby conferring the Petitioner as a distribution licensee for specified area notified as SEZ. Thereafter, through a subsequent Order, the Commission decided to allow inclusion of additional area notified as SEZ and accordingly extended the total area of licence.
- 2.2. Now through this present Application, inclusion of entire Mundra taluka of Kutch district is being prayed for as parallel distribution licensee. It is submitted that the legal framework enabling in this regard is the preamble and Statement of objects and Reasons of the Electricity Act, 2003 which contemplates promotion of competition and mechanism is provided wherein the operation of multiple licensees can be granted in a single area of supply.
- 2.3. It is submitted that earlier Clause (e) of Section 3 of the Indian Electricity Act, 1910 provided regarding grant of a license for any purpose not to hinder in any way or restrict the grant of license to another person within the same area of supply for a like purpose. Accordingly, as per 1910 Act, there was no restriction for grant of license to another person within same area of supply for like purpose. Subsequently, Section 5 of the Electricity Supply Act, 1948 enabled constitution of State Electricity Board by the Government through notification. The Electricity Act, 2003 emphasis on competition and sixth proviso to Section 14 of the Electricity Act, 2003 empowers this Commission to grant a licence to 2 (two) or more persons for distribution of electricity within the same area of supply, subject to the fulfilment of statutory provisions in that regard by such person. Accordingly, the Applicant/Petitioner is seeking extension of its licence area for contiguous land of entire Mundra taluka.
- 2.4. It is submitted that as per notification of the Central Government that the developer of Special Economic Zone notified under Sub-Section (1) of Section 4 of the Special Economic Zone Act, 2005 shall be deemed to be a licensee, with effect from the date of notification of such Special Economic Zone. Accordingly, the Petitioner as developer of SEZ notified under aforesaid Act is a distribution licensee for SEZ notified area under the Special Economic Zone Act, 2005 as per provisions of

Section 4 of the SEZ Act, 2005 read with Regulations/Rules framed thereunder and functioning as deemed licensee from 03.03.2010.

- 2.5. It is submitted that as per the Notification No. 228 (E) dated 03.03.2010 issued by the Ministry of Commerce & Industries, Government of India, the Petitioner is operating and developing the SEZ areas, is also having deemed distribution license which was also recorded by the Commission in its Order dated 17.04.2010. Thereafter, in pursuant to the Commission's Order dated 17.08.2015 in Petition No. 1446 of 2014, Distribution License No. 6 of 2016 dated 31.03.2016 has been issued to the Petitioner MUL which is valid for a period of 25 years. It is submitted that the Petitioner had filed Petition No. 1633 of 2016 under Section 18 of the Electricity Act, 2003 seeking an amendment of license by incorporating the area of distribution license for 6641.28 hectares to 8481.28 hectares in view of the notification of the Ministry of Commerce and Industry, Government of India, which was allowed and approved by the Commission vide Order dated 03.11.2017 after following due process of law.
- 2.6. Subsequently, there is further development whereby, the Government of Gujarat vide Notification dated 25.08.2020 in exercise of the powers conferred by clause (2) of Article 243Q of the Constitution of India having regard to the population of the areas, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agriculture activities and the economic importance of the area has specified the local area comprising in the village declared under Section 7 of the Gujarat Panchayats Act, 1993 of the Mundra Village Panchayat and Baroi group Village Panchayat of district Kutch to be the smaller urban area and in exercise of the power conferred by sub-section (2) of Section 5 of the Gujarat Municipalities Act, 1963 constituted w.e.f. 25.08.2020.
- 2.7. She further submitted that the Petitioner has preferred the present 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 before the Commission proposing to distribute and supply electricity in the entire Mundra Taluka of Kutch district, Gujarat. It is submitted that the Urban Development and Urban Housing Department, Government of Gujarat vide its above Notification dated 25.08.2020,

has declared the local areas of Mundra Village Panchayat and the Baroi group Village Panchayat in the Kutch District are to be the smaller urban area. It is also submitted that the Urban Development and Urban Housing Department, Government of Gujarat, vide its another Notification dated 25.08.2020 has constituted the said area as a Municipal area, namely, "Mundra- Baroi Municipality", comprising of the said smaller urban area with effect from 25.08.2020. Therefore, the proposed license area also includes the existing license area of the Applicant as part of entire Mundra Taluka which includes the Municipality of Mundra-Baroi.

- 2.8. It is submitted that sixth proviso of Section 14 of Electricity Act, 2003 provides that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the application for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, credit-worthiness, or Code of Conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose. Therefore, the Commission is empowered to grant a licence to two or more persons for distribution of electricity within the same area of supply, subject to the fulfilment of statutory provisions by such person.
- 2.9. It is further submitted that the said proviso also provides that the Central Government to prescribe the requirements in respect to capital adequacy, creditworthiness, or code of conduct. Therefore, it is submitted that the emphasis for consideration of the Commission is on the word "Prescribed", which is defined under Section 2 (52) of Electricity Act, 2003. Referring to said definition it is submitted that "prescribed" means the prescribed by rules made by the Appropriate Government under the Electricity Act, 2003. Accordingly, the Central Government has framed the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and Clause 3 thereof provide regarding the 'Requirements of capital adequacy

and creditworthiness', whereas; Clause 4 therein provides requirement of code of conduct.

- 2.10. It is further submitted that Sections 14, 15 and 18 of the Electricity Act, 2003 provides for parallel license to ensure competition in all segments. The Petitioner MUL is already having a Distribution Licence, which meets the 'minimum area' requirement as contemplated under the Distribution of Electricity Rules read with the Constitution of India and now the Petitioner MUL by way of the present application is seeking alteration/ amendment/ modification of its existing licence by including the larger Mundra Taluka region, which presently falls within the distribution license area of PGVCL. Pursuant to such amendment, in the Mundra Taluka region, the Petitioner would be a second parallel Distribution Licensee. It is submitted that the request of the Petitioner is to only increase the 'area of supply' beyond the existing Licence area of the MUL, and also to include the Mundra Taluka, which further includes the Mundra-Baroi Municipality (Municipal Council).
- 2.11. It is submitted that the Petitioner MUL also fulfils all the requirements of minimum license area provided under the Distribution of Electricity Rules and has filed relevant details including the Map of proposed licence area. Accordingly, the Petitioner MUL has already qualified in terms of the legal framework under the provisions of the Electricity Act, 2003 read with the Rules and Regulations framed therein by way of holding a licence for a minimum area (SEZ). Hence, the present application has been preferred by the Petitioner MUL seeking amendment of a Distribution License to cover the area of Mundra Taluka of Kutch District, in the State of Gujarat, including a Municipal Council. It is also submitted that the Petitioner has annexed the Map of its proposed license area along with the present Petition.
- 2.12. It is further submitted that the Petitioner fulfils all the criteria as laid down in the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 issued by the Ministry of Power, GoI. Based on the above, it is requested the Commission to allow the present Petition by amendment/alteration/modification of the existing Distribution

License of the Petitioner MUL by inclusion of the larger area of Mundra Taluka of Kutch District, in the licensed area of the Petitioner MUL.

3. In response to query of the Commission regarding the issuance of the Public Notice in the present matter, Ld. counsel of the Petitioner submitted that the Petitioner has received a letter dated 30.06.2022 from the Commission wherein it was conveyed that as per Section 18 of the Electricity Act, 2003 and Regulation 16 of the GERC (Licensing of Distribution of Electricity) Regulations, 2005, the Applicant is required to issue a public notice to invite comments and suggestions from the stakeholders/objectors and host the Application on its website. Accordingly, in compliance to the aforesaid directives, the Petitioner issued public notice on 06.07.2022 in one English newspaper viz. Indian Express Newspaper (Ahmedabad Edition) and two Gujarati newspaper viz. (i) Gujarat Samachar Newspaper (Bhuj Edition) & (ii) Kutchmitra (Bhuj Edition) and last date of submissions of comments/suggestions was 04.08.2022. Moreover, the Petitioner also placed the present Petition along with public notice on its website www.adaniports.com for inviting comments, objections and suggestions from the stakeholders in this matter and has thereafter also filed compliance affidavit dated 11.07.2022 in this regard before the Commission. It is also submitted that the Petitioner has not received any comments or suggestions or objections from the stakeholders.
4. Upon further query of the Commission that the Commission has issued distribution license to the Petitioner in respect to its SEZ area in view of SEZ area notified by the Ministry of Commerce and Industry, Government of India, whereas in the present Petition, the Petitioner desires to add the adjoining area of entire Mundra Taluka which is non-SEZ area and Industrial township is relevant in the present case, then how the Petitioner fulfils the necessary criteria of minimum area of licensee which consist of SEZ area with non-SEZ area, it is submitted that initially the license was issued to the Petitioner for SEZ area only and thereafter the Commission has approved an additional SEZ area in view of Notification dated 21.09.2016 issued by Ministry of Commerce and Industry, Government of India. It is further submitted that recently the Commission in one matter with regard to application for grant of Distribution License in the area of Mandal Becharaji SIR, while referring the provisions of the Electricity Act, 2003 and Distribution of Electricity License

(Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, has rightly pointed out that the Commission can grant Distribution Licence to the Applicant for 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. Also, The Explanation to Rule 3 has to be read with Rule 3 (1) and Rule 3 (2) of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. 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 proviso to Section 14 and the term “minimum” is inserted for computation of the two conditions of credit worthiness and capital adequacy only. The Commission also held that the Proviso to Article 243-Q of the Constitution of India states that a Municipality may not be constituted in such urban area or its part if the Governor by a public notification specify it to be an Industrial Township, having regard to the size of the area and municipal services being provided or proposed to be provided by an industrial establishment in that area as if may deem fit. The nomenclature used in Article 243-Q is as per the quantum of the area, for which the Municipality is established namely, the Municipal Council for a smaller urban area and Municipal Corporation for a larger urban area. Both being institutions of self-government, are municipalities. The proviso to Article 243-Q provides for industrial township being a self-governing area in reference to Municipal corporation or council. Accordingly, it was decided that in view of the proviso to Article 243-Q (1), industrial township cannot be read as an exception of the 6th proviso to Section 14 of the Electricity Act, 2003. Section 14 along with its proviso applies to the entire State of Gujarat without any exception. The minimum area of an industrial township therefore would fall within the Explanation to Rule 3 of the Rules 2005 for construing the Requirements of capital adequacy and creditworthiness. Therefore, the Commission has taken a view that Distribution License can be provided to such Applicant.

- 4.1. It is further submitted that the aforesaid Order of the Commission has been challenged by Gujarat Urja Vikas Nigam Limited (GUVNL) before the Hon’ble APTEL wherein it was prayed for stay by GUVNL which is not yet granted by the Hon’ble

APTEL, wherein the Hon'ble APTEL has made exactly the same comments as that of the Commission in its aforesaid Order pertaining to MBSIR.

- 4.2. Referring to Rule 3 of Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 issued by the Ministry of Power, Govt. of India, it is submitted that the said Rule is applicable to any such person who applies for a distribution license in the same area where another distribution licensee already exists. The said provisions also states that while applying for a parallel license, there has to be a 'minimum area' in terms of a Municipal Council or Municipal Corporation as defined in Article 243 (Q) of the Constitution of India or a revenue district.
- 4.3. It is also submitted that recently the Ministry of Power, Govt. of India has amended the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and as per the aforesaid amendment, for grant of a license for distribution of electricity within the same area in terms of the sixth proviso to Section 14 of the Electricity Act, 2003, the minimum area of supply shall be the area falling either within a Municipal Corporation as defined in Article 243Q of the Constitution of India or three adjoining revenue districts or a smaller area as may be notified by the Appropriate Government.
- 4.4. Ld. counsel for the Applicant/Petitioner agreed to file additional submissions on affidavit in context thereto.
- 4.5. In response to query of the Commission that no board resolution with regard to the authorized person for dealing with the present Petition submitted by the Petitioner agreed to submit the same on affidavit.
- 4.6. After referring to the case of *S. Sundaram Pillai, Etc. V/s. V.R. Pattabiraman Etc., [(1985) SCC (1) 591]*, it is submitted that the explanation provided to any Section needs to be interpreted in context to the said provision/Act.
- 4.7. In response to query of the Commission regarding compliance to the requirements under Section 15(2)(ii) of the Electricity Act, 2003 whereby prior to granting any

distribution license to the Applicant, it is necessary to confirm that the area of license including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defense purpose and the Appropriate Commission has ascertained that there is no objection to the grant of the license on the part of Central Government which is not filed, Ld. counsel for the Applicant admitted that there is an Airport in SEZ area and agreed to file on affidavit the said details and provide other necessary documents in this regards. It is further requested that the Commission may pass an appropriate Order in this regard.

5. We note that the present Petition has been preferred by the Petitioner 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 its existing distribution license by inclusion of the larger area of Mundra Taluka of District Kutch, Gujarat in the licensed area of the Petitioner MUL.
- 5.1. We note that pursuant to directives, the Petitioner has issued public notice on 06.07.2022 in one English newspaper viz. Indian Express Newspaper (Ahmedabad Edition) and two Gujarati newspapers viz. (i) Gujarat Samachar Newspaper (Bhuj Edition) & (ii) Kutchmitra (Bhuj Edition) and last date of submissions of comments/suggestions was 04.08.2022. The Petitioner submitted that it has also placed the present Petition along with public notice on its website www.adaniports.com for inviting comments, objections and suggestions from the stakeholders in this matter and has thereafter also filed compliance affidavit dated 11.07.2022 before the Commission but the Petitioner has not received any comments or suggestions or objections from the stakeholders. We also note that the Commission's office has also not received any comments or objections or suggestions from any stakeholders in the present matter.
- 5.2. We have considered the submissions made by Ld. Adv. Ms. Deepa Chawan appearing on behalf of the Petitioner. We note that the present Application/Petition requires further submissions on affidavit with regard to clarifications sought / directives by the Commission as stated hereinabove, which has been agreed by the Ld. counsel that the same will be lied with on affidavit. We also note that Ld. counsel

appearing on behalf of the Petitioner has also agreed during the hearing to provide details of cantonment, aerodrome, fortress, arsenal, dockyard, building or place in occupation of Government for defense in proposed incremental area of existing licensee, NOC, etc. or relevant authorities, other relevant details/documents etc. Let the same be filed on affidavit within two weeks' time from the date of this Order. The Commission will pass appropriate Order thereafter.

6. A communication dated 20.09.2022 through an e-mail post hearing from Gujarat Urja Sanyukt Sankalan Samiti (GUSSS) is received by the Commission requesting to give an opportunity to hear them and for filing written submission before passing final order in the matter. In view of the above, it would be proper and just to give opportunity of hearing and to file any written submission to Gujarat Urja Sanyukt Sankalan Samiti. The staff of the Commission is directed to provide a copy of communication received from the Gujarat Urja Sanyukt Sankalan Samiti to the Applicant / Petitioner for their submissions on it. We also decide that GUSSS is at liberty to file their submission / suggestions / objections on the Application / Petition, if any, with a copy to the Applicant / Petitioner. The Applicant / Petitioner may file their submission, if any, to the submissions of the GUSSS within 7 days with a copy to GUSSS.
7. The next date of hearing will be intimated separately.
8. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar
Date: 26/09/2022