

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1859 of 2020.

In the Matter of:

Petition under Section 86 (1)(f) and other applicable provisions of the Electricity Act, 2003 read with 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. Ecotax LLP.

Petitioner : J. B. Renewable LLP

Co-Petitioner : J. B. Ecotax LLP

Represented By : Ld. Adv. Mr. Arijit Maitra alongwith Mr. Vikalp Vats

V/s.

Respondent No. 1 : Dakshin Gujarat Vij Company Limited

Represented By : Ld. Adv. Ms. Shrishti Khindaria alongwith Mr. S. P. Patel and Mr. K.B. Vasava

Respondent No. 2 : Gujarat Energy Transmission Corporation Limited

Represented By : Nobody was present.

Respondent No. 3 : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Adv. Ms. Shrishti Khindaria alongwith Mr. Prashant Gandhi

Respondent No. 4 : Madhya Gujarat Vij Company Limited

Represented by : Nobody was present.

Respondent No. 5 : Energy & Petrochemicals Department, Govt. of Gujarat

Represented by : Nobody was present.

CORAM:

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 12/06/2023.

DAILY ORDER

1. The matter was listed for hearing on 22.05.2023.

2. Ld. Adv. Mr. Arijit Maitra, appearing on behalf of the Petitioners submitted that the present Petition has been filed on account of refusal to grant long term open access of 2.1 MW wind power from Petitioner No. 1 viz. J. B. Renewable LLP to the Petitioner No. 2 viz. J. B. Ecotex LLP being industrial consumer by the distribution licensee. The Petitioner No. 2 J.B. Ecotex LLP has installed the Wind Turbine Generator (WTG) of installed capacity of 2.10 MW at district Jamnagar for its captive use and also owns the WTG of installed capacity of 2.10 MW at District Kutch for which permission for sale of said windmill has been received from the GEDA on 25.09.2017.
- 2.1. It is submitted that the Respondent No. 1 DGVCL vide its letter dated 30.08.2019 informed the Petitioners that third party arrangement from the Petitioner No. 1 to Petitioner No. 2 for wheeling under LTOA cannot be allowed more than 50% of contract demand as capacity restriction is applicable at consumption end. Therefore, the said agreement for wheeling of 2.1 MW wind power under third party arrangement from M/s J.B. Renewable LLP to M/s J.B. Ecotex LLP cannot be executed.
- 2.2. Further, referring the letter dated 30.08.2019 of the Respondent No. 1 DGVCL wherein it is stated that the documents for execution of wheeling agreement for wheeling of 2.1 MW wind power under LTOA as third-party sale from M/s J.B. Renewable LLP to M/s J B Ecotex LLP bearing consumer No. 62789 having contract demand of 5000 KVA has been provided. It is also stated that M/s J.B. Ecotex has already executed wheeling agreement for 2.1 MW WTG capacity for captive use with DGVCL on 29.09.2017 and applied for another 2.1 MW wind power under third party arrangement under LTOA. In the said letter, it is also stated that as per Gujarat Wind Power Policy 2016, wheeling cannot be allowed more than 50% of contract demand as capacity restriction is applicable at consumer end and therefore, denied to execute wheeling agreement of 2.1 MW power under third party arrangement from M/s J.B. Renewable LLP to M/s J.B. Ecotex LLP. It submitted that the reliance is being placed by the Respondent DGVCL on the Gujarat Wind Power Policy 2016 and the said letter of the Respondent DGVCL has been challenged in the present petition by the Petitioners. It is submitted that the denial of LTOA on the ground that wheeling of 2.10 MW power from WTG exceeds capacity restriction of 50% of contract demand at consumption end is unlawful and contrary to the provisions of the GERC OA Regulations, 2011 read with Section 42 of the Electricity Act, 2003. It is submitted that there are no provisions in the said

Regulations which imposed any restriction that has been done by way of letter dated 30.08.2019 by the Respondent DGVCL.

- 2.3. Referring the Clause 5 of Gujarat Wind Power Policy 2016, it is submitted that the Petitioners are MSME units and there are no such restrictions in the said Policy 2016 to disallow LTOA on the ground that the quantum is to be transmitted exceeds 50% of the contract demand. The Petitioner had applied for open access of 2.1 MW which is less than 50% of 5 MW contract demand of the Petitioner with the licensee. There is restriction of captive use of wind power upto 50% of contracted demand in case of units other than MSME units. Therefore, the Petitioner has not violated any provisions of Wind Power Policy 2016 and hence the impugned letter dated 30.08.2019 issued by DGVCL is contrary to the Wind Power Policy 2016 and required to be quashed and set aside by the Commission. Referring to provisions of 'third party sale', it is submitted that the Petitioner No. 2 is third party consumer buying power from the wind power project of the Petitioner No. 1 and there are no such restrictions of contract demand for wheeling of power to third party from wind power project.
- 2.4. The Petitioner No. 2 being captive user has generated and consumed the energy from such plant is less than 50% of contract demand. The Petitioner No. 1 who is seller and Petitioner No. 2 who is buyer under third party sale and there is no restriction on contracted demand/sanctioned load as per Policy and Order of the Commission so far energy is purchased under third party sale. It is also submitted that despite having applied for open access way back in the year 2019 and paying transmission charges also, the open access has not been granted to the Petitioners and no set off of energy given by the Respondents.
- 2.5. It is further submitted that the Petitioners have filed application for urging the additional grounds and amendment of prayers under Rule 17 of the Order of VI of the Code of Civil Procedure 1908. It is requested that the Commission while allowing the Respondents to file their reply to the applications of the Petitioners, may also grant two weeks' time to the Petitioners to file rejoinder reply in the matter. It is further requested that the matter may be listed on 05.07.2023 subject to the convenience of the Commission.

3. Ld. Adv. Ms. Shrishti Khindaria, appearing on behalf of the Respondent No.'s 1 and 3 submitted that the Commission may grant two weeks' time to the Respondents to file reply to the applications filed by the Petitioners. She also agreed for listing of the matter on 05.07.2023 subject to the convenience of the Commission.
4. Heard the parties. When the matter was called out, nobody has appeared on behalf of Respondents No. 2, 4 & 5 nor any written communication about their inability to remain present has been made, despite notice.
- 4.1. We also note that the Petitioners have filed IA in the present matter for seeking relief to allow the amendments in the Petition by adding the additional grounds and amendment of prayers under Rule 17 of the Order of VI of the Code of Civil Procedure 1908, which is pending registration and numbering. The said Application is pending due to certain defects exists by the Petitioners. Let the same be registered and numbered after curing the defects, if any. We direct the staff of the Commission to list the aforesaid IA, alongwith the main matter by issuing necessary notice to the Applicants/Petitioners and the Respondents. We further direct the Applicants/Petitioners to provide the copy of said IA to the Respondents, if not already served, within a week from the date of this Order and thereafter, file proof of service before the Commission. We also direct all the Respondents to file their respective reply, if any, within two weeks, with copy to the Petitioners in the IA. The Petitioners are at liberty to file the rejoinder to the reply of the Respondents in the IA, if any, within two weeks' time after receipt of reply from the Respondents, with a copy to the Respondents.
- 4.2. With joint concurrence of the parties, the next date of hearing is fixed on 05.07.2023 at 11:30 A.M.
5. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 12/06/2023.