

1

**BEFORE THE HONORABLE GUJARAT ELECTRICITY REGULATORY
COMMISSION AT GANDHINAGAR**

Case No.

Filing No.

IN THE MATTER OF

Filing of Petition under GERC
(Procurement of Energy from Renewable
Sources) Regulations, 2010 and its (First
Amendment) Regulations, 2014 for
revision in Renewable Power Purchase
Obligation (RPO) in case of four
subsidiary distribution Companies of
GUVNL for FY 2015-16.

AND

IN THE MATTER OF

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan
Race Course,
Vadodara – 390 007

Petitioner

AND

IN THE MATTER OF

1. Madhya Gujarat Vij Company Ltd
(MGVCL) Vadodara
2. Uttar Gujarat Vij Company Ltd
(UGVCL) Mehsana
3. Paschim Gujarat Vij Company Ltd
(PGVCL) Rajkot
4. Dakshin Gujarat Vij Company Ltd
(DGVCL) Surat

Co-Petitioners

PETITIONER MOST RESPECTFULLY SUBMITS THAT:-

1.0 PREAMBLE

1.1 The erstwhile Gujarat Electricity Board has been unbundled in seven functional entities under the Gujarat Electricity Industry Reorganization and Comprehensive Transfer Scheme, 2003 notified under the Gujarat Electricity Industry (Reorganization and Regulation) Act 2003. The activities of Generation, Transmission, Distribution, Bulk power purchase and supply undertaken by erstwhile Gujarat Electricity Board has been entrusted to separate seven functional entities. The generation activity is assigned to Gujarat State Electricity Corporation Ltd. (GSECL), the transmission activity is assigned to Gujarat Energy Transmission Corporation Ltd. (GETCO) and the distribution activity is assigned to four Distribution companies viz. Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL), Dakshin Gujarat Vij Company Ltd. (DGVCL) and Paschim Gujarat Vij Company Ltd. (PGVCL). Further, the function of Bulk purchase and Bulk sale of power is assigned to Gujarat Urja Vikas Nigam Ltd. (GUVNL) as per the re-organization scheme. Accordingly, the function of Bulk purchase and Bulk sale of power on behalf of four subsidiary Distribution Companies is assigned to Gujarat Urja Vikas Nigam Ltd. (GUVNL).

1.2 Hon'ble GERC through Notification dated 17th April 2010 had notified GERC (Procurement of energy from Renewable Energy sources) Regulations 2010 and the said Regulation has been amended through Notification dated 4.03.2014 (hereinafter collectively referred as RPO Regulations). As per the Regulation 4.1 of RPO Regulations, each distribution licensee is required to purchase minimum stipulated percentage of the total consumption of its consumers including T&D losses during a year from renewable energy sources. The prescribed minimum percentages are as under:

Year	Wind	Solar	Others	Total
2010-11	4.5%	0.25%	0.25%	5%
2011-12	5%	0.5%	0.5%	6%
2012-13	5.5%	1%	0.5%	7%

Year	Wind	Solar	Others	Total
2013-14	5.5%	1%	0.5%	7%
2014-15	6.25%	1.25%	0.5%	8%
2015-16	7.00%	1.50%	0.5%	9%
2016-17	7.75%	1.75%	0.5%	10%

The copies of GERC (Procurement of energy from Renewable Energy sources) Regulations 2010 and amended Regulations 2014 is annexed herewith as **Annexure-A**.

- 1.3 Hon'ble GERC from time to time has been determining and deciding preferential tariff for procurement of power by Distribution Licensees from Renewable Energy Sources for meeting of Renewable Power Purchase Obligation (RPO).

In order to meet the RPO of its Distribution Companies, GUVNL has been purchasing power from various RE Sources by entering into Power Purchase Agreements at the tariff determined by Hon'ble Commission. The status of RE Capacity tied up by GUVNL as on 31.3.2016 for the purpose of meeting RP obligation, is as under:

Source	Capacity tied up (MW)
Wind	2470*
Solar	886**
Biomass	30
Small Hydel	10
Total	3396

* 2262 MW commissioned

** 861 MW commissioned

2.0 SUBMISSION

- 2.1 The status of RPO compliances for FY 2015-16 taking into account total power purchase requirement of 72972 MUs (as per MTR Order dated 29.4.2014) for all 4 DISCOMs of GUVNL on provisional basis, is as under:

RPPO Status	Solar	Wind	Others	Total
RE Power Purchase (Mus)	1398	4118	71	5587
(%)	1.92%	5.64%	0.10%	7.66%
Shortfall (+) / Excess (-)	-303	990	293	980

- 2.2 The above status of RPO is worked out based on quantum of power purchase for FY 2015-16 as approved by Hon'ble Commission. It is humbly submitted that GUVNL / Distribution Companies are managing RE power purchase during the year for meeting RPO based on approved quantum of particular year and any variation in quantum of power purchase and consequent variation in RPO requirement for the year can be known only after finalization of annual accounts. Therefore, in accordance with Regulations 7.1 of RPO Regulations, variation in RPO compliance based on actual purchase of power is allowed to adjust/carry forward in the ensuing year.
- 2.3 As regard to RPO under non-solar category is concerned, it is humbly submitted that during FY 2015-16, GUVNL has purchased 4189 MUs Non-solar energy i.e. 5.74% as against requirement of 5473 MUs i.e. 7.50% of non-solar RPO prescribed in the Regulations. Thus, there is shortfall of 1284 MUs in non-solar RPO for FY 2015-16, on account of reasons not attributable to GUVNL/Distribution Licensee as explained in detail hereinafter.
- 2.4 As regard to RPO under Solar category, it is humbly submitted that from the contracted solar capacity of 861 MW during the FY 2015-16, GUVNL has purchased 1398 Mus Solar energy i.e. 1.92% as against requirement of 1095 Mus to meet stipulated solar RPO of 1.50%. Thus, there is excess purchase of 303 MUs solar energy for FY 2015-16, which is eligible to compensate against shortfall of non-solar RPO in terms of various orders of Hon'ble APTEL.
- 2.5 It is humbly submitted that pursuant to the Solar Power Policy, 2009 notified by Government of Gujarat, GUVNL had entered into PPAs with various solar project developers and out of which 861 MW solar capacity has been installed and available for generation to meet solar RPO. It is to mention that when PPAs

5

were entered into with solar project developers in the year 2010, the concept of solar energy and solar technology was at nascent stage of development in the Country as a whole and was not considered to be a proven technology for power generation in comparison to other available RE sources like Wind, Hydel, Biomass etc. Therefore, in order to give kick start and to promote new source of RE power in terms of solar, Government of Gujarat has consciously promoted and encouraged installation of MW based solar capacity in the State of Gujarat.

2.6 It is humbly submitted that the PPAs entered into with solar power project developers in year 2010 are for the term of 25 years and no new PPAs have been signed with any solar power project developers thereafter except 4 MW Rooftop Solar project in Vadodara city. The action of GUVNL/Government of Gujarat towards promotion of solar power was bonafide. The RPO Regulations of Hon'ble Commission provides for adjustment of excess purchase of wind energy against shortfall in solar RPO. In the same manner, it is in the interest of the consumers to allow adjustment of purchase of excess solar energy against shortfall in non-solar RPO more particularly when purchase of solar power is not with an intention to distort the technology specific RPOs.

2.7 The above has also been upheld by the Hon'ble Appellate Tribunal for Electricity in the following Judgments –

Judgment dated 25.04.2014 in Appeal No. 24 of 2013

"60. We find that the Regulation 4.1 only provides that shortfall in RPO for solar and other renewable energy sources can be made good by additional wind or other energy. However, the Regulation is silent about making good the shortfall in wind and other energy by procuring additional energy from solar which may be due to higher price of solar energy. However, we feel that keeping in view the circumstances of the case, the State Commission can exercise its powers under Regulation 4.2 to allow adjustment of excess solar energy procured for meeting the shortfall in non-solar RPO.

61. In the present case we find that GUVNL in order to promote solar technology has tied up more solar capacity than required for meeting the solar RPO. As pointed out by the distribution licensees, the Wind Energy generators in the State did not come

6

forward to enter into PPA for supply of energy at the preferential tariff determined by the State Commission and preferred supply of energy to others and sell REC in the market. We agree with the State Commission that if the adjustment of excess solar energy is not permitted it would require purchase of non-solar REC from the market which will result in additional financial burden on the distribution licensees and the consumers. The State Commission under Regulation 4.2 is empowered to revise the percentage of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee.

62. In the present case, in order to promote solar technology and in view of wind energy generators not coming forward to enter into PPA for supply of wind energy to the distribution licensees, they have entered into PPAs with solar generators for a capacity higher than required for meeting the solar RPO. If under these circumstances, the State Commission, in order to avoid additional financial burden of purchasing non-solar REC on the distribution licensee and the consumers, has allowed to meet non-solar RPO by additional energy procured from solar projects, there is no infirmity in the same. There is no illegality in the State Commission exercising its powers under Regulation 4.2 for such adjustment in the circumstances of the case. Accordingly, we reject the contention of the Appellant with regard to adjustment of excess solar energy against the non-solar RPO."

Judgment dated 16.04.2015 in Appeals No. 258 of 2013 and 21 of 2014 & IA-28 of 2014

66. Let us examine the fifth issue regarding adjusting the excess solar energy purchased over the specified solar RPO to set off the shortfall in fulfillment of non-solar RPO.

67. This issue has been dealt with by this Tribunal in Appeal No.24 of 2013 that keeping in view the circumstances of case, the State commission can exercise its power under Regulation 4.2 to allow adjustment of excess solar energy procured for meeting the shortfall in non-solar RPO.

68. Solar energy is more expensive, therefore, distribution licensees should refrain from excessive procurement of solar energy as it would unnecessarily burden the consumers. Excessive procurement of solar energy is also not advisable as the price of solar energy has been declining over the years with advancement in technology and increase in production capacity due to increase in demand. In the initial years of implementation of the RPO Regulations there may be some variations in different sources of renewable energy and such adjustment may be justifiable. In such case the State Commission can exercise its power in the circumstances of the case to set off non-solar RPO with excess solar energy purchase. However, this should not be made as regular practice and the State Commission should ensure that the distribution licensees do not deliberately try to alter the technology specific RPOs to defeat the purpose of

giving separate RPOs to solar and non-solar RPOs. Excessive procurement of solar RPO for adjustment of shortfall in non-solar RPO may also be uneconomical in comparison to purchase of non-solar REC to meet the shortfall in non-solar REC. This aspect should also be kept in view by the State Commission in future."

Copy of Hon'ble APTEL judgments dated 25.4.2014 & 16.4.2015 are annexed herewith as **Annexure – B** (Colly.)

- 2.8** Keeping in view the above Judgments, GUVNL has not tied up any further Solar capacity in the State except 4 MW Rooftop Solar project in Vadodara city and is only purchasing the power already tied up.
- 2.9** It is submitted that as against 1284 Mus shortfall in compliance of non-solar RPO, GUVNL has purchased excess 303 MUs of solar energy. Thus, the net shortfall in compliance of total RPO is 980 Mus i.e. 1.34% for FY 2015-16.
- 2.10** It is humbly submitted that average power purchase cost of solar energy is around Rs. 13.38 / Unit which is almost three times costlier than the cost of power from other RE sources. The excess solar power purchase has additional financial implication of Rs. 284 Crores (i.e Rs. 13.38 less Rs. 4). The above additional financial implication is more than the amount required to purchase non-solar REC to meet shortfall in non- solar RPO. Further, at no point of time, GUVNL had denied to sign PPA under preferential tariff with any Wind Generator. Therefore, Hon'ble Commission is humbly requested to revise the RPO of FY 2015-16 as per actuals since the reasons for shortfall in non-Solar RPO is anyway not attributable to the Petitioners.
- 2.11** The shortfall in compliance of RPO to the tune of 980 Mus for FY 2015-16, is on account of factors beyond the control of GUVN/Distribution licensees and mainly attributable to:
- (i) Lower Wind/Other RE capacity addition during FY 2013-14, FY 2014-15 & even during FY 2015-16 nation as whole and State of Gujarat in particular.

- (ii) Actual available generation from other RE capacity is at lower level as compared to normative generation.
- (iii) Delay in commissioning of tied up Wind Capacity.

2.12 It is submitted that in case of Wind energy, GUVNL has been signing PPA and ready to sign PPA at preferential tariff with all the Wind Developers whosoever come forward to supply power to GUVNL. Despite that, adequate wind capacity under PPA route was not set up during FY 2013-14 & FY 2014-15 and also during FY 2015-16. The Wind capacity addition in terms of tied up capacity (under PPA route) during FY 2013-14 & 2014-15 was at lower level to tune of 93 MW and 162 MW respectively as compared to capacity addition of 378 MW and 425 MW for FY 2011-12 & FY 2012-13 respectively. Even in FY 2015-16 wind capacity has been tied up to the tune of 190 MW but most of the capacity commissioned in second half of the year when wind season is low. Lower capacity addition during past three years has cumulative effect for meeting Wind RPO of FY 2015-16.

2.13 It is further submitted that for 200 MW wind capacity tied up during FY 2012-13, the Schedule Commercial Operation Dates (SCOD) as agreed in the PPAs was to be in between December 2013 to December 2014, in phased manner. However, the execution and commissioning of these 200 MW Wind Power projects got delayed inordinately and only 8 MW commissioned during FY 2014-15, 28 MW commissioned during tail end of FY 2015-16 and balance 164 MW yet not commissioned. Had 192 MW Wind Capacity under these PPAs been commissioned as per agreed time schedule, generation of approximately 412 Mus would have been available to meet the Wind RPO for FY 2015-16.

2.14 In regard to purchase of power from the category 'other' RE sources, it is humbly submitted that GUVNL has tied-up 39.6 MW capacity which includes 30 MW from Biomass based power projects and 9.6 MW from Small/Mini Hydro power projects. During the FY 2015-16, the generation from 30 MW Biomass

based power project was 0.8 MUs (at PLF of 0.32%) only, which is significantly lower level as compared to normative generation of 210 Mus (at normative PLF of 80%). Thus, there is shortfall of 209 MUs from Biomass based RE sources. Similarly, Small Hydel projects of 9.6 MW were also not operated to the normative level on account of shortage of water during the year.

- 2.15** It is humbly submitted that the cumulative effect of (i) lower capacity addition cumulative during last three years (ii) delay in commissioning of tied up capacity (iii) lower generation as compared to normative generation has resulted into shortfall in compliance for FY 2015-16.
- 2.16** As enumerated herein above, the reasons for shortfall in RPO are not attributable to GUVNL / Distribution Companies and there has been no willful default or failure on the part of GUVNL/distribution companies for compliance of RPO for FY 2015-16.
- 2.17** It is humbly submitted that the Regulation 4.2 of GERC (Procurement of Energy from Renewable Sources), Regulations, 2010 provide for revising the targets of RPO in case of supply constraints or factors beyond control of concerned distribution licensee. Under RPO Regulations, Hon'ble Commission has inherent power to give relaxation as may be deemed necessary in the scenario of RE supply constrains or other factors not attributable to concerned distribution licensee.
- 2.18** From the above, it is evidently clear that there were supply constraints in the State of Gujarat and factors beyond the control of GUVNL and therefore this Hon'ble Commission can exercise its power under Regulation 4.2. Further, Regulation 7.2, the pre-condition for invocation of Regulation 9 which states that despite availability of renewable energy sources, the distribution licensee failed to meet the RPO is also not applicable.

2.19 In view of above, it is humbly requested to revise shortfall in meeting RPO for FY 2015-16 and also requested to exempt GUVNL / Distribution Companies from the requirement of transferring funds equal to shortfall quantum at forbearance price to the Designated Account since GUVNL/Discoms are already having additional financial burden of Rs. 284 Crores during FY 2015-16 due to purchase of additional solar power.

3.0 PRAYER:

It is humble prayer of the petitioner that

- i. Hon'ble Commission may please allow adjustment of excess purchase of 303 Mus solar power against shortfall in RPO of non-Solar category
- ii. Hon'ble Commission may please revise the RPO target of FY 2015-16 as per actual and may please exempt from requirement of transferring funds to the Designated Account for FY 2015-16, as shortfall in compliance of RPO is on account of factors beyond the control of distribution licensee and there is no willful default or failure on the part of GUVNL/distribution companies for compliance of RPO for FY 2015-16.



GUJARAT URJA VIKAS NIGAM LIMITED
- PETITIONER

Declaration:

Declaration that subject matter of the petition has not been raised by the Petitioner before any other competent forum and that no other competent forum is currently seized of the matter or has passed any order in relation thereto.



GUJARAT URJA VIKAS NIGAM LIMITED
PETITIONER

DATE : 26 /08/2016
PLACE: VADODARA

Regd. No.: 2056.
Date: 26.8.2016

BEFORE THE HONORABLE GUJARAT ELECTRICITY REGULATORY
COMMISSION AT GANDHINAGAR

Case No.

Filing No.

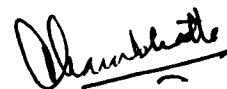
IN THE MATTER OF	Filing of Petition under GERC (Procurement of Energy from Renewable Sources), (First Amendment) Regulations, 2014 for waiver the shortfall in meeting of RPO in case of four subsidiary distribution companies of GUVNL for FY 2015-16.
AND	
IN THE MATTER OF	Gujarat Urja Vikas Nigam Limited Sardar Patel Vidyut Bhavan Race Course, Vadodara – 390 007 Petitioner
AND	
IN THE MATTER OF	1. Madhya Gujarat Vij Company Ltd (MGVCL) Vadodara 2. Uttar Gujarat Vij Company Ltd (UGVCL) Mehsana 3. Paschim Gujarat Vij Company Ltd (PGVCL) Rajkot 4. Dakshin Gujarat Vij Company Ltd (DGVCL) Surat Co-Petitioners

AFFIDAVIT

I, Ashwinkumar son of Nagindas Khambhatta, aged about 53 years, working as Superintending Engineer of Gujarat Urja Vikas Nigam Ltd, having office at Sardar Patel Bhawan, Race Course Road, Vadodara – 390 007 do solemnly affirm and state on oath as under :

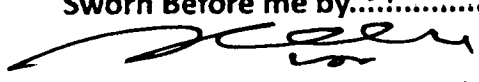
1. That I am duly authorized by the Company to swear this Affidavit.
2. That the facts stated in the Petition are based on record and files of the Company and they are true and correct to my knowledge, information and belief and I believe the same to be true.

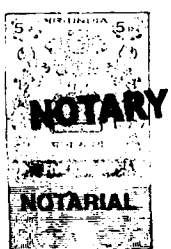
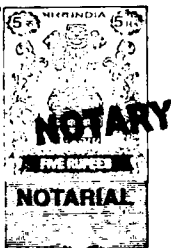
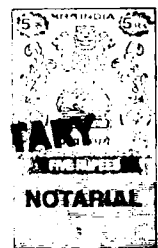
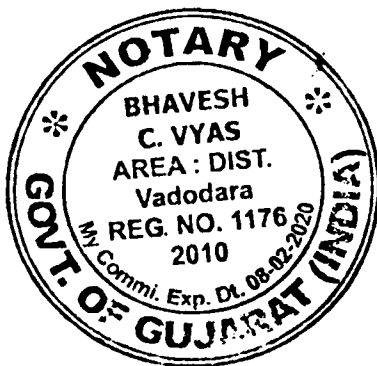
Solemnly affirmed at Vadodara on this 26th day of August, 2016.



(DEPONENT)

Solemnly Affirmed / Declared
Sworn Before me by.....


BHAVESH C. VYAS
NOTARY (Govt. of Gujarat)
26.8.2016



GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)**Procurement of Energy from Renewable Sources**

Notification No. 3 of 2010

In exercise of the powers conferred under sections 61, 66, 86 (1)(e) and 181 of the Electricity Act 2003 (36 of 2003) and all powers enabling it in that behalf, Gujarat Electricity Regulatory Commission hereby makes the following Regulations for promoting the sale of power from renewable energy sources to any person and for procurement of energy from renewable sources by distribution licensee within the State of Gujarat.

1. Short Title, Extent and Commencement

- i. These Regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010.
- ii. These Regulations extend to the whole of the State of Gujarat.
- iii. These Regulations, excluding clause 8 shall come into force on the date of their publication in the Gazette.
- iv. Clause 8 of these Regulations shall come into force from a date to be notified by the Commission separately.

2. Definitions and Interpretation



2.1 In these Regulations, unless the context otherwise requires -

- (a) 'Act' means the Electricity Act, 2003 (Act 36 of 2003);
- (b) 'Area of Supply' means the area within which a distribution licensee is authorized to supply electricity;
- (c) 'Central Agency' means the agency operating the National Load Dispatch Centre or such other agency as the Central Commission may designate from time to time;
- (d) 'Central Commission' means the Central Electricity Regulatory Commission referred to in sub - section (1) of section 76 of the Act;
- (e) 'Certificate' means the renewable energy certificate issued by the Central Agency in accordance with the procedures laid down by it and under the provisions specified in the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010;
- (f) 'Commission' means Gujarat Electricity Regulatory Commission;



- (g) 'Distribution Licensee' means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (h) 'Floor price' means the minimum price as determined by the Central Electricity Regulatory Commission in accordance with its (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 at and above which the certificate can be dealt in the power exchange;
- (i) 'Forbearance price' means the ceiling price as determined by the Central Electricity Regulatory Commission in accordance with its (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 within which only the certificates can be dealt in the power exchange;
- (j) 'MNRE' means the Ministry of New and Renewable Energy;
- (k) 'Obligated entity' means the entity mandated under clause (e) of subsection (1) of section 86 of the Act to fulfil the renewable purchase obligation and identified under clause 3 of these Regulations;



- (l) 'Person' shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (m) 'Power Exchange' means any exchange operating as the power exchange for electricity in terms of the orders issued by the Central Commission;
- (n) 'Preferential tariff' means the tariff fixed by the Commission for sale of energy from a generating station based on renewable energy sources to a distribution licensee;
- (o) 'Quantum of purchase' means percentage share of total purchase of electricity from renewable energy sources as specified in these Regulations. The quantum would be the sum of all direct purchases from generating stations based on renewable energy sources and purchase from any other licensee, which would arise from renewable energy sources;
- (p) 'Renewable energy sources' in this context means non-conventional, renewable electricity generating sources such as mini/ micro hydel, wind, solar, biomass and bagasse based co-generation, urban/municipal waste, or such other sources, (which are generally inexhaustible and can be replenished in a short period



of time) as approved by the Ministry of New and Renewable Energy, Government of India or by the State of Gujarat;

- (q) 'State' means the state of Gujarat;
- (r) 'State agency' means the agency in the State of Gujarat to be designated by the Commission to act as the agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these Regulations;
- (s) 'Supply', in relation to electricity, means the sale of electricity to a licensee or consumer;
- (t) 'Year' means a financial year.

Words and expressions used and not defined in these Regulations but defined in the Act shall have the meanings assigned to them in the Act. Expressions used herein but not specifically defined in these Regulations or in the Act but defined under any law passed by a competent legislature and applicable to the electricity industry in the state shall have the meaning assigned to them by such law. Expressions used herein but not specifically defined in the Regulations or in the Acts or any law passed by a competent legislature shall have the meaning as is generally assigned in the electricity industry.



2.2 Interpretation

For the interpretation of these Regulations, unless the context otherwise requires:

- a. words in the singular or plural term, as the case may be, shall also be deemed to include the plural or the singular term, respectively;
- b. the terms "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" regardless of whether such terms are followed by such phrases or words of like import;
- c. references herein to the "Regulations" shall be construed as a reference to these Regulations as amended or modified by the Commission from time to time in accordance with the applicable laws in force;
- d. the headings are inserted for convenience and may not be taken into account for the purpose of interpretation of these Regulations;
- e. references to the statutes, Regulations or guidelines shall be construed as including all statutory provisions consolidating, amending or replacing such statutes, Regulations or guidelines, as the case may be, referred to.

3. Applicability of Renewable Purchase Obligation



These Regulations shall apply to:

- (1) Distribution licensee
- (2) Any other person consuming electricity (i) generated from conventional Captive Generating Plant having capacity of 5 MW and above for his own use and / or (ii) procured from conventional generation through open access and third party sale.

4. Quantum of Renewable Purchase Obligation (RPO)

- 4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year.

Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.

The defined minimum percentages are given below in the Table 1.

Table 1

Year (1)	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and



				others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.5%	0.5%
2012-13	7%	5.5%	1.0%	0.5%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.

Provided further that such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by the obligated entity concerned:

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.

- 4.2 The Commission may, *suo-motu* or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these Regulations



keeping in view supply constraints or other factors beyond the control of the licensee.

- 4.3 For the FY 2009-10, the RPO specified for the years 2008-09, vide Commission's Notification No.15 of 2005 shall be applicable.
- 4.4 The RPO specified for the Financial Year 2012-13 shall be continued beyond 2012-13 till any revision is effected by the Commission in this regard.

5. Certificates under the Regulations of the Central Commission

- 5.1 Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources.

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to



purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfillment of the RPO in accordance with Table 1.

- 5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfillment of the Renewable Purchase Obligation under these Regulations.
- 5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated entities with the Commission within 15 days of the purchase.

6. State Agency



- a) The Commission shall designate an agency as the State Agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these Regulations.
- b) The State Agency shall function in accordance with the directions issued by the Commission and shall act in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.
- c) The State Agency shall submit quarterly status to the Commission in respect of compliance of renewable purchase obligation by the obligated entities in the format as stipulated by the Commission and may suggest appropriate action to the Commission, if required, for compliance of the renewable purchase obligation.
- d) The Commission may from time to time fix the remuneration and charges payable to the State Agency for discharge of its functions under these Regulations.

7. Distribution Licensee



- 7.1 Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/ annual performance review petition in accordance with Regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with clause 4.1 of these Regulations of the approved power purchase quantity for the ensuing year(s). In the event of the actual consumption in the license area being different from that approved by the Commission, the RPO shall be deemed to have been modified in accordance with clause 4.1. If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year. ||
- 7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations. (
- 8. Captive and Open Access User(s)/ Consumer(s)**



- 8.1 The quantum of RPO mentioned in clause 4.1 shall be applicable to captive and open access user(s)/ consumer(s) from the date as would be notified in the Official Gazette.
- 8.2 Every Captive and Open access consumer(s)/ user(s) shall have to submit necessary details regarding total consumption of electricity and purchase of energy from renewable sources for fulfillment of RPO on yearly basis on or before 30th April to the State Agency.
- 8.3 Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in Table 1 of these Regulations. If the Captive user(s) and Open Access consumer(s) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per clause 9.
- 8.4 Captive/ Open Access consumer(s)/ User(s) may fulfil its RPO through the renewable energy certificate as provided in clause 5 above.

9. Consequences of default

- 9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the



shortfall in units of RPO and the forbearance price decided by the Central Commission:

Provided that the fund so created shall be utilised, as may be directed by the Commission, partly for purchase of the certificates and partly for development of transmission infrastructure for evacuation of power from generating stations based on renewable energy sources.

Provided that the obligated entities shall not be authorized to use the fund created in pursuance of the above, without prior approval of the Commission;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided also that the distribution licensee shall be in breach of its license condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach



the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.

10. Grid Connectivity

- 10.1 Any person generating electricity from renewable energy sources, irrespective of installed capacity, shall have open access to any Licensee's transmission system and/or distribution system or grid as the case may be. On an application from such person, the transmission licensee or distribution licensee shall provide appropriate interconnection facilities, as far as feasible, before Commercial Operation Date of the renewable energy project. Such interconnection shall follow the grid connectivity Standards as specified in the Indian Standard Grid Code, State Grid Code and/or the manner prescribed by the Central Electricity Authority.

The STU/SLDC/Licensee shall make best efforts to strengthen the system to provide timely open access to transmit power from renewable energy sources.



11. Cross-Subsidy

Third Party Sale from renewable energy sources shall be exempted from the cross-subsidy surcharge determined by the Commission from time to time. However, no banking facility shall be provided for supply (third party sale) from renewable energy sources through open access. Further, ABT compatible interface metering system capable of energy accounting for each block of 15 minutes shall be provided at both supply as well and drawal point.

For third party sale, energy generation from renewable energy sources in each 15 minute time block shall be set off against the captive/ open access user(s) consumption in the same 15 minute time block.

12. Power to remove difficulties

- 12.1 The Commission shall *suo motu* or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.



13. Repeal

13.1 The previous Regulation No.15 of 2005 dt. 29th October, 2005 is hereby repealed.

Sd/-

Place: Ahmedabad
Date: 17 April 2010

(Sanjay Nandan Agrawal)
SECRETARY
Gujarat Electricity Regulatory Commission



GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)

GUJARAT ELECTRICITY REGULATORY COMMISSION (PROCUREMENT OF ENERGY FROM RENEWABLE SOURCES) (FIRST AMENDMENT) REGULATIONS, 2014

Notification: No. 2 of 2014

In exercise of Powers conferred under section 61, 86 and 181 of the Electricity Act, 2003 (Act No. 36 of 2003) and all other powers enabling it in this behalf, and after previous publication, the Gujarat Electricity Regulatory Commission hereby makes the following regulations, to amend Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereinafter referred to as "The Principal Regulations") namely:

1) Short Title Extent and Commencement:

(i) These regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014.

(ii) These Regulations extend to the whole of the State of Gujarat.

2) These regulations shall come into force with effect from the date of their publication in the Official Gazette except Regulation No. 5.4 and 5.5 of this regulations which shall come into effect from 1st April, 2014.

3) **Addition in Regulation 2.1 of the Principal Regulations:**

A new Regulation 2.1 (aa) shall be added after the Regulation 2.1 (a) of the Principal Regulations as under:-

2.1 (aa) '**Average Power Purchase Cost**' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

4) **Substitution of Table 1 of Regulation 4.1**

The table 1 provided in Principal Regulation 4.1 shall be substituted by following table 1

	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
Year	TOTAL	Wind	Solar	Others (Biomass, Bagasse, MSW, etc.)
2010-11	5.0	4.5	0.25	0.25
2011-12	6.0	5.0	0.5	0.5
2012-13	7.0	5.5	1.0	0.5
2013-14	7.0	5.5	1.0	0.5
2014-15	8.0	6.25	1.25	0.5
2015-16	9.0	7.0	1.5	0.5
2016-17	10.0	7.75	1.75	0.5

5) Addition of Regulations 5.4 and 5.5 in Principal Regulation

The Regulation 5.4 shall be added after Regulation 5.3 in Principal Regulation as under:

5.4 : The Commission shall determine the '**Average Power Purchase Cost**' of the distribution licensee concerned on annual basis. The Average Power Purchase Cost determined by the commission shall be required to be paid by the distribution licensee when the distribution licensee purchases the electrical component of the renewable energy projects registered under the REC scheme notified by the Central Electricity Regulatory Commission.

The Regulation 5.5 shall be added after proposed Regulation 5.4 in Principal Regulation as under:

In case of renewable energy generator set up under the REC scheme notified by the Central Electricity Regulatory Commission supplying power for captive use or sale to third party, the distribution licensee shall pay to such RE generator the Average Power Purchase Cost for the surplus energy available after giving set off for the consumption by such captive consumer or the third party.

Sd/-

[Dilip Raval]

Secretary

Date: 04 /03 /2014.

Place: Gandhinagar.

Annexure B

Appeal no. 24 of 2013 &
IA no. 39 of 2013

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal no. 24 of 2013 & IA no. 39 of 2013

Dated: 25th April, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

Indian Wind Energy Association, Through its Secretary,
PHD House, 3rd Floor,
Opp. Asian Games Village,
August Kranti Marg,
NEW DELHI-110 016

... **Appellant**

Versus

1. **Gujarat Electricity Regulatory Commission**,
Through its Secretary,
1st Floor, Neptune Tower,
Opposite Nehru Bridge,
Ashram Road,
Ahmedabad-380 009
Gujarat, India.
2. **Gujarat Energy Development Agency**,
4th Floor, Block No. 11 & 12,
Udyog Bhavan,
Sector-11,
Gandhinagar-382 017
Gujarat, India.
3. **Gujarat Urja Vikas Nigam Limited**,
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodra-390 007,
Gujarat, India
4. **Madhya Gujarat Vij. Co. Ltd.**,
Sardar Patel Vidyut Bhavan,
Race Course Circle,
Vadodara-390 007, Gujarat.

5. **Dakshin Gujarat Vij Co. Ltd.,**
Kapodara Char Rasta,
Surat-395006, Gujarat
6. **Uttar Gujarat Vij Co. Ltd,**
Corporate Office,
Mehsana-Visnagar Highway,
Mehsana-384 001,
Gujarat, India
7. **Paschim Gujarat Vij Co. Ltd,**
Nanamava Road,
Laxminagar,
Rajkot-360 004,
Gujarat, India
8. **Torrent Power Limited, Ahmedabad,**
Torrent House,
Off. Ashram Road,
Ahmedabad-380 009,
Gujarat, India
9. **Torrent Power Limited, Surat,**
Electricity House,
Station Road, Surat 395003
10. **Kandla Port Trust,**
Nisomess Development Cell,
P.O. Box No. 50,
Administrative Building,
Gandhidham,
Kutch (Gujarat)-370 201
11. **MPSEZ Utilities Pvt. Ltd.,**
Adani House,
Near Mithakhali Circle,
Navrangpura,
Ahmedabad-380 009,
Gujarat, India
12. **M/s. Jubilant Infrastructure Pvt. Limited,**
24-25/39-40, 1st Floor,
Shri Rang Palace, Rang Multiplex,
Zadeshwar Road,
Bharuch-392 012

13. **M/s. Synefra Engineering & Construction Co. Ltd.,**
Survey No. 26, Village Pipaliya,
Taluka Waghodia,
Distt. Vadodara-391 760
Gujarat, India
14. **M/s. Torrent Energy Limited,**
Dahej SEZ, Dahej-392 130,
Gujarat, India

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.,
Mr. Hemant Singh,
Ms. Shikha Ohri
Mr. Anurag Sharma

Counsel for the Respondent(s) : Ms. Suparna Srivastava with
Mr. S.R. Pandey (Rep.) for R-1
Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R. 3, 8 & 9
Mr. M. Deliwala (Rep.) for R-11
Mr. Mehul Rupeece for R-12

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

The present Appeal has been preferred by the Indian Wind Energy Association against the order dated 17.8.2012 passed by the Gujarat Electricity Regulatory Commission ("State Commission") in a *suo-motu* Petition no. 1219 of 2012.

2. The Appellant is an Association of wind energy generators. The State Commission is the Respondent no. 1. Gujarat Energy Development Agency, the nodal agency of the Government of Gujarat for development of renewable energy sources in the State is the Respondent no. 2. Gujarat Urja Vikas Nigam Ltd. ("GUVNL") the holding electricity company and procurer of bulk power on behalf of the distribution licensees is the Respondent no. 3. Respondent no. 4 to 14 are the distribution licensees.
3. The brief facts of the case are as under:
 - a) The State Commission issued the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 specifying the Renewable Purchase Obligation ('RPO') of the distribution licensees and other obligated entities in the State, hereinafter referred to as "RPO Regulations." The Regulations specified the RPO

Regulations separately for wind, biomass/ baggase and others and solar.

- b) On 20.4.2012, the State Commission initiated *suo motu* proceedings and issued notices to the Respondents excluding the wind energy generators regarding compliance of the RPO Regulations.
- (c) The State Commission passed the impugned order dated 17.8.2012 revising the RPO targets for FY 2010-11 from the levels prescribed in the RPO Regulations and further ordered to carry forward the shortfall in procurement of renewable energy during FY 2011-12 to FY 2012-13. Also, any excess procurement of solar energy by the distribution licensees during FY 2012-13 was also allowed to be adjusted against the fulfillment of Non-solar RPO for that financial year.
- (d) Aggrieved by the impugned order dated 17.8.2012, the Appellant has filed this Appeal. As FY 2010-11 to 2012-13 are already over, the only

grievance left with the Appellant is the imposition of penalty for non-fulfillment of RPO targets as specified in the RPO Regulations and giving directions to the State Commission for future.

4. Some of the Respondents raised the objection that the Appeal is not maintainable. We have therefore, heard the Appeal both on maintainability and merits.
5. The Appellant has made the following submissions:
 - a) The Appeal is maintainable under Section 111 of the Electricity Act, 2003. The Appellant Association is a registered organization and members of the Association are the wind energy generators, some of which are operating in the State of Gujarat. The Members of the Association are aggrieved by the impugned order.
 - b) The State Commission has passed the impugned order which has an impact upon the wind power generators

even without hearing the wind energy stakeholders. No hearing notice was issued to the Appellant or any wind/renewable energy stakeholders. The same is against the express provisions of the Regulation 24 of the Conduct of Business Regulations 2004. Thus, the State Commission has erred by allowing the relaxation in RPOs to the distribution licensee at the cost of wind energy generators, without hearing the said generators in violation of principles of natural justice.

- c) The impugned order has been passed allowing carry forward of RPO targets for FY 2011-12, despite categorical findings of the State Commission that Renewable Energy Certificates ("REC") were available. This is not in consonance with the RPO Regulations which specify REC as a mechanism to fulfil the RPOs of the distribution licensees.
- d) The State Commission while relaxing/carrying forward the RPO targets did not impose any penalty as

stipulated in RPO Regulations even after categorical finding that GUVNL and other licensees did not take any imitative for processing RECs in the FY 2011-12.

- e) The State Commission has allowed excess solar energy procured by the distribution licensees to be used to fulfil the shortfall in non-solar RPO. Excess procurement of solar energy procured or solar RECs cannot be used to fulfil the non-solar RPO since the Regulations do not permit the same. The Regulations only provide for fulfillment of Solar RPO by non-solar RPO in case minimum quantum of power from solar is not available in a Financial Year. The Regulation is silent about adjustment of excess energy purchased from solar energy during the year to be considered for fulfillment of RPOs specified for wind and other renewable energy.

5. The reply submissions made by GUVNL are as under:

- a) The Appeal is a clear abuse of the process of court and an attempt made by the wind power developers to seek orders when shortfall in the purchase of wind power by the Respondent no. 3 was entirely on account of wind power developers not willing to sell power to the Respondent no. 3 at the promotional tariff determined by the State Commission under Section 86(1)(e) of the Electricity Act, 2003. Thus, there is lack of bonafide on the part of the Appellant to seek reliefs against the Respondent no. 3 for non-purchase of Renewable Energy Certificate when the circumstances leading to the shortfall have been brought about by the wind power developers themselves.
- b) There is no provision in the Electricity Act, 2003 for purchase of Renewable Energy certificate ('REC'). The promotion of renewable sources of energy is recognized by imposing a RPO being a percentage of the total consumption of electricity in the area of

distribution. The State Commission can impose RPO only if there is availability of renewable sources of energy in the State. It is well settled that an authority cannot impose an obligation which is impossible to perform.

- c) If the Wind Power Developers chose not to offer to supply their generation of electricity to the Distribution Licensees and adopted other means to dispose of the generation of electricity, the Distribution Licensees cannot be said to be in default. The alternative opportunity available to the Wind Power Developers to sell generation to others on the expectation of net aggregate higher price than the promotional tariff decided by the State Commission for wind energy cannot be used by them to secure financial advantage by compelling the Distribution Licensees to purchase wind energy REC.

- d) REC is an option available to the Distribution Licensees under the RPO Regulations but they cannot be compelled to purchase REC since it is a commercial decision of GUVNL.
- e) The State Commission has power to relax the RPO if the circumstances so warrant. The State Commission also has the authority to adjust the percentage of RPO from wind power based on availability. The plenary action of the State Commission to adjust the percentage of RPO is not open to challenge by the Wind Power Developers, particularly when they had chosen to adopt other alternative for sale of quantum of power generated by them. The shortfall in meeting RPO in FY 2010-11 and 2011-12 was on account of non-availability of adequate capacity of RE sources and there has been no default or failure on the part of the Respondent no. 3 or the distribution companies.

- f) Gujarat Urja Vikas Nigam Limited, the Respondent no. 3 has signed PPAs with aggregate capacity of 971.5 MW for various solar power projects out of which 601 MW capacity was commissioned just before 31.3.2012. Further the balance 370.5 MW was likely to be commissioned during FY 2012-13. Thus, purchase of power from solar projects during 2012-13 was much higher (almost three times) the Solar RPO stipulated in the RPO Regulations from FY 2012-13. Since power from wind power projects was not available even though the Respondent no. 3 tied up the entire capacity of RE sources whomsoever came forward to sign PPA, the Respondent no. 3 could not meet the wind RPOs. The purpose of fixing RPO is that renewable sources of energy should be promoted. If in a certain State, there is more scope for one type of renewable power and the developers are willing to enter into PPA, the Respondent no. 3/Distribution licensee would be free to

tie up the same. Therefore, the State Commission has correctly adjusted the excess solar energy against non-solar RPO.

- g) REC is a national level market mainly meant for the States, where renewable sources are not available to have some proportion of RPO. Thus, the Respondents can neither be responsible for unsold RECs nor can be compelled to fulfil RPO through REC mechanism.
6. The Respondent no. 8, 9 and 11 have made similar submissions on merits of the case. Besides, they have also objected to the Appeal on the ground of maintainability as the Association is not a person or company engaged in the Wind Power Generation. According to them, the Appellant is not an aggrieved person within the meaning of Section 111 of the Electricity Act, 2003. Further, according to the Respondents 8 & 9, the RPO Regulations do not envisage participation of the Appellant before the State

Commission pertaining to the decision on the issue regarding revision of RPO targets for a year or in regard to the extent of fulfillment. .

7. The State Commission has filed written submissions in support of its findings in the impugned order.
8. We have heard Mr. Sanjay Sen, Learned Senior Advocate representing the Appellant, Mr. M.G. Ramachandran and Ms. Swapna Seshdari, learned counsel for the Respondent nos. 3, 8 and 9 and Ms. Suparna Srivastava, learned counsel for the State Commission on the above issues.
9. On the basis of rival contentions of the parties, the following issues arise for our consideration:
 - i) Whether the present Appeal filed by the Indian Wind Energy Association is maintainable against the impugned order of the State Commission allowing

certain relaxations in RPO obligations of the distribution licensees with respect to the RPO Regulation?

- ii) Whether the State Commission has erred by not giving public notice in the *suo motu* proceedings initiated to review the compliance of RPO of the distribution licensees thus acting against the principles of natural justice?
- iii) Whether the State Commission has erred by revising the RPO for FY 2010-11?
- iv) Whether the State Commission has erred in allowing carry forward of the shortfall in procurement of renewable energy for the FY 2011-12 to FY 2012-13 despite holding that the distribution licensees did not take initiative to purchase Renewable Energy Certificates?
- v) Whether the State Commission has erred by not imposing penalty as stipulated in the RPO Regulations

on the distribution licensees for failure to fulfil the RPO obligations as specified in the Regulations?

- vi) Whether the State Commission was correct in adjusting the excess solar energy procured by the distribution licensees against the non-solar RPOs for FY 2012-13?

10. Let us take up the first issue regarding maintainability of the Appeal.

11. According to the Respondents 8 and 9, the Appellant is an Association and not a person or company engaged in wind power generation. Thus, the Appellant is not an aggrieved person within the meaning of Section 111 of the Electricity Act, 2003 to file this Appeal.

12. According to the Appellant, it is a registered organization and some of its members are the

generators of electricity from wind energy who are affected by the impugned order.

13. According to Section 111 of Electricity Act, 2003 any person aggrieved by an order made by an adjudicating officer under this Act (except under Section 127) or an order made by the Appropriate Commission under this Act may prefer an Appeal to the Appellate Tribunal for Electricity. Section 2 (49) defines "person" to include any company or body corporate or association or body of individuals, whether incorporated or not or artificial juridical person.
14. It is not disputed that the Appellant Association is a registered body which has members who are wind energy generators some of which are located in the State of Gujarat and are aggrieved by the impugned order.

15. This issue has already been dealt with by this Tribunal in the judgment dated 5.4.2011 in Appeal no. 148 of 2010 in the matter of South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors. as under:

"24. The first objection of the Respondent No. 1 to 6 that the appeal is not maintainable on the ground of it not having been preferred by any individual and the association of sugar factories does not have locus standi to prefer the appeal against the order for determination of tariff for the co-generation units attached to those factories is itself not maintainable in view of the fact that the appellant undisputedly is a society registered under the Karnataka Societies Registration Act, and an incorporeal body having capacity to sue and be sued. As we find from Annexure B, C and D of the memorandum of appeal, the association has 30 members having sugar mills in Karnataka, and the sugar factories with cogeneration units in Karnataka are 34 in numbers. In terms of the resolution of Committee the Secretary of the Association has been duly authorized to present this

appeal. The appeal has been preferred thus by a registered body in its representative capacity to urge therein common view points. It is not an unregistered body, not are the members obscure and uncertain. The objection is thus repelled."

16. The findings of the Tribunal in the above judgment will apply to the present case also. The Appellant is a registered organization. The Appellant has also filed the supporting documents regarding its registration, list of members, including those operations in Gujarat who are aggrieved by the impugned order. Accordingly, we hold that the Appeal filed by the Appellant Association, as an aggrieved person is maintainable.
17. **The second issue is regarding passing of the impugned order without any hearing notice.**
18. According to the Appellant the State Commission should have heard the Appellant and wind

energy/renewable energy generators before passing the impugned order which has affected them. This is also contrary to the provisions of the Conduct of Business Regulations, 2004.

19. According to the Respondent Utilities, RPO Regulations do not envisage the participation of the Appellant or any other person before the State Commission pertaining to the decision on the issue of revision of percentage targets for the year or in regard to the extent of fulfillment. The Regulation 24 of the Conduct of Business Regulations, 2004 gives the discretionary powers to the State Commission for issuance of notice.
20. We find that the Regulation 6 of the Procurement of Energy from Renewable Sources Regulations, 2010 (hereinafter referred to as RPO Regulations) provides that the State Commission shall designate an agency

as State Agency which shall submit quarterly status to the State Commission in respect of Renewable Purchase Obligation by the Obligated entities and may suggest appropriate action for compliance of the RPO Obligation. The State Commission has notified Gujarat Energy Development Agency (GEDA) as the State Agency for the said purpose.

21. However, as evident from the impugned order the distribution licensees had not submitted the details regarding RPO obligation for the periods FYs 2010-11, 2011-12 and the first quarter of FY 2012-13. Therefore, the State Commission decided to initiate *suo motu* proceedings and issued notices to the distribution licensees. Thus, the main purpose for initiating the *suo motu* proceeding as appears from the impugned order was to verify the compliance of the RPO obligations by the distribution licensees. However, the State

Commission also analyzed the reason for non-compliance of the RPO and decided to relax RPOs for FY 2010-11 and carry forward the shortfall in procurement of renewable energy from FY 2011-13 to FY 2012-13. The State Commission also decided that any excess procurement of solar energy can be considered towards fulfillment of total RPO requirement due to shortfall in wind and other sources of energy.

22. Regulation 4.2 of the RPO Regulations provides that the State Commission may, *suo motu* or at the request of a licensee revise the percentage targets for a year keeping in view supply constraints or other factor beyond the control of licensee. There is no specific provision regarding public notice in these Regulations.
23. Regulation 7 of RPO Regulations provides for inclusion of estimation of the Renewable Energy Purchase in the tariff/annual performance review petition as under:

"7.1 Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/ annual performance review petition in accordance with Regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with clause 4.1 of these Regulations of the approved power purchase quantity for the ensuing year(s). In the event of the actual consumption in the license area being different from that approved by the Commission, the RPO shall be deemed to have been modified in accordance with clause 4.1. If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.

7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it

shall be liable to pay compensation as per clause 9 of these Regulations."

24. According to Regulation 7.1, the distribution licensees have to indicate along with proof, the estimated quantum of purchase from renewable energy sources for the ensuing year in Tariff/APR petition. The Tariff/Annual Performance Review Petition is mandatorily subjected to public notice and public hearing under Section 64 of the Electricity Act. Thus, in the RPO Regulations there is an inbuilt mechanism for planning and review of RPO being subjected to public hearing. The distribution licensees have to indicate the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff petition and the review of RPO in the APR review which is also a part of the petition. The stakeholders can file suggestions and objections regarding the proposal of the licensee for the ensuing year and in APR review. This mechanism

would ensure that the State Commission after considering the suggestions and objections of stakeholders could give directions to the distribution licensees for corrective action, if any, at the beginning of the ensuing year.

25. Regulation 9 of the RPO Regulations provides for consequences of default. According to Regulation 9, if the distribution licensee and other obligated entities do not fulfil the specified RPO obligation during a year and do not purchase the Renewable Energy Certificates, the State Commission may direct the licensee/obligated entity to deposit in a separate account such amount as determined by the State Commission which shall be utilized for the purpose laid down in the Regulations. However, in case of genuine difficulty in complying with the RPO obligations because of non-availability of power from renewable energy source or the RECs, the

State Commission on application of the distribution licensee/obligated entity can carry forward the compliance requirement.

26. The question that would arise is “whether the State Commission should issue public notice while considering the supply constraints or other factors beyond the control of the distribution licensee in meeting the specified RPOs and deciding the action for non-compliance in a *suo motu* proceeding or on petition filed by a party?”

27. In the Business of Conduct Regulations, 2004, Clause 24 is set out as under:

“24. The notice of the initiation of the proceedings may be issued by the Commission, and the Commission may give such orders and directions as may be deemed necessary, for services of notices to the affected parties, the filing of Reply in opposition or in support of the Petition in such form as it may direct.

The Commission may, if it considers appropriate, issue orders for publication of the Petition and/or Reply inviting comments on the issues involved in the proceedings in such form as the Commission may direct”.

Thus, the State Commission has discretion to order issuance of public notice in a proceeding. Even though the State Commission has discretion to issue public notice in a hearing, the discretion cannot be exercised arbitrarily and has to be in consonance to provisions of the Act and the Regulations.

28. Since the present case is the first *suo motu* review of compliance of the RPO obligations after the notification of the RPO Regulations and in view of the fact that there was no specific regulation for public notice for such reviews in the RPO Regulations, we do not propose to hold that the absence of public notice in the

suo motu proceeding was illegal. However, we would like to give directions for future for such proceedings.

29. There is a growing public concern about the CO₂ emissions caused by generation of power from the conventional sources and its adverse impact on the environment. At the same time, public is also concerned about cost of renewable sources of energy to replace part of energy from conventional sources as the impact of the high cost of renewable sources of energy has to be borne by them in the form of retail supply tariff. The Preamble of the Electricity Act, 2003 states that one of the objectives of the Act is promotion of environmentally benign policies. The Electricity Act, 2003 also mandates that the State Commission has to promote renewable sources of energy. Keeping in view the environmental concerns of the public, it would be prudent to seek suggestions and objections of the

public in the proceedings where the State Commission reviews the RPO of the distribution licensees and passes orders on relaxation or carry forward of RPOs and default of distribution licensees in meeting the specified RPO targets.

30. As provided for under Regulation 7.1 of the RPO Regulations, the distribution licensee has to indicate alongwith sufficient proof thereof, the estimated quantum of purchase from the ensuing tariff/annual performance review petition. Such tariff petition has to mandatorily be published in the manner specified by the State Commission under Section 64 of the Electricity Act, 2003, to obtain the suggestions and objections from the public. The information about the actual consumption from the renewable sources against the RPO specified in the Regulations during the six months period of the current year and the review of RPO for current year in the APR petition has to also undergo

public hearing mandatorily. Therefore, in future the State Commission should consider the proposal of the licensee for compliance of the RPO obligations for the ensuing year in the Tariff Petition and review of RPO in Annual Performance Review proceedings to enable the public to offer their suggestions and objections. After completion of the financial year, the State Commission has to review the actual performance in respect of RPO and pass necessary direction as per the Regulation either *suo motu* or on a petition filed by a party. Such review should be subjected to public notice to invite suggestions and objections of all the stakeholders. Thus, in separate proceeding for annual review of RPO or otherwise by the State Commission either *suo motu* or on application from a party, the suggestions and objections of the public should be invited. Accordingly, directed for future.

31. **The third, fourth and fifth issues are interconnected and are being dealt with together.**
32. Let us examine the RPO Regulations, 2010.
33. The minimum quantum of purchase from renewable energy sources have been specified in the RPO Regulations as under:

“Table 1

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
(1)	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5%	0.5%	0.5%
2012-13	7%	5.5%	1%	0.5%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.”

The RPO Regulations specify the minimum quantum of purchase from wind, solar and biomass, bagasse & others and the total RPOs for the FYs 2010-11, 2011-12 and 2012-13. However, if the minimum quantum of power purchase from solar and other renewable sources is not available in a particular year, then the additional energy from wind and other energy could be procured over and above their respective RPOs. Thus, shortfall in solar energy can be made good from additional energy procured from wind but vice-versa i.e. making up shortfall in wind and other energy from solar energy has not been provided for.

34. Regulation 4.2 stipulates that the State Commission may *suo motu* or at the request of the licensee, revise the percentage targets for a year keeping in view the

supply constraints or other factors beyond the control of the licensee.

35. Regulation 5 provides for Renewable Energy Certificates as under:

“5. Certificates under the Regulations of the Central Commission

5.1 Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Electricity Regulatory Commission’s (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources.

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and

the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfillment of the RPO in accordance with Table 1.

5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfillment of the Renewable Purchase Obligation under these Regulations.

5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated

entities with the Commission within 15 days of the purchase.”

36. Thus, REC issued under the Central Commission's Regulation has been recognized as a valid instrument for discharge of the mandatory RPO. RPO for renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase solar energy by solar certificates only. However, in case solar energy certificates are not available then in such cases additional non-solar certificates can be purchased for fulfilling the Solar RPO.

37. The consequences of default have been specified under Regulation 9 which is reproduced below:

9. Consequences of default

9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:

Provided that the fund so created shall be utilised, as may be directed by the Commission, partly for purchase of the certificates and partly for development of transmission infrastructure for evacuation of power from generating stations based on renewable energy sources.

Provided that the obligated entities shall not be authorized to use the fund created in pursuance of the above, without prior approval of the Commission;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the

extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided also that the distribution licensee shall be in breach of its license condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.”

38. Thus, in terms of Regulation 9, the State Commission may direct the distribution licensees/other obligated entities to deposit into a separate fund such amount as

determined by the State Commission on the basis of the shortfall in RPO energy and forbearance price decided by the Central Commission which shall be utilized by the State Commission for purchase of REC and for development of transmission infrastructure for evacuation of power from renewable sources of energy. However, in case of any genuine difficulty in meeting RPO due to non-availability of power from renewable sources or the REC, the State Commission may carry forward the shortfall to the next year.

39. The scheme of RPO under the RPO Regulations 2010 as applicable to the distribution licensees is summarized as under:
- i) The distribution licensees shall purchase electricity from renewable energy sources at a specified minimum percentage of total consumption of consumers including T&D loss during a year.

- ii) The minimum quantum energy in percentage from Wind, Solar, Biomass/bagasse & others and the total percentage for FYs 2010-11, 2011-12 & 2012-13 have been specified in the Regulations. In case minimum quantity of energy from solar and other renewable energy sources is not available in a particular year, then the shortfall can be made good by utilizing additional energy from wind or other energy sources.
- iii) The State Commission has power to revise the percentage targets for a year keeping in view supply constraints or other factors beyond the control of the licensee *suo motu* or on request by the licensee.
- iv) Renewable Energy Certificate shall be the valid instrument for discharge of mandatory Renewable Purchase obligations set out in the Regulations.
- v) Purchase of non-solar certificate shall be utilized for meeting obligation from renewable energy other than solar and solar certificate shall be used for meeting the

solar obligation. Only if solar certificates are not available in a particular year then additional non-solar certificates can be purchased for fulfillment of the specified Solar RPO.

- vi) Each distribution licensee shall indicate with proof the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/APR Petition. The estimated quantum shall be in accordance with the specified RPOs. If the actual consumption is different from that approved by the State Commission, the RPO shall be deemed to be modified accordingly. If the distribution licensee is unable to fulfil the obligation, the shortfall of that year would be added to the specified quantum for the next year. However, credit for excess purchase would not be adjusted in the ensuing year.
- vii) Despite availability of renewable energy sources if the distribution licensee fails to purchase energy from

renewable energy sources, then it shall be liable to pay compensation as per clause 9 of the Regulations.

- viii) If the distribution licensee does not fulfil the RPO as specified in the Regulations and also does not purchase certificates, the State Commission may direct the licensee to deposit into a separate fund such amount as determined by the State Commission. This fund shall be utilized by the State Commission partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power from renewable sources of energy.
- ix) However, in case of any genuine difficulty in complying with the RPO due to non-availability of power from renewable energy sources or the RECs, the State Commission may carry forward the compliance requirement to next year and in that case payment of regulatory charges shall not be applicable.

40. Let us examine the findings of the State Commission in the impugned order. The relevant extracts are reproduced below:

“9.1 From the proceedings in the matter, it is observed that none of the respondents was able to meet the RPO percentage as decided by the Commission. It is also observed that the Commission had notified the RPO percentage for the FY 2009-10 as 2% which was increased to 5% within one year. The increase in RPO percentage was decided based on the potential of renewable energy sources in the State as well as in pursuance of the National Action Plan on Climate Change. However, due to increase in RPO percentage the requirement of procurement of energy from renewable sources increased substantially within a short period for the distribution licensees. Moreover, the addition in capacity in RE generation during the FY 2010-11 was also not adequate to meet with the demand of the distribution licensees. The REC mechanism was introduced for compliance of RPO during the month of October 2010 and the availability of the same was very less in the FY 2010-11. Regulation

4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulation, 2010 provides that the Commission may, suo-motu or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these regulations keeping in view supply constraints or other factors beyond the control of the licensees. Thus, the said regulation empowers the Commission to revise RPO percentage in case of supply constraint or factor beyond control of the licensees. The reasons attributed for non-compliance by the distribution licensees are beyond the control of the distribution licensees and seem to be genuine and justifiable. We, therefore, hold that the non-fulfillment of RPO by the distribution licensees for the FY 2010-11 was because of non-availability of power from RE sources and REC. In the above circumstances, we decide to revise the RPO for the FY 2010-11 from the level prescribed in the regulations to actual procurement of the renewable energy by the distribution licensees concerned.

9.2 So far as fulfillment of RPO for the FY 2011-12 is concerned, the respondent GUVNL and its subsidiary distribution licensees were unable to comply with RPO

specified by the Commission. It is also fact that the REC trading in the energy exchanges started during the FY 2011-12. Thus, an alternative mechanism of REC purchase for fulfillment of RPO was available to the distribution licensees and GUVNL from the FY 2011-12. However, the above respondents have not taken any initiative to purchase the REC and comply with the regulations notified by the Commission.

9.3 In case of TPL Ahmedabad and Surat distribution licensees, they have purchased renewable energy from the RE generators as well as purchased REC during the FY 2011-12 to comply with RPO as stated in table for RPO fulfillment by TPL for FY 2011-2012 in para-3 above. From the table, it appears that the TPL Ahmedabad and Surat have achieved the non-solar renewable purchase to the extent of 5.51% and 5.42% as against RPO requirement of 5.5% for non-solar RPO. As regards, solar RPO, the regulations stipulate 0.5% as the minimum quantum, to be procured from solar energy, of the total consumption of its consumers including T&D loss during a year 2011-12. However, the TPL Ahmedabad and Surat were not able to procure any energy from solar power generation. The

TPL has signed PPA for 50 MW solar Power project being set up by M/s kindle Engineering & Construction Pvt. Ltd., but the said project has not yet started operation, and as such TPL could not fulfill its solar RPO. Moreover, no solar RECs were available during FY 2011-12. Thus, the TPL has not complied with the RPO requirement of solar energy to that extent.

9.4 From the above it appears that the GUVNL and its subsidiary distribution licensees and TPL, Ahmedabad and Surat have not complied with the fulfillment of RPO requirement for FY 2011-12, though an alternative mechanism for fulfillment of RPO through REC was available. Regulation 9 of the GERC (Procurement of Energy from Renewable Sources) Regulations 2010, which is relevant in this case, reads as under:

.....

“The 5th proviso and 6th proviso of Regulation 9 provide that in case of any genuine difficulty by the distribution licensee in fulfillment of RPO, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year and in such case if the Commission consents to the same, no

regulatory charges shall be applicable. In the present case, the suo-motu proceedings have been initiated by the Commission for verifying compliance with the Regulations. It is found that the GUVNL and its subsidiary distribution licensees and TPL, Ahmedabad and Surat have not been able to comply with the RPO for the FY 2011-12. Non-compliance was primarily due to non-availability of RE power. Though the REC mechanism has been introduced to meet such contingency, availability of RECs was also not adequate. Further, no solar REC was available during the F.Y 2011-12. We, therefore, decide to carry forward the shortfall in procurement of renewable energy during FY 2011-13 by the aforesaid entities to FY 2012-2013."

"9.5 The GUVNL submitted that the GUVNL and its subsidiary distribution licensees will procure the renewable power from solar energy more than the quantum required for fulfillment of RPO. The excess power procured from solar energy sources may be allowed for fulfillment of RPO against the shortfall in RPO percentage of wind, biomass, bagasse, and other sources. In this regard, it is necessary to refer to relevant Regulation 4.1 of GERC (Procurement of

Energy from Renewable Sources) Regulations, 2010, which reads as under:

.....

"The aforesaid provision provides that in case of shortfall in RPO of solar energy the additional renewable energy purchased from wind, biomass, Bagasse, and other sources shall be utilized for fulfillment of total RPO requirement. The above Regulation is silent about adjustment of excess energy purchased from solar energy during the year be considered for fulfillment of RPO specified for wind and other energy. We note that the cost of procurement of solar energy is higher than that of other sources of renewable energy. If such excess energy procurement from solar energy is not allowed to be adjusted against the fulfillment of shortfall of RPO of wind and other sources based energy, such shortfall will be required to be fulfill through non-solar REC from the energy market and the same will be additional burden on the distribution licensee and consumers. Any excess procurement of solar energy by the distribution licensees for promotion of solar technology can, therefore, be considered towards fulfillment of total

RPO requirement due to shortfall in RPO of wind and other sources of energy. We, therefore, decide that the excess energy, if any, procured by the distribution licensees from solar energy projects during the FY 2012-13 may be adjusted against the total RPO requirement during the year”.

41. The main reasons considered by the State Commission for non-fulfillment of RPO during 2009-10 were:
 - (i) Substantial increase (from 2% to 5%) in RPO percentage from 2009-10 to 2010-11;
 - (ii) Addition in Renewable Energy during 2010-11 was inadequate and, therefore, availability from renewable sources of energy was inadequate.
 - (iii) REC mechanism was introduced for compliance of RPO during October 2010 and its availability during 2010-11 was very less.

The State Commission held that the reasons attributable for non-compliance by the distribution licensee during FY 2010-11 were beyond their control

and, therefore, the State Commission in exercise of its power under Regulation 4.2 revised the RPO for the FY 2010-11 from the level prescribed in the Regulations to actual procurement.

42. The State Commission found that for FY 2011-12 also the distribution licensee were unable to comply with the specified RPO due to non-availability of renewable energy. However, the distribution licensees did not take any initiative to purchase the REC. Only Torrent Power Ltd., Ahmedabad and Surat distribution licensees purchased energy from RE generator as well as purchased REC to fulfil their RPOs. The State Commission also held that the availability of REC was inadequate and decided to carry forward the shortfall in procurement of renewable energy during FY 2011-13 to FY 2012-13. Thus during 2012-13 the distribution licensees will have to meet the RPOs

specified for FY 2012-13 plus the shortfall of FY 2011-12. However, the State Commission has not given basis of coming to conclusion that availability of REC during FY 2011-12 was inadequate.

43. The State Commission on the request of GUVNL also decided that any excess procurement of solar energy by the distribution licensees for promotion of solar technology will be considered towards fulfillment of total RPO requirement due to shortfall in RPO of wind and other sources of energy during the FY 2012-13. This was decided to avoid additional financial burden on the distribution licensees and consumers.

44. In light of the RPO Regulations let us see if the State Commission was correct in allowing relaxations in RPO.

45. As far as FY 2010-11 is concerned, the State Commission has given following reasons for relaxing the RPOs to actuals:

- i) RPO percentage was increased from 2% in FY 2009-10 to 5% in FY 2010-11.
- ii) Addition in RE capacity during FY 2010-11 was inadequate to meet the demand of the distribution licensees.
- iii) REC mechanism was introduced during October 2010 and its availability during FY 2010-11 was very less.
- iv) The reasons attributed to non-compliance by the distribution licensees was beyond their control.

Accordingly, the State Commission relaxed the RPO for the FY 2010-11 by exercising its power under clause 4.2 of the RPO Regulations.

46. The State Commission has given reasons for coming to the conclusion that the RPO could not be fulfilled by the distribution licensees due to supply constraints. We notice that the RPO Regulations 2010 were notified on 17.4.2010. The RPO for FY 2010-11 was more than doubled (2% to 5%) from the previous year. We feel that adequate notice was not available to the distribution licensee to tie up supplies with renewable energy developers to meet the substantial increase in the RPO specified for FY 2010-11. There is a gestation period for development of renewable energy projects. The alternative mechanism of REC was introduced only in October 2010 and therefore, the REC availability was also limited. Hence, we feel that the State Commission has correctly allowed the relaxation in view of the circumstances of the case which were beyond the control of the distribution licensees. The State Commission has powers to revise the RPO targets

under clause 4.2 of the RPO Regulations keeping in view the supply constraints and other factors beyond the control of the distribution licensee. Thus, we do not find any infirmity in the order of the State Commission regarding revision of RPO targets during FY 2010-11.

47. For FY 2011-12, while TPL, Ahmedabad and Surat distribution licensee fulfilled their non-solar RPO by purchasing renewable energy as well as REC, other distribution licensees failed to do so. It was noticed by the State Commission that GUVNL and its subsidiary distribution licensees did not take initiative to purchase REC and comply with the Regulations. At the same time the State Commission also held that though REC mechanism had been introduced the availability of REC was not adequate. In view of inadequate availability of renewable energy and REC, the State Commission

allowed carry forward of the shortfall for FY 2011-12 to FY 2012-13.

48. We find that the State Commission under fifth proviso to Regulation 9.1 is empowered to allow carry forward of REC in case of any genuine difficulty due to non-availability of power from renewable energy sources or the REC.
49. According to the Respondents, the REC mechanism was introduced for fulfillment of RPO for the States which do not have sufficient renewable energy resources. The State of Gujarat has abundant renewable resources, but despite this, the wind energy capacity addition in FY 2011-12 has been on the lower side as compared to the past years. The wind energy generators did not offer wind power at preferential tariff determined by the State Commission to enable the respondents to fulfil the specified RPO but wanted to

sell REC to make more profit. No wind generator has complained that they have offered their energy at preferential tariff determined by the State Commission and it has not been accepted by the distribution licensees.

50. Based on the submissions placed before us, we cannot hold that the GUVNL and its subsidiary distribution licensees have not made efforts as far as procurement of renewable energy from the renewable energy generators is concerned. However, there is clear finding of the State Commission that GUVNL and its subsidiary distribution licensees did not make any efforts to purchase REC which is an alternative mechanism for fulfilling the RPOs as per the Regulations. On the other hand, Torrent Ahmedabad and Surat distribution licensees have been able to purchase REC to meet their shortfall in non-solar purchase obligation.

51. We find from the market data of REC for FY 2011-12 submitted by the Appellant that quantum of non-solar energy certificates by the sellers of REC was more than the volume cleared in the exchanges. It is also seen that for 10 months during 2011-12, the buy bids were much more than the sell bids despite which the full volumes of sell bids could not be traded. This may presumably be due to the buy bids being lower than the clearing price of REC.
52. According to the Appellant, if the distribution licensees had placed their buying bids close to or equal to forbearance price, they would have been able to procure REC certificate. We, however, feel that the price at which the distribution licensees want to purchase REC to meet shortfall in RPO is its own commercial decision and this Tribunal cannot dictate the bid price for REC by the distribution licensee. However, the fact remains that GUVNL and its

subsidiary distribution licensee did not make any attempt to purchase any REC during 2011-12 to meet their shortfall in RPO as per the alternate mechanism specified for in the Regulations for fulfilling their RPOs. 5th proviso to Regulation 9.1 provides that the distribution licensees in case of genuine difficulty in complying with the RPO because of non-availability of renewable energy or the RECs can approach the State Commission to carry forward the compliance requirement to the next year. Thus non-availability of REC is also a condition to be satisfied before allowing carry forward of RPO.

53. According to the Respondents, they cannot be forced to purchase REC when the State has adequate renewable energy sources. It cannot be disputed that the distribution licensees have to set their priority for meeting RPO. If they want to procure renewable energy to meet their RPO targets as the State is endowed with

adequate renewable energy sources, we cannot find fault with that approach. However, if a distribution licensee is not able to make arrangements to procure adequate renewable energy, then it has to resort to the alternate mechanism of REC as specified in the Regulations, to meet the shortfall in REC. REC has been recognized in the RPO Regulation as an alternate mechanism to meet the shortfall in RPO. According to the Regulations, the carry forward of RPO is permissible if there is genuine difficulty due to non-availability of renewable energy or REC. Thus, carry forward of the shortfall in RPO to the next year should be allowed if the distribution licensee despite making efforts to procure renewable energy and purchase REC could not meet the RPO target. Admittedly, some of the distribution licensees did not make any efforts to purchase REC.

54. The aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission properly. On one hand it has decided that the GUVNL and its subsidiary distribution licensees did not make efforts to purchase REC and on the other hand it has held that adequate RECs were not available. No reasons have been adduced to come to conclusion that adequate REC were not available.
55. FYs 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during

2011-12 to 2012-13, the objective of meeting the RPO obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPO during FY 2011-12. We would, however, give guidelines to the State Commission for future as under:

- (A) The State Commission may decide the RPO targets at least one year before the commencement of the Multi Year Tariff period to give adequate time to the distribution licensees to plan and arrange procurement of renewable energy sources and enter into PPAs with the renewable energy project developers.
- (B) The proposal for renewable energy procurement should be submitted by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year. Suggestion and objections of public have to be invited for the above petition. The State Commission may give necessary directions

with regard to RPO after considering the suggestions and objections of the stakeholders. If the distribution licensee is not able to tie up procurement of renewable energy to meet the RPO target, it should plan purchase of REC. Advance planning of REC purchase will give ample opportunity to the distribution licensees to purchase REC when the market conditions are more favourable to them.

- (C) After the completion of the financial year the State Commission may review the performance of the distribution licensees in respect of RPO and give directions as per the Regulations. Suggestions and objections of the public should be invited in the review proceedings.
- (D) The State Commission should give directions regarding relaxation in RPO and consequential order for default of the distribution licensees as per the RPO Regulations. Accordingly, directed for future.

56. The fifth issue is regarding adjustment of excess solar energy procured against shortfall in non-solar energy RPO during FY 2012-13.

57. According to the Respondent no.3 (GUVNL), the power from wind power project was not-available, even though the Respondent no.3 and the State utilities tied up entire capacity of renewable energy sources i.e. whosoever came forward to sign the PPA.

58. The State Commission has allowed excess procurement of solar energy by the distribution licensees towards fulfillment of total RPO requirement due to shortfall in RPO of wind and other sources of energy during FY 2012-13.

59. The reasons given by the State Commission for allowing above dispensation are:

- i) The Regulation provides that in case of shortfall of RPO of solar energy, additional energy from wind, biomass, bagasse and other sources can be utilized for fulfillment of RPO requirement. However, the Regulation is silent about adjustment of excess solar energy purchased against the shortfall of RPO for wind and other energy.
- ii) Cost of procurement of solar energy is higher than other sources of renewable energy. If the excess energy procurement from solar energy is not allowed to be adjusted against the fulfillment of shortfall of RPO for wind and other energy, such shortfall will be required to be fulfilled through purchase of non-solar REC which will be additional burden on the consumers.
- iii) Excess procurement of solar energy by the distribution licensees for promotion of solar technology can, therefore, be considered towards fulfillment of non-solar RPO.

60. We find that the Regulation 4.1 only provides that shortfall in RPO for solar and other renewable energy sources can be made good by additional wind or other energy. However, the Regulation is silent about making good the shortfall in wind and other energy by procuring additional energy from solar which may be due to higher price of solar energy. However, we feel that keeping in view the circumstances of the case, the State Commission can exercise its powers under Regulation 4.2 to allow adjustment of excess solar energy procured for meeting the shortfall in non-solar RPO.
61. In the present case we find that GUVNL in order to promote solar technology has tied up more solar capacity than required for meeting the solar RPO. As pointed out by the distribution licensees, the Wind Energy generators in the State did not come forward to enter into PPA for supply of energy at the preferential

tariff determined by the State Commission and preferred supply of energy to others and sell REC in the market. We agree with the State Commission that if the adjustment of excess solar energy is not permitted it would require purchase of non-solar REC from the market which will result in additional financial burden on the distribution licensees and the consumers. The State Commission under Regulation 4.2 is empowered to revise the percentage of RPO targets for a year keeping in view the supply constraints or other factors beyond the control of the licensee.

62. In the present case, in order to promote solar technology and in view of wind energy generators not coming forward to enter into PPA for supply of wind energy to the distribution licensees, they have entered into PPAs with solar generators for a capacity higher than required for meeting the solar RPO. If under these circumstances, the State Commission, in order to avoid

additional financial burden of purchasing non-solar REC on the distribution licensee and the consumers, has allowed to meet non-solar RPO by additional energy procured from solar projects, there is no infirmity in the same. There is no illegality in the State Commission exercising its powers under Regulation 4.2 for such adjustment in the circumstances of the case. Accordingly, we reject the contention of the Appellant with regard to adjustment of excess solar energy against the non-solar RPO.

63. Summary of our findings:

- i) Appeal filed by the association of wind energy project developers against the impugned order of the State Commission allowing relaxation in Renewable Purchase obligation of the distribution licensees is maintainable.**
- ii) Since the present case is the first suo motu review of compliance of the RPO obligations after the**

notification of the RPO Regulations and in view of the fact that there was no specific regulation for public notice for such reviews, we do not want to hold that the absence of public notice in the *suo motu* proceeding was illegal. However, we feel that in the proceedings before the State Commission either *suo motu* or on a petition by a party, regarding review of RPOs in which consequential directions for relaxation or carry forward of RPO or creation of regulatory fund are given, public notice inviting suggestions and objections of the stakeholders is necessary. We have given some directions for future under paragraphs 29 and 30.

- iii) We do not find any infirmity in the State Commission revising the RPO for FY 2010-11 by exercising its power under Regulation 4.2 of the RPO Regulations, 2010, in view of the reasons beyond the control of the distribution licensees.

(iv) We do not see any infirmity in the distribution licensee setting priority to procure renewable energy by entering into PPAs with the renewable energy generators to meet their RPO targets when the State is endowed with adequate renewable energy sources. However, if the distribution licensees are not able to make arrangements to procure adequate renewable energy to meet the RPO targets, then they have to resort to alternate mechanism of REC specified in the Regulations to meet the shortfall in RPO. The aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission properly. On one hand, it decided that the GUVNL and its subsidiary distribution licensees did not make efforts to purchase REC and on the other hand it held that adequate REC were not available. No reason was

given to come to conclusion that adequate REC were not available.

- v) FY 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during 2011-12 to 2012-13 the objective of meeting the RPO obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPO during FY 2011-12. We have, however, given some guidelines to the State

Commission for future under paragraph 55(A) to (D).

vi) We do not find any infirmity in the State Commission exercising its powers under Regulation 4.2 for adjustment of excess solar energy procured against non-solar RPO in the circumstances of the present case.

64. In view of above, the Appeal is partly allowed to the extent as indicated above. We have also given some directions/guidelines to the State Commission to be followed in future. No order as to cost.

65. Pronounced in the open court on this 25th day of April, 2014.

(Rakesh Nath)
 Technical Member

(Justice M. Karpaga Vinayagam)
 Chairperson

✓
REPORTABLE/NON-REPORTABLE
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Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 258 of 2013
&
Appeal No. 21 of 2014 & IA-28 of 2014

Dated : 16th April, 2015

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

Appeal No. 258 of 2013

In the matter of :

Indian Wind Power Association,
A-509-511, Atma House,
Opp. La-Gajjar Chamber,
Ashram Road, Ahmedabad-380009.

.....Appellant

Versus

1. Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City,
Gandhinagar-382355,
Gujarat, India
2. Gujarat Urja Vikas Nigam Ltd. (GUVNL),
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara-390007.
3. Madhya Gujarat Vij Company Limited (MGVCL),
Sardar Patel Vidyut Bhawan,
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4. Uttar Gujarat Vij, Company Limited (UGVCL),
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4th Floor, Block No.11 &12,
Udyog Bhavan, Sector-11,
Gan dhinagar-382017.
8. **MPSEZ Utilities Pvt. Ltd.,**
Adani House,
Near Mithakhali Circle,
Navrangpura, Ahmedabad-380009.
9. **Kandla Port Trust,**
Business Development Cell,
P.O. Box No.50, Administratived Cell,
Gandhidham, Kutch-370201.
10. **M/s. Aspen Infrastructure Ltd.,**
Survey No. 26, Village Pipaliya,
Taluka Waghodia,
Distt. Vadodara-391760 (Gujarat).
11. **Jubilant Infrastructure Pvt. Ltd.,**
Plot No.5, Vilayat GIDC,
Vagra, Bharuch-390012.
12. **Torrent Power Limited-Ahmedabad,**
Electricity House, Lal Darwaja,
Ahmedabad-380009.
13. **Torrent Power Limited,**
"Torrent House",
Station Road, Surat-395003.
14. **Torrent Energy Limited,**
Electricity House, Lal Darwaja,
Ahmedabad-380009.
15. **Indian Wind Energy Association,**
PHD House, 3rd Floor, Asian Games Village,
August Kranti Marg,
New Delhi-110049.

.....Respondents

Counsel for the Appellant(s) : Mr. Vishal Gupta
Mr. Kumar Mihir

Counsel for the Respondent(s) : Ms. Suparna Srivastava,
Mr. S.R. Pandey, (Rep.),
Mr. S.T. Anada (Rep.) and
Ms. Nishtha Sikroria for R-1

Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshadri,
Ms. Anushree Bardhan,
Ms. Poorva Saigal and for R-3 to R-6 &
R-12 to R-14

Appeal No. 21 of 2014 & IA-28 of 2014

In the matter of:

1. **India Wind Power Association,
PHD House, 3rd Floor,
Opp. Asian Games Village,
August Kranti Marg,
New Delhi-110016.**
2. **Green Energy Association,
Sagam Retailers Pvt. Ltd.,
Taqdir Terrace, Shop No. 4, 5, 6,
Plot No.143, Dr. E Borjes Road,
Near Shirodkar High School, Parel,
Mumbai-400012.**
3. **Indian Wind Turbine Manufacturers' Association,
Suite No.A2, OPG Towers, 74 (Old No.133),
Santhome High Road,
Chennai-600004.**

.....Appellants

Versus

1. **Gujarat Electricity Regulatory Commission,
1st Floor, Neptune Tower, Opp. Nehru Bridge,
Ashram Road, Ahmedabad-380009.**
2. **Gujarat Energy Development Agency,
4th Floor, Block No. 11 & 12,
Udyog Bhavan, Sector-11,**

3. **Gandhinagar-382017.**
Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhavan,
Race Course Circle,
Vadodara-390007.
4. **Madhya Gujarat Vij Co. Ltd.,**
Sardar Patel Vidyut Bhavan,
Race Course Circle,
Vadodara-390007.
5. **Dakshin Gujarat Vig. Co. Ltd.,**
Kapodara Char Rasta,
Surat-395006.
6. **Uttar Gujarat Vij Co. Ltd.,**
Corporate Office,
Mehsana – Visnagar Highway,
Mehsana-3894001.
7. **Paschim Gujarat Vij Co. Ltd.,**
Nanamava Road, Laxminagar,
Rajkot-360004.
8. **Torrent Power Ltd. Ahmedabad,**
Torrent House, Off Ashram Road,
Ahmedabad-380009.
9. **Torrent Power Ltd. Surat,**
Electricity House,
Station Road, Surat-395003.
10. **Kandla Port Trust,**
Nisomess Development Cell,
P.O. Box No. 50,
Administrative Building,
Gandhidham, Kutch-370201.
11. **MPSEZ Utilities Pvt. Ltd.,**
Adani House,
Near Mithakhali Circle,
Navrangpura, Ahmedabad-380009.
12. **M/s. Jubilant Infrastructure Pvt. Ltd.,**
24-25/39-40, 1st Floor,
Shri Rang Palace, Rang Multiplex,

Zadeshwar Road, Bharuch-392012.

13. **M/s. Aspen Infrastructure Ltd.,
Survey No. 26, Village Pipaliya,
Taluka Waghodia,
Distt. Vadodara-391760 (Gujarat).**

14. **M/s. Torrent Energy Ltd.
Dahej SEZ, Dahej-392130.**

.....Respondents

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Shikha Ohri
Ms. Ruth Elwin
Ms. Meghana Aggarwal
Mr. Hemant Singh
Mr. Matrugupta Mishra
Mr. Tusar Nagar
Ms. Ruth Elwin

Counsel for the Respondent(s) : Ms. Suparna Srivastava,
Mr. S.R. Pandey, (Rep.),
Mr. S.T. Anada (Rep.) and
Ms. Nishtha Sikrora for R-1

Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshadri,
Ms. Anushree Bardhan,
Ms. Mandakini Ghosh and
Ms. Swagatika Sahoo for R-3 to R-9
& R-14

JUDGMENT

Rakesh Nath, Technical Member

Appeal No. 258 of 2013 has been filed by Indian Wind Power Association challenging the order dated 8.8.2013 passed by the Gujarat Electricity Regulatory Commission ("State Commission") in the petitions filed by the Respondent distribution licensee whereby the State Commission has waived the

shortfall in meeting the Renewable Purchase Obligation ("RPO") by the distribution licensees for FY 2012-13. Appeal No. 21 of 2014 has filed by Indian Wind Energy Association & others challenging the same impugned order on the same grounds.

2. The Appellants are associations representing the interest of various stakeholders in wind energy sector. The Respondent No. 1 is the State Commission. The other Respondents are the Gujarat Energy Development Agency, GUVNL and the distribution licensees/deemed distribution licensees in the State of Gujarat.
3. The brief facts of the case are as under:-
 - (a) The State Commission notified the Renewable Energy Regulations, 2010 ("RE Regulations") specifying the minimum quantum of purchase from renewable energy ("RE") sources to be fulfilled by the obligated entities in FYs 2010-11 to 2012-13.
 - (b) The State Commission by order dated 17.8.2012 permitted the distribution licensees to carry forward their RPO of FY 2011-12 to FY 2012-13. An appeal was filed against this order dated 17.8.2012 before this Tribunal by the Wind Energy Project developers. The Tribunal by Judgment dated 25.4.2014 partly allowed the appeal and gave some directions to the State Commission to be followed in future.
 - (c) In the meantime, GUVNL which is responsible for procurement of power for the four State distribution licensees, filed a petition before the State Commission under Regulation 4.2 of the RE Regulations, seeking waiver of the shortfall in meeting the RPO by its distribution licensees in FY

2012-13. Similar petition was filed by Torrent Power Ltd., Ahmedabad and Surat, the distribution licensee, seeking revision of RPO in view of supply constraints and other factors beyond the control of the licensee.

- (d) No public notice was issued in the proceedings. However, Indian Wind Energy Association (Appellant No. 1 in Appeal No. 21 of 2014) and Indian Wind Power Association (Appellant in Appeal No 258 of 2013) upon becoming aware of the aforesaid proceedings participated in the proceedings and furnished their suggestions and objections.
- (e) The State Commission passed the impugned order dated 8.8.2013 revising/exempting the RPO of the obligated entities of the State for FY 2012-13 by exercising its powers under Regulation 4.2 and 12.1 of the RE Regulations.
- (f) Aggrieved by the impugned order dated 8.8.2013 revising/exempting the RPO of the distribution licensees, the Appellants have filed these Appeals.

4. The Appellants have made the following submissions:

- (a) The State Commission erred in holding that REC mechanism was evolved only to enable the States not having renewable energy potential to fulfill their RPO through the purchase of RECs generated in the resource rich States.
- (b) The State Commission wrongly waived the shortfall in RPO and revised the same at actual contrary to its own Regulations and the judgment of this Tribunal dated 25.4.2014.

- (c) The State Commission only has the power to carry forward the RPO in case of genuine difficulty being either non-availability of power from renewable energy source or non-availability of RECs and in the absence of both these difficulties, there was no reason for the State Commission to waive the shortfall.
- (d) The State Commission is not empowered to revise the RPO in terms of Regulation 4.2 as this Regulation only deals with revision in the percentage targets for a year at the beginning of the year and not at the end of the year as otherwise there will be inconsistency between Regulation 4.2 and Regulation 9.1 and the 5th proviso thereof dealing with default on the part of the obligated entities. Even otherwise, Regulation 4.2 can be invoked only in case of supply constraints or other factors beyond the control of the licensee. In the present case, as RECs were available, the RPO compliance was not beyond the control of the obligated entities. Revision of RPO after the expiry of the year amounts to waiver of the default on the part of the distribution licensees.
- (e) It is not correct that the Wind Energy Generators are selling power under captive and open access mode and are having windfall gain from such transactions. Significant capacity has been added under the preferential tariff mode in the State.
- (f) The State Commission has ignored the fact that GUVNL was not willing to enter into PPAs at the revised preferential tariff during the pendency of the review petitions against the said order dated 8.8.2012 and was insisting

on signing PPAs at preferential tariff of the previous control period i.e. as per order no. 1 of 2010 dated 30.1.2010 which was not existing at that point of time and was not a valid tariff.

- (g) The State Commission has erroneously adjusted the excess purchase of solar energy by the distribution licensees to fulfill the non-solar RPO. This is contrary to Regulation 4.1 which only provides for adjustment of excess wind or other energy in the event minimum quantum of solar or other renewable energy is not available in a particular year and not vice versa.
 - (h) Exercise of power to remove difficulty by the State Commission under Regulation 12.1 is wrong as the Regulation 12.1 does not vest judicial powers. This power can be exercised only if there is problem in implementation of a Regulation.
5. In reply, the Respondent GUVNL and the distribution licensees have made the following submissions:-
- (a) The definition of "Renewable Energy Sources" in the RE Regulations is restrictive in nature and does not cover instruments such as REC. Accordingly, the term "Renewable Energy Sources" used in various provisions of the RE Regulations, 2010 has to be given the restrictive meaning ascribed to it in the definition. The renewable energy sources as statutorily defined can encompass only the physical sources of energy within its scope. RPO specified in Regulation 4.1 only imposed obligation to purchase physical renewable energy and does not impose any

obligation in regard to REC. Therefore, the State Commission does not need to consider the availability of REC before exercising the power to revise the targets under Regulation 4.2 read with Regulation 4.1.

- (b) RPO targets are fixed in advance based on expected level of availability of renewable power. Thus, the quantum is fixed not on the basis of any firm concluded long term power generation that would be available. The actual availability of renewable power is subject to vagaries of any kind. The developer may sell power to third parties and many of the renewable projects may be established for captive use. These events are totally outside the control of the distribution licensee. It will be counter productive to insist on the State Commission not to revise the target and force the distribution licensee to purchase REC, as this would lead to the State Commission deciding on the target in future in a conservative manner.
- (c) In the facts and circumstances of the case, the State Commission has duly exercised its discretion to revise the targets for reasons recorded which is in accordance with law.
- (d) The State Commission which has the absolute discretion to determine the quantum of RPO in terms of Section 86(1)(e) of the Electricity Act, 2003 will have the full discretion to revise the targets based on actual unfolding of circumstances.
- (e) Section 86 (1) (e) of the Act also refers to purchase of renewable energy from projects being set up and does not make any reference to REC which has been provided as an enabling provision/promotional

mechanism under section 66 of the Act under developmental of power market. RPO is always fixed with reference to the potential of renewable sources of energy available in the State and not with reference to REC that may be outstanding or available. The primary objective of the State is to promote establishment of renewable energy sources and procurement of renewable energy by distribution licensee at the promotional tariff. The purchase of REC which is not electrical energy in physical form is not envisaged as an obligation under Section 86(1) (e) and it can not be imposed on the obligated entities. REC has been only provided as a mitigating mechanism which can be purchased as per the choice of the obligated entity.

- (f) It was expected that wind power developers would establish significant quantum of renewable energy projects and offer wind power to the distribution licensee at the promotional tariff. The default or failure can be attributed to the distribution licensees if the developers were offering wind power at the promotional tariff but the distribution licensee declined to purchase the same. The distribution licensees can not be placed at a precarious and impossible situation that the wind power developers will establish the projects but will not offer wind power for sale to the distribution licensee and sell power in open access thereby benefitting by recovering tariff in excess of pooled Power Purchase Cost and also claiming REC and demand the distribution licensees to purchase REC to fulfill their RPO.

- (g) The scheme of the RE Regulation, 2010 is to provide an obligation on the distribution licensee to purchase electricity from renewable energy sources as per Regulation 4 (1) and give estimate, etc. as per Regulation 7 (1) and face the consequences of default in procuring electricity from such sources despite availability as provided in Regulation 7 (2) read with Regulation 9. The distribution licensee can, however, mitigate the default or discharge the obligations by alternate sources of procuring REC as per Regulation 5 read with Regulation 9(1). Further Regulation 9(1) is also discretionary.
 - (h) The validity of adjusting excess solar energy against shortfall in wind power RPO stands settled by the decision of the Tribunal in Appeal No. 24 of 2013.
 - (i) There is no infirmity in the reasoning of the State Commission in waiving RPO for SEZ licensees as the SEZs cannot be expected to comply with RPOs at such high cost when they need to operate in absolutely tight and competitive margins.
6. Elaborate submissions have been made by Mr. Sanjay Sen, Learned Senior Counsel and Mr. Vishal Gupta, Learned Counsel for the Appellants, Shri M.G. Ramachandran and Shri Anand K. Ganesan, Learned Counsel for the GUVNL and distribution licensee and deemed distribution licenses and Mrs. Suparna Srivastava, Learned Counsel for the State Commission. They have also filed detailed written submissions. Ms. Suparna Srivastava has made detailed submissions in support of the impugned order. She also refuted the submissions

made by the distribution licensee that Section 86 (1) (e) of the Electricity Act mandates purchase of renewable energy and REC which is not physical energy is neither envisaged as obligation under Section 86 (1) (e) nor can it be imposed as such upon the obligated entities.

7. On the basis of the rival contentions of the parties, the following questions would arise for our consideration:

- (i) **Whether the State Commission has erred in waiving the shortfall in Renewable Purchase Obligation for FY 2012-13 on account of lower capacity addition and unwillingness of the wind energy developers to supply electricity to the distribution licensee at preferential tariff determined by the Commission?**
- (ii) **Whether the State Commission has erred in waiving the shortfall in Renewable Purchase Obligation for wind and other energy sources despite the availability of Renewable Energy Certificates for wind energy?**
- (iii) **Whether the obligation cast upon the obligated entities under Section 86 (1) (e) of the Electricity Act, 2003 read with Tariff Policy is to purchase mandatory minimum prescribed electricity from RE sources and the purchase of REC which is not renewable energy in physical form is neither envisaged as an obligation under Section 86 (1) (e) nor can be imposed as such upon the obligated entities?**
- (iv) **Whether the Renewable Energy Certificates have been introduced only for obligated entities in the States which do not have adequate**

potential for renewable energy generation and the obligated entities in the States such as Gujarat having high potential for generation of renewable energy, have to fulfill RPO by procurement of physical renewable energy and for them REC is only a mitigating measure to be purchased at the option of the obligated entities?

- (v) Whether the State Commission was justified in adjusting the excess solar energy purchased over the specified Solar RPO by the distribution licensee to set off the shortfall in fulfillment of non-solar power purchase obligation?**
 - (vi) Whether the State Commission has erred in not giving public notice in the proceedings for review of compliance of RPO obligation of the distribution licensees?**
8. The first four issues are interconnected and, therefore, being dealt with together.
9. Let us first examine the relevant findings in the impugned order dated 8.8.2013 passed in Petitions filed by the distribution licensees/deemed distribution licensees for revision of minimum percentage of purchase of energy from renewable sources for FY 2012-13 under the Renewable Energy Regulation, 2010 on the basis of supply constraints and reasons beyond the control of the distribution licensees.
10. The findings of the State Commission are summarized as under:

- (a) Non-compliance of RPO for FY 2011-12 and 2012-13 was on account of renewable energy supply constraints. Wind energy generators did not come forward to sign PPA under the preferential tariff and they insisted on signing PPAs under the REC mechanism to sell electricity at Average Power Purchase Cost ("APPC rate"). GUVNL had not denied to sign the PPAs under preferential tariff. Thus, there is force in submissions made by GUVNL and Torrent Power Ltd. that no wind energy generator came forward to sign the PPA at preferential tariff with the distribution licensee.
- (b) Wind energy generators were able to sign PPAs with the distribution licensees from April, 2012 to August, 2012. However, no PPA had been signed by any wind energy generators with GUVNL or Torrent Power to sell electricity at preferential tariff after order no. 2 of 2012 dated 8.8.2012 regarding determination of wind energy tariff. During the hearing of review petition of the tariff order, GUVNL had expressed its willingness to sign the PPA with the wind energy project developers provisionally at the tariff decided in earlier order i.e. order no. 1 of 2010 dated 30.1.2010, subject to final decision of the Commission in the review petition. However, no wind energy generator approached the distribution licensees for signing the PPA.
- (c) Wind energy capacity set up during FY 2012-13 is quite low in comparison of capacity addition during the FYs 2010-11 and 2011-

12. Only 207 MW wind capacity was added in Gujarat during FY 2012-13 as against 790 MW during FY 2011-12.
- (d) GUVNL tied up 425 MW capacity with wind energy developers of which only 122 MW was commissioned during 2012-13 that too during the last quarter of FY 2012-13 and balance 303 MW spilled over to the ensuing year 2013-14. It is, therefore, incorrect to say that GUVNL has not tried to procure wind energy during FY 2012-13.
- (e) Torrent Power Ltd. also could not procure adequate wind energy due to the reasons that addition in wind energy generation capacity was quite low in comparison of earlier years and no wind energy generator came forward to enter into PPA at preferential tariff. Further, the power procurement of the distribution licensee also increased resulting in increase in the RPO.
- (f) Thus, GUVNL and Torrent Power were unable to comply with RPO for FY 2012-13 due to insufficient availability of wind energy generation and unwillingness of the generators to sell energy at preferential tariff to them.
- (g) GUVNL has procured 537 MU of solar Energy in excess of its RPO during FY 2012-13. Power Purchase Cost of solar power is much higher than Power Purchase Cost for other sources of renewable energy. Hence, if the excess energy purchased by GUVNL for

solar projects is not allowed to compensate for shortfall in non-solar RPO, then the licensees will be burdened with the financial cost.

- (h) Regulation 4.1 provides that in case of non-availability of solar energy generation, the shortfall of such energy may be compensated through energy generation available from wind and other sources. The said Regulation is silent about the excess energy purchased from solar. The Commission therefore decided that the excess solar energy procured may be allowed for fulfillment of RPO of wind and other sources.
- (i) Regulation 12.1 provides the Commission inherent powers to interpret, add, amend and make modification in the Regulations by giving sufficient reasons.
- (j) Even though REC's were available in the market, the purchase of REC is a commercial decision and management decision of the licensees and the Commission cannot interfere in such decision.
- (k) The Renewable Energy Certificate was initiated to sort out the issues arising out of uneven distribution of renewable sources in the country. It was visualized that States not having renewable potential can fulfill their RPO through purchase of REC's generated in resources rich States.. However, Gujarat has high potential of wind and solar energy generation. But distribution licensees could not fulfill the non-solar RPO due to lower capacity addition and unwillingness of wind generators to supply electricity at preferential

tariff. Under such conditions, procurement of REC would unjustifiably burden the consumers of the State.

- (l) There was shortfall to the tune of 1.9% in case of GUVNL and 2.21% in case of Torrent Power. Any carry forward of the same would add to the burden of the licensees and consumers. In view of the above, it is decided to revise RPO for FY 2012-13 at actuals for the year as a special case.
- (m) MP SEZ Utilities Pvt. Ltd., Torrent Energy Ltd. (Dahej SEZ) and Kandla Port are at the nascent stage of operation in their licence area and their RPO quantum is also very low, therefore, it was decided to exempt these licensees from applicability of RPO for FY 2012-13.
- (n) Jubilant Information Pvt. Ltd. and M/s. Synefra Engineering & Construction Ltd. are procuring power from the distribution licensees and Kandla Port is procuring power from GUVNL as consumers at retail supply tariff. The quantum of power procured by these licensees is considered for fulfillment of RPO percentage of the distribution licensees. Hence, any further imposition of RPO on these deemed distribution licensees will lead to double counting of RPO percentage. Therefore, these deemed licensees are exempted from RPO obligation till they continue to procure power from other distribution licensees as consumers.

11. Thus, the State Commission by exercising its inherent power under Regulation 12.1 decided to revise the RPO for FY 2012-13 at actuals for the distribution licensees supplied power by GUVNL and for Torrent Power, Ahmedabad and Surat mainly due to unwillingness of wind energy generators to sell at preferential tariff and inadequate capacity addition. The Commission felt that any carry forward of shortfall in RPO for FY 2012-13 would burden the consumers. The commission also set off part of shortfall of non-solar RPO by the excess solar energy procured by GUVNL. For SEZs (deemed licensees), the State Commission exempted the applicability of RPO for FY 2012-13 as they were in the nascent stage. For some other deemed licensees who were procuring power only from the State distribution licensees/GUVNL at retail supply tariff, the State Commission exempted them from RPO obligation as their consumption was already included in the RPOs of the distribution licensees. The Commission also felt that purchase of REC is a commercial decision of the distribution licensees and the Commission cannot interfere in the same. REC mechanism is meant for fulfilling the RPO of the States who do not have renewable energy potential whereas Gujarat has very high potential of wind and solar energy. The distribution licensees could not fulfill the RPO due to unwillingness of wind generators to supply electricity at preferential tariff. The Commission felt that under such circumstances procurement of REC would unjustifiably burden the consumers of the State.

12. **Let us examine the provisions of the Electricity Act, 2003, National Electricity Policy and Tariff Policy relating to promotion of renewable energy.**
13. The State Commission under Section 61 of the Electricity Act has to specify the terms and conditions for determination of tariff and in doing so is to be guided by inter-alia promotion of co-generation and generation of electricity from renewable sources of energy.
14. Section 86 stipulates the functions of the State Commission. Under Section 86 (1) (e), the State Commission has to promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of total consumption of electricity in the area of distribution licensee.
15. The National Electricity Policy issued by the Central Government under Section-3 of the Act provides that the State Commission shall specify for purchase of electricity from non-conventional sources of energy a percentage of the total consumption of electricity in the area of a distribution licensee. The share of electricity for non-conventional sources would need to be increased as prescribed by the State Commission. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.

16. National Tariff Policy notified by the Central Government under Section 3 of the Act stipulates that the Appropriate Commission shall fix a minimum percentage for purchase of energy from non-conventional energy sources taking into account the availability of such sources in the region and its impact on retail supply tariffs. Further, it will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.

17. The Tariff Policy was amended on 20.01.2011 as under :

"6.4. Non-conventional and Renewable sources of energy generation including Co-generation:-

- (1) Pursuant to provision of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of distribution licensee for purchase of energy from such sources, taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006.*
- (i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification in the official gazette which will go up to 0.25% by the end of 2012-13 and further up to 3% by 2022.*
- (ii) It is desirable that the purchase of energy from non-conventional sources of energy takes place more or less in the same proportion in different states. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as renewable energy certificates (REC) would need to be evolved. Through such a mechanism, the renewable energy based generation companies can sell the electricity to local distribution licensees at the rates for conventional power and can recover the balance cost by selling such certificates to other distribution companies and obligated entities enabling latter to meet their renewable power purchase obligation. In view of the comparatively higher cost of the electricity from solar energy currently, the REC mechanism should also have a solar specific REC.*

- (iii) *It will take some time before non-conventional technologies can complete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission."*

18. The following position emerges from the amended Tariff Policy:

- (a) The State Commission shall fix the RPO taking into account the availability of such sources in the region and its impact on retail supply tariffs.
- (b) Within the above RPO, the State Commission shall also reserve a minimum percentage of purchase from the solar energy which will go up to 0.25% by the end of 2012-13 and further upto 3% by 2022.
- (c) It is desirable to have purchase of energy for renewable sources more or less in same proportion in different States. As the renewable sources are not evenly distributed and available only in certain parts of the country, an appropriate mechanism such as REC is required to be evolved. Through such mechanism, the renewable energy generators can sell electricity to the local distribution licensee at the rates of conventional energy and recover the balance cost by selling the REC to other distribution licensees/obligated entities to meet their RPO.

19. The Tariff Policy provides for evolving of mechanism such as Renewable Energy Certificate to achieve the objective of development of renewable energy sources in a resource rich State more than that required for meeting the RPO of the State. The Renewable Energy Generators can sell electricity to local distribution licensees at conventional energy rate and recover the balance cost by selling REC to other distribution licensees and obligated entities to meet their RPO.

Therefore, under REC mechanism, the local distribution licensee can physically consume power from all such renewable energy sources over and above its own RPO at a tariff applicable for conventional power.

20. Let us now examine the Central Commission's REC Regulations, 2010.

- (a) These Regulations have been issued by the Central Commission under Section 178(1) and Section 66 read with clause (y) of sub-section (2) of section 178 of the Electricity Act. Section 66 provides that the Appropriate Commission shall endeavor to promote the development of market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy. Section 178 is relating to the power of Central Commission to make Regulations.
- (b) 'Renewable Energy Sources' are defined as renewable sources such as small hydro, wind, solar including its integration with combined cycle, biomass, bio-fuel cogeneration, urban or municipal waste and such other sources as recognized or approved by the Ministry of New and Renewable Energy.
- (c) There are two categories of certificates viz. Solar Certificates issued to eligible entities for generation of electricity based on solar and non-solar certificates issued to eligible entities for generation of electricity based on renewable energy sources other than solar. The solar certificates shall be sold to the obligated entities to meet their solar RPO and non-solar certificate shall be sold to the obligated entities to meet their non-solar RPO.

- (d) Under Regulation 5, generating company engaged in generation of electricity for renewable energy sources shall be eligible to apply for registration for issuance of REC if it fulfills the following conditions:-
- i) it has obtained accreditation from the State Agency;
 - ii) it does not have a PPA for the capacity related to such generation to sell electricity at preferential tariff determined by the Appropriate Commission
 - iii) it sells electricity either (i) to the local distribution licensee at a price not exceeding the pooled power purchase price of all sources excluding renewable energy sources of such distribution licensee, or (ii) to any other licensee or to an open access consumer at mutually agreed price or through power exchange at market determined price. Captive power plants based on renewable energy sources are also eligible for REC subject to certain conditions.
- (e) The price of REC shall be discovered in the Power Exchange. However, the Central Commission may provide for a floor price and a forbearance price (ceiling price) separately for solar and non-solar certificates.
21. It would be useful to examine the Statement of Object and Reasons of the Central Commission's REC Regulations, 2010. The concept of REC seeks to address the mismatch between availability of renewable energy sources and requirement of obligated entities to met their RPO. The REC mechanism aims at promoting investment in the renewable energy projects and to provide an

alternative mode to the RE generators for recovery of their costs. It is indicated that the Forum of Regulators had deliberated on this concept in detail and evolved framework for implementation of this mechanism. The Forum of Regulators felt that it would be necessary for both the Central Commission and the State Commissions to frame suitable Regulations for giving effect to the REC framework.

22. The salient features of REC mechanism as described in the Statement of Object and Reasons of Central Commission's Regulations are:

- REC mechanism is a market based instrument to promote renewable energy and facilitate RPO.
- REC mechanism is aimed at addressing the mismatch between availability of RE resources in State and the requirement of the obligated entities to meet the RPO.
- Cost of electricity generation for renewable energy source is clarified as cost of electricity generation equivalent to conventional energy sources and the cost of environmental attributes.
- RE generators will have two option i) either to sell the renewable energy at preferential tariff or ii) to sell electricity generation and environment attributes associated with RE generation separately. The RE generator can also sell electricity generation to third parties or use for captive consumption.
- The environmental attributes can be exchanged in the form of REC.
- REC will be issued to RE generator for 1 MWh of electricity injected into the grid from RE source.

- REC would be issued to RE generators only.
- REC could be purchased by the obligated entities to meet their RPO under Section 86(1) (e) of the Act. **Purchase of REC would be deemed as purchase of renewable energy for RPO compliance.**
- State Commission to recognize REC as valid instrument for RPO compliance.
- State Commission to designate State Agency for accreditation for RPO compliance and REC mechanism at State level.
- REC would be exchanged only in power exchange approved by the Central Commission.
- Price of electricity component of RE generation would be equivalent to the weighted average for purchase cost of the distribution licensee including short term power purchase but excluding renewable power purchase.
- REC would be exchanged within the forbearance price and floor price as determined by the Central Commission in consultation with central agency and Forum of Regulators from time to time.
- In case of default, State Commission may direct obligated entity to deposit into a separate fund to purchase the shortfall of REC at forbearance price.
- However, in case of genuine difficulty in complying with the RPO because of non-availability of certificates, the obligated entity can approach the Commission for carry forward of compliance requirement to in the next year.

23. **Let us now examine the findings of this Tribunal in Judgment dated 24.4.2014 in Appeal No. 24 of 2013 in the matter of Indian Wind Energy Association Vs. Gujarat Electricity Regulatory Commission & Ors.**
24. In that case the State Commission had revised the RPO for FY 2010-11 and carried forward the non-solar RPO for FY 2011-12 to FY 2012-13. The excess solar energy over the specified solar RPO was also adjusted against the shortfall in non-solar RPO. The order was challenged by the Association of Wind Energy Developers before this Tribunal.
25. In the Appeal No. 24 of 2013, the scheme of RPO under the RPO Regulations, 2010 as applicable to the distribution licensee has been summarized as under:
- "i) The distribution licensees shall purchase electricity from renewable energy sources at a specified minimum percentage of total consumption of consumers including T&D loss during a year.*
 - ii) The minimum quantum energy in percentage from Wind, Solar, Biomass/bagasse & others and the total percentage for FYs 2010-11, 2011-12 & 2012-13 have been specified in the Regulations. In case minimum quantity of energy from solar and other renewable energy sources is not available in a particular year, then the shortfall can be made good by utilizing additional energy from wind or other energy sources.*
 - iii) The State Commission has power to revise the percentage targets for a year keeping in view supply constraints or other factors beyond the control of the licensee suo motu or on request by the licensee.*
 - iv) Renewable Energy Certificate shall be the valid instrument for discharge of mandatory Renewable Purchase obligations set out in the Regulations.*
 - v) Purchase of non-solar certificate shall be utilized for meeting obligation from renewable energy other than solar and solar certificate shall be used for meeting the solar obligation. Only if solar certificates are not available in a particular year then additional non-solar certificates can be purchased for fulfillment of the specified Solar RPO.*

- vi) *Each distribution licensee shall indicate with proof the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/APR Petition. The estimated quantum shall be in accordance with the specified RPOs. If the actual consumption is different from that approved by the State Commission, the RPO shall be deemed to be modified accordingly. If the distribution licensee is unable to fulfill the obligation, the shortfall of that year would be added to the specified quantum for the next year. However, credit for excess purchase would not be adjusted in the ensuing year.*
 - vii) *Despite availability of renewable energy sources if the distribution licensee fails to purchase energy from renewable energy sources, then it shall be liable to pay compensation as per clause 9 of the Regulations.*
 - viii) *If the distribution licensee does not fulfill the RPO as specified in the Regulations and also does not purchase certificates, the State Commission may direct the licensee to deposit into a separate fund such amount as determined by the State Commission. This fund shall be utilized by the State Commission partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power from renewable sources of energy.*
 - ix) *However, in case of any genuine difficulty in complying with the RPO due to non-availability of power from renewable energy sources or the RECs, the State Commission may carry forward the compliance requirement to next year and in that case payment of regulatory charges shall not be applicable."*
26. As regards exercise of power by the State Commission under Regulation 4.1 for revision of RPO for FY 2010-11, this Tribunal in Appeal No. 24 of 20013 upheld the same for the reasons that RPO for FY 2010-11 was more than doubled for the previous year and adequate notice was not available to the distribution licensee to tie up the supplies with RE developers as the RPO Regulations were notified only on 17.4.2010 and availability of REC was also limited as REC was introduced only in October, 2010.
27. As regards carry forward of shortfall of non-solar RPO for FY 2011-12 to FY 2012-13, the Tribunal held that under Regulation 9.1, non availability of REC is

also a condition to be satisfied before allowing carry forward of RPO to the next year. The Tribunal held that the aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission and no reason had been adduced to come to the conclusion that REC were not available, whereas the data showed that RECs were available but the distribution licensees did not make any efforts to purchase REC. However, the Tribunal did not interfere with the findings of the State Commission regarding carry forward of shortfall in RPO for FY 2011-12 to FY 2012-13 since the FYs 2011-12 and 2012-13 and the following year 2013-14 were already over and at that stage the clock could not be turned back and carry forward of RPO could not be reversed. The Tribunal also laid down the following guidelines for future:

- (A) *The State Commission may decide the RPO targets at least one year before the commencement of the Multi Year Tariff period to give adequate time to the distribution licensees to plan and arrange procurement of renewable energy sources and enter into PPAs with the renewable energy project developers.*
- (B) *The proposal for renewable energy procurement should be submitted by the distribution licensee as part of the tariff petition for the ensuing year/Annual Performance Review for the current year. Suggestion and objections of public have to be invited for the above petition. The State Commission may give necessary directions with regard to RPO after considering the suggestions and objections of the stakeholders. If the distribution licensee is not able to tie up procurement of renewable energy to meet the RPO target, it should plan purchase of REC. Advance planning of REC purchase will give ample opportunity to the distribution licensees to purchase REC when the market conditions are more favourable to them.*
- (C) *After the completion of the financial year the State Commission may review the performance of the distribution licensees in respect of RPO and give directions as per the Regulations. Suggestions and objections of the public should be invited in the review proceedings.*
- (D) *The State Commission should give directions regarding relaxation in RPO and consequential order for default of the distribution licensees as per the RPO Regulations Accordingly, directed for future.*

28. Interestingly, the State Commission in the impugned order has revised the non-solar RPO for FY 2012-13 to negate its own direction given in the order dated 17.8.2012 (impugned in Appeal 24 of 2013) for making good the shortfall of FY 2011-12 in FY 2012-13, which was upheld by the Tribunal.
29. Learned Counsel for GUVNL and the distribution licensees has argued that Section 86 (1) (e) of the Electricity Act, 2003 imposes obligation to procure renewable energy in physical form only and not REC and REC is not renewable energy but only a mitigating mechanism available to the obligated entities as per their own choice. We do not agree that REC is only a mitigating mechanism and is not to be considered as renewable source of energy for fulfilling the RPO obligation specified under Section 86 (1)(e) of the Act. The RE Regulations, 2010 recognize REC as valid instrument to meet the RPO obligation specified under Section 86(1)(e) of the Electricity Act, 2003. As set out in the statement of objects and reasons, purchase of REC is to be deemed as purchase of renewable energy for RPO compliance and accordingly the State Commissions have been mandated to recognize REC as a valid instrument for RPO compliance. The Tariff Policy also envisages introduction of REC for meeting the RPO. We agree with Learned Counsel for the State Commission that by introducing the deeming provision as reiterated in the Gujarat Commission's RE Regulations, a legal fiction has been created by virtue of which purchase of REC is to be construed as fulfillment of RPO by purchase of renewable energy.

30. In *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.* (2003) 2 SCC 111, it was observed that the purpose and object of creating a legal fiction in the statute is well known. It was held that when a legal fiction is created, it must be given full effect. In *Ashoka Leland Ltd. Vs. State of Tamil Nadu and another*, (2004) 3 SCC 1, the Hon'ble Supreme Court also came to conclusion that whenever a legal fiction is created by a statute, the same should be given full effect.
31. In this connection, it would be relevant to refer to the Statement of Reasons of RE Regulations, 2010 of the State Commission wherein the objections raised by the stakeholders regarding validity of REC were answered. The relevant extracts are reproduced below:

"3.2 Renewable Energy Certificates under Regulations of the Central Commission

The following points were raised regarding inclusion of provision regarding Renewable Energy Certificates in the draft Regulations;

- *Validity of RECs, since neither the Act nor the Policy provides for the same.*
- *Applicability of RECs issued under CERC Regulations to the State Regulation.*

Commission's findings:

It is important to note that the framework of Renewable Energy Certificate (REC) is meant to facilitate and promote the development of market in electricity based on renewable energy sources. The Act and the policies envisages coordinated efforts of CERC and SERCs in promotion of renewable energy in the country. On the basis of the deliberations in the Working Group of the Forum of Regulations (FOR), CERC has notified the Regulations on Renewable Energy Certificate mechanism. The SERCs have specific responsibility under section 86(1)(e) of the Act and the Forum of Regulators (FOR), where all the SERCs are represented, has already evolved a model regulation to be framed by SERCs under the said provision to facilitate inter-alia implementation of the REC framework. The scheme envisages inter-alia central level registry and trading of certificates at the power exchange, which can be facilitated only through a regulation by the Central Commission. This mechanism is aimed at addressing the mismatch between availability of renewable energy sources in some states and the requirement of the obligated entities to meet the renewable purchase

obligation. While framing the Regulations, SERCs, are eligible to adopt the provisions of CERC regulation. The Act mandates SERCs to promote the development of market including trading. The REC is an instrument of trading, which is tradable at Power Exchange, and it is also a tool for fulfillment of RPO by the obligated entity.

The commission therefore decides to retain the provisions regarding RECs as included in the draft regulation."

Thus the State Commission held that REC is a tool for fulfillment of RPO by the obligated entity and decided to retain provision of REC in the Regulations.

32. REC is issued only to RE generators for generation of renewable energy and is an alternative mode provided to the RE generators for recovery of their costs. One REC is issued for 1 MWh of energy from renewable energy sources injected into the grid or consumed by a captive consumer. REC can be purchased by the obligated entities to meet their RPO under Section 86(1)(e) of the Electricity Act and purchase of REC would be deemed as purchase of renewable energy for RPO compliance. REC is an alternative to physical procurement of renewable energy. The distribution licensees as well as other persons consuming electricity generated from conventional Captive Generating Plant or procuring electricity from conventional generating stations through open access and third party sale are obligated entities who have to meet their RPO. These obligated entities have option to meet their RPO mandated under Section 86 (1) (e) of the Act and the Regulations either by directly procuring energy from renewable sources of energy in physical form or purchasing REC, as deemed procurement of renewable energy. Both have to be considered for fulfilling the RPO specified under Section 86(1)(e). An obligated entity has option to fulfill its RPO either by fully procuring renewable energy in physical form or fully by purchasing REC or

partly in physical form and partly REC. However, the option has to be exercised based on sound economic principles. In case of distribution licensees, the State Commission while approving compliance of RPO has to consider that the distribution licensee has exercised its option prudently.

33. Let us take the example of the State of Gujarat which is endowed with huge potential for development of wind energy sources, much more than required to meet the minimum quantum of purchase specified by the State Commission. Generally the obligated entities in a resource rich State would plan to meet their RPO by procuring power from renewable sources of energy in physical form. While planning for meeting wind energy RPO for a particular year, a distribution licensee would examine the availability of power from firm sources of power with which it has PPAs (including the existing PPAs with the renewable energy sources) vis-à-vis the requirement of power during the time periods when the wind energy to be procured to meet the specified RPO is likely to be available. The distribution licensee may be surplus or just adequate in power with availability from the existing sources during such periods and physical procurement of additional wind energy may result in additional surplus availability. Despite availability of power from wind energy generators for meeting wind energy RPO at preferential tariff, the distribution licensee may take a commercial decision to meet a part of RPO by purchasing REC. The commercial decision will be influenced by the preferential tariff for wind energy fixed by the State Commission, trend of market rate of REC, trend of market rate of surplus power at the relevant time periods and incremental energy rate from the firm

conventional sources with which it has long term PPA, etc. In a situation where rate of sale of surplus energy during the time of generation of wind energy is expected to be low and the price of REC is at or near floor price, it may be prudent to purchase REC instead of procuring renewable energy in physical form at preferential tariff. This would, however, require detailed examination and analysis for different times of the day and months when wind energy contribution is expected to be high. Similarly other obligated entities in Gujarat instead of taking physical energy from wind energy generators to meet their RPO which may involve banking, wheeling, sale of surplus power, etc., may prefer to meet the RPO by purchasing REC. REC though evolved basically to exploit the renewable energy sources in States having abundant potential of renewable energy for the benefit of States which do not have adequate potential of renewable energy sources, is also useful for meeting the RPO of obligated entities of resource rich States. REC mechanism has opened up the market for the renewable energy generators outside the State in which they are located helping in unconstrained growth of the renewable energy sector and needs to be promoted by the State Commissions.

34. One of the main features of the Electricity Act, 2003 is that electricity generation is delicensed and captive generation is freely permitted. Hydro Power, however, needs approval of the State Government and clearance from the Central Electricity Authority relating to issues of dam safety and optimum utilisation of water resources. Hon'ble Supreme Court in Tata Power Company Ltd. Vs. Reliance Energy Ltd. & Ors: (2009) 16 SCC 659, held as under:

"83 The primary object, therefore, was to free the generating companies from the shackles of licensing regime. The 2003 Act encourages free generation and more and more competition amongst the generating companies and the other licensees so as to achieve customer satisfaction and equitable distribution of electricity. The generation company, thus, exercises freedom in respect of choice of site and investment of the generation unit; choice of counter-party buyer; freedom from tariff regulation when the generating company supplies to a trader or directly to the consumer."

35. Freedom of supply of power as per its choice throughout the length and breath of the country is being freely exercised by the conventional energy sources due to more favourable tariffs, economy of scales and lower transmission cost per unit due to high plant load factor. This led to development of huge capacity of conventional generating plants in private sector in the country. Such unhindered growth opportunity was not available to renewable sources of energy due to higher tariff and high cost of transmission due to poor plant load factor and limited scope of supplying power to distribution licensees and other persons within the State. Growth of expensive RE technologies was also restrained by the RPO fixed by the State Commission of the State where RE projects were set up. The introduction of REC mechanism has opened up the market for RE generators. This has provided a mechanism where the physical form of energy is sold to the distribution licensee and consumers within the State, the green attributes of such energy is sold in the pan India market through the power exchange. REC is a mechanism for facilitating accelerated development of renewable energy potential of the resource rich States thus serving the object of the Electricity Act, 2003 for promotion of renewable sources of energy and attracting investment in private sector for setting up renewable energy based power projects, particularly in rural areas. By treating REC as a valid instrument

for discharge of mandatory RPO, as set out in the Regulations, the State Commission has only followed the mandate of the Electricity Act, 2003 under Section 86(1)e) for promotion of renewable sources of the energy in the State.

36. According to Mr. Ramachandran, Learned Counsel for GUVNL, the RPO specified under Regulation 4.1 are applicable for physical form of energy purchased from renewable energy sources at preferential tariff and would not be applicable to REC. Thus, there is no obligation imposed on the obligated entities to procure REC under Regulation 4.1. If there are supply constraints on other factors beyond the control of the licensee, the State Commission can revise the RPO for a year. The State Commission need not consider the availability of REC before exercising the power to revise the targets under Regulation 4.2 read with Regulation 4.1. "Renewable Source of Energy" is defined in the RE Regulations and therefore, it is not open to extend the scope of the term on assumption or widen the scope by deeming something more. Similarly, the Regulation 7 which deals with failure of the distribution licensee to fulfill the RPO and its liability to pay compensation as per clause 9 is also with respect to renewable energy source and not REC. Regulation 5.1 also makes it clear that REC cannot be read as a part of the term "Renewable Energy Sources". Regulation 5 only provides for mitigating the default or discharge the obligation by alternate means by purchasing REC. If the distribution licensee could not procure adequate energy from renewable energy sources due to non-availability then there is no default on the part of the licensee and therefore penalty under Regulation 9 could

not be imposed. He argued that "Renewable Energy source" wherever used in the Regulations, has to be given restrictive meaning as per the definition.

37. We have already dealt with the issues of purchase of REC by the obligated entities to fulfill their RPO specified under Section 86(1)(e) of the Act. Let us now deal with the issue of exercise of power by the State commission to revise RPO targets. This Tribunal in its judgment in Appeal No. 24 of 2013 though upheld the State Commission's decision to revise RPO for FY 2010-11 by exercising power under Regulation 4.2, it has not elaborately dealt with the conditions under which the State Commission can revise RPO under Regulation 4.2. However, while upholding the revision of RPO for FY 2010-11 under Regulation 4.2, the Tribunal had examined the availability of REC which was also found to be limited as REC was introduced only in October 2010. It would be necessary to examine the RE Regulations, 2010 before answering the above issue.
38. Regulation 4.1 specifies the minimum quantum of purchase (in %) for renewable energy sources separately from wind, solar, biomass/bagasse and other sources for each of the financial year from FY 2010-11 to 2012-13. However, if the minimum quantum of power purchase for solar and other renewable energy sources is not available in a year, then the additional energy from wind and other energy can be procured over and above their respective RPOs. There is no provision for shortfall in non-solar energy to be made good by procurement of solar energy. This appears to be due to higher price of solar energy.

39. Regulation 4.2 provides that the State Commission, suo moto or at the request of a licensee, revise the percentage targets for a year as per Clause 4.1, keeping in view supply constraints or other factors beyond the control of the licensee.
40. Regulation 5.1 provides that subject to the terms and conditions contained in these Regulations, the certificates issued under the Central Commission's REC Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligation set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources. Proviso to the Regulation 5.1 provides that in the event of the obligated entity fulfilling the RPO by purchase of REC, the obligation to purchase electricity from generation based on non-solar energy sources can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity for generation based on solar as renewable energy sources can be fulfilled by purchase of solar certificates only. However, if solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfillment of the specified solar RPO.
41. Under Regulation 5.2, subject to such direction as the State Commission may give from time to time, the obligated entity shall act consistent with the Central Commission's REC Regulations, 2010 with regard to procurement of REC for fulfillment of RPO under these Regulations.
42. Thus, in term of Regulation 5.1, the REC is a valid instrument for discharge of mandatory RPO as specified in the Regulations and is not just a mitigating mechanism. It is an alternative mechanism to physical procurement of renewable

energy. As already discussed earlier, REC is issued in terms of energy ('MWh') injected by a renewable energy source into the grid. REC procured by the obligated entity will have to be treated as deemed energy purchase from such RE source and added to physical renewable energy procured directly from the renewable energy source by the obligated entity to find the total percentage of renewable energy procured in a year vis-à-vis that specified in the Regulations. Thus, for verifying the compliance of RPO, the REC has to be treated as deemed energy from renewable source of energy. When a renewable energy generator which opts for REC scheme generates renewable energy only then the REC is issued to it. Only a renewable energy generator is entitled to trade its REC. Under REC mechanism, the renewable energy is physically drawn either by the local distribution licensee at its average power purchase cost (and not at preferential tariff) or the energy is used for captive consumption or sold to any other licensee or to an open access consumer at mutually negotiated tariff or through power exchange and the green attributes of the same energy is sold as REC as deemed purchase of renewable energy. An obligated entity can fulfill its RPO obligation specified under Regulation 4.1 by purchase of REC. In case of an obligated entity procuring part of the RPO obligation through REC, the deemed energy procurement will have to be added to the energy drawn physically by directly procuring energy from a RE generator for compliance of the RPO specified under Regulation 4.1. Therefore, purchase of REC for the purpose of compliance of Regulation 4.1 has to be considered as deemed procurement of energy from renewable energy source. However, in a resource

surplus State, the obligated entities have to make their own choice for fulfilling the RPO but such choice has to be made on sound commercial principles or based on convenience to avoid hassles of open access, cross subsidy surcharge, banking, etc., involved in physical procurement of renewable energy or if RPO quantum is too small.

43. Under Regulation 7.1, each distribution licensee has to indicate the estimated quantum of purchase from RE sources for the ensuing year in tariff/annual performance review petition. The estimated quantum of purchase has to be in accordance with Regulation 4.1. However, if the actual consumption in the licensed area is different from being approved by the Commission, the RPO shall be deemed to be modified in accordance with Regulation 4.1 corresponding to the actual consumption. If the distribution licensee is not able to fulfill the RPO due to increase in consumption then the shortfall would be added to the specified quantum for the next year i.e. carried forward to the next year. However, credit for excess purchase would not be adjusted in the ensuing year.
44. According to Regulation 7.2, despite availability of RE sources, if the distribution licensee fails to fulfill the RPO, it shall be liable to pay compensation as per Regulation 9.
45. Regulation 9 describes the consequences of default if the obligated entity does not fulfill RPO and also does not purchase REC. In that case the State Commission may direct the obligated entity to deposit into a separate fund such amount as the State Commission may determine on the basis of shortfall in units of RPO and the forbearance price decided by the Central Commission.

However, in case of any genuine difficulty in complying with the RPO because of non-availability of power from renewable energy sources or RECs, the obligated entity can approach the State Commission to carry forward the compliance requirement to the next year. Where the Commission has consented to carry forward the compliance requirement, the provision regarding regulatory charge shall not be applicable.

46. Regulation 12 is power to remove difficulties under which the State Commission may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provision of these Regulations. In our opinion, the State Commission by exercise of power under Regulation 12 could not have waived or revised the RPO targets. The first part of Regulation 12.1 is the legislative power for amendment of the Regulation and the second part is for removing difficulty in case there is a problem in implementation of the Regulation. In the present case, the State Commission has not revised or amended the Regulations. There is also no difficulty in implementing the Regulations. Difficulty experienced by the obligated entities in fulfilling the specified RPO has to be dealt with as per the provisions of the Regulations.
47. Conjoint reading of the above Regulations show that Commission can revise/carry forward the RPO for a particular year under the following Regulations:-
- i) Under Regulation 4.2, the Commission suo motu or at the request of the licensee can revise the percentage targets for a year **keeping in view**

supply constraints or other factors beyond the control of the licensee.

- ii) Under 5th proviso to Regulation 9, in case of **any genuine difficulty in complying with RPO because of non-availability of power from renewable sources of energy or the RECs**, the obligated entity can approach the Commission and the Commission may carry forward the requirement to the next year.
48. RE Regulation, 2010 dated 17.4.2010 specified RPO for three years (2010-11 to 2012-13) with increasing quantum of RPO every year. Under Regulation 4.2, the RPOs can be revised before the beginning or during a financial year for that year if the State Commission is convinced that the targets set up by it are unrealistic and can not be achieved. For example, on the basis of the experience of FYs 2010-11 and 2011-12, if the State Commission feels that the targets set up by the Commission for FY 2012-13 are high and unrealistic, it may revise the same at the beginning of FY 2012-13 or during FY 2012-13. The State Commission may also revise the targets during a year due to force majeure such as natural calamity occurring during the year due to which it becomes impossible to achieve the RPO targets.
49. The State Commission may also revise the targets after the completion of financial year under Regulation 4.2 due to supply constraints or factors beyond the control of the licensee which may be due to reasons such as:

- 15.9.2015
- i) Actual renewable energy generation is below normative generation from tied up renewable energy sources due to reasons beyond the control of the distribution licensee.
 - ii) Force majeure such as natural calamity resulting in supply constraints.
 - iii) Inadequate capacity addition in the State and RECs could not be purchased due to non-availability of REC despite efforts made by the distribution licensee. In a resource rich State where the State Commission had set up RPO targets keeping in view the anticipated capacity addition in the State, the State Commission may also revise the targets due to inadequate renewable capacity addition in the State.
 - iv) Minimum energy purchase obligation for renewable sources of energy was fixed on estimated energy consumption of the licensee in the ARR based on estimated growth but the actual consumption has been much lower due to slow growth or negative growth or due to forced majeure. Thus, percentage RPO on actual energy consumption was met but minimum energy purchase target fixed in the ARR based on anticipated energy consumption could not be met.
 - v) A distribution licensee has proposed to meet a part or full RPO by purchase of REC but REC could not be purchased, despite efforts made by the licensee, due to non-availability of REC.
50. If the distribution licensee has not made efforts to procure requisite renewable energy to fulfill the RPO and has also not purchased REC, the State Commission shall not revise the RPO under Regulation 4.2. While revising the RPO targets,

G. 4. 2015

the State Commission has to ensure that such revision should not defeat the object of the Electricity Act and the Regulations. It is important that RPO specified under Regulation 4.1 are applicable to all the obligated entities in the State. Thus, if RPOs are revised due to inadequate capacity addition in the State, the same percentage will be applicable to all the obligated entities. In the present case, State Commission by revising the RPO due to supply constraints as per actual achievement of different distribution licensees has de facto decided different percentage RPO targets for different distribution licensees for the same reason. For some of the deemed distribution licensees the revised RPO is zero, for GUVNL the revised RPO is 7.4%, for Torrent Power 3.81% and for TEL (Dahej) it is 1.49%. In this manner, the State commission in the impugned order for reasons of supply constraints has set up different RPO targets for different distribution licensees. This is not permissible as per the Regulations. The revision of RPO target, under Regulation 4.2 has to be of the same order for all obligated entities as RPOs are revised due to low capacity addition in the State.

51. We want to add that non-availability of REC may not always be a pre-condition for exercise of power to revise under Regulation 4.2. For Example, if the distribution licensees had tied up adequate capacity at preferential tariff but due to actual generation being lower than the normative generation due to reasons beyond the control of the distribution licensee or there is natural calamity in the State and energy consumption in the State has gone down or renewable energy generation in the State has been affected due to natural calamity then shortage of REC may not be a pre-condition to revise RPO targets set up under

Regulation 4.1. Further, if in a resource rich State the State Commission has set up RPO targets keeping in view anticipation of capacity addition in the State, the State Commission may also revise the targets due to inadequate capacity addition in the State due to reasons beyond the control of the distribution licensee.

52. Under 5th proviso to Regulation 9, if the Commission is convinced that the obligated entity has faced genuine difficulty in meeting the RPO due to non-availability of power from renewable sources or the REC, it may allow carry forward the compliance requirement to the next year. However, before exercising power under Regulation 9, the State Commission has to satisfy itself that there was difficulty in meeting the RPO from purchase of REC. Therefore, non-availability of REC is a pre-condition for carry forward under Regulation 9.
53. Let us now examine whether in the specific circumstances in this case during FY 2012-13, the State Commission was correct in exercising its power under Regulation 4.2 to revise the RPO of different distribution licensees. Even though the State Commission has wrongly exercised the power to revise RPO under Regulation 12, we have to examine if the Commission could have revised the RPO by exercising the power under Regulation 4.2, as merely wrong mentioning of the Regulation would not make the order invalid if such powers are available in the Regulation elsewhere.
54. In the impugned order, there is no discussion on the proposal for fulfillment of RPOs of distribution licensees which they were required to furnish with sufficient

proof in their Tariff Petition/ARR before the State Commission as specified in the Regulations. We feel that this should have formed part of the review exercise by the State Commission.

55. Let us examine the case of GUVNL and its four distribution licensees. GUVNL had prayed before the State commission to waive the shortfall in meeting the carried forward RPO during FY 2012-13 and requirement of transferring funds to the Designated Account for FY 2012-13 as the shortfall was on account of supply constraints under "other" and "wind" sub-categories due to non-availability of capacity under preferential tariff. Considering the carry forward shortfall of RPO for FY 2011-12, the position based on the estimated quantum of purchase during FY 2012-13 was as under:

Provisional status of RPPO	(In MUs)			
	Wind	Solar	Others	Total
RE Power purchase for FY 2012-13	3366	1159	76	4601
	5.41%	1.86%	0.12%	7.40%
Shortfall(+)/Excess (-)	532	-390	447	589

56. While GUVNL purchased 247 MU additional renewable energy over the target for FY 2012-13, it was not adequate to meet the shortfall of 836MU carried forward from FY 2011-12 to FY 2012-13. The main reason given by GUVNL for non-fulfillment of RPO was lower wind capacity addition in the State and wind generators not coming forward to enter into PPA. The reason for low capacity addition was given as withdrawal of Generation Based Incentive Scheme and benefit of accelerated depreciation for wind projects.
57. The Commission came to the conclusion that non-compliance of RPO for FY 2011-12 and 2012-13 was on account of supply constraints as wind energy

developers did not come forward to sign PPAs as GUVNL had not denied to sign the PPA under the preferential tariff.

58. We find that the State Commission failed to consider the submissions of the Wind Energy Developers' Association that GUVNL had refused to sign PPA at tariff determined by the Commission by its tariff order dated 8.8.2012 as GUVNL had filed a review petition against the tariff order. GUVNL was insisting for signing PPA at tariff as per tariff order no. 1 of 2010 dated 30.1.2010 subject to the final decision of the Commission in Review Petition filed by GUVNL. We have been informed during the proceeding that the wind energy tariff as per previous order dated 30.1.2010 was Rs.3.56/KWh. The tariff determined by order dated 8.8.2012 was Rs.4.23/KWh which was subsequently revised to Rs.4.15 per KWh in the review order passed by the State Commission. It is also seen that the GUVNL tied up 425 MW wind energy capacity during the year out of which 122 MW was commissioned and balance 303 MW will be commissioned in ensuing year. The wind energy generators signed PPAs from April 2012 to August 2012, however, no PPA was signed after tariff order dated 8.8.2012.
59. We feel that after the passing of the tariff order dated 8.8.2012 the earlier tariff order dated 30.1.2010 did not exist for PPAs to be signed after 8.8.2012. Even though GUVNL had filed a review against order dated 8.8.2012, there was no stay on State Commission's order dated 8.8.2012. GUVNL should have entered into PPA at the tariff which was valid after 8.8.2012 subject to the outcome of the review. Further, out of 207 MW wind energy capacity commissioned during FY 2012-13, 142 MW was under preferential tariff, 23 MW under captive and 42

MW under REC for sale of APPC. Thus, major quantum of wind energy capacity commissioned during FY 2012-13 supplied energy under preferential tariff as decided by the State Commission.

60. We also find that GUVNL had tied up a capacity of 425 MW with wind energy developers out of which only 122 MW was commissioned during 2012-13 and the balance capacity of 303 MW was spilled over to the ensuing year. Therefore, it would be incorrect to conclude that the wind energy generators were not inclined to enter into PPA with the distribution licensees. From the data of wind energy projects submitted by the Appellant, it is seen that as on 30.11.2014 out of total wind energy capacity of 3448 MW only 325 MW capacity is under REC mode, of which 255 MW capacity is selling power at APPC to the distribution licensees. It is also seen that ratio of buy bid to sell bid volume of REC, during FY 2012-13 was about 0.27 indicating large volume of REC remaining unsold during FY 2012-13. The Report on Short-Term Market in India FY 2012-13 issued by the Central Commission as available in public domain also indicates that for major period during FY 2012-13, the REC price remained at the floor price of Rs.1500 per REC (Rs.1.50 per KWh). Therefore, we do not find much force in the argument of the distribution licensees and the conclusion of the State commission that the wind energy generators are not willing to supply power to the distribution licensee and are opting for REC mechanism for making windfall gain.
61. Renewable energy generators not coming forward to enter into PPA at preferential tariff cannot be a reason for revising the RPO target. The obligation

to meet the RPO is of the obligated entities. However, if the Commission has fixed the targets in the year 2010 for the next three years based on the anticipated development of renewable energy sources in the State and the Commission feels that these targets are required to be revised in view of drastic reduction in capacity addition in a year due to reasons beyond the control of the distribution licensees then the State commission can revise the RPO targets by exercising its power under Regulation 4.2. It is an accepted fact that the capacity addition in the State was inadequate due to withdrawal of fiscal incentives by the Government. However, such revision in RPO due to shortfall in capacity addition has to be uniform for all the distribution licensees. Thus, if the State Commission concludes that due to low wind energy capacity addition in the State during the year RPO for wind energy has to be reduced by 1%, such reduction has to be uniform for all distribution licensees. It can not be different for different licensees.

62. As far as Torrent Power (Ahmedabad and Surat) is concerned there was a shortfall of 223.50 MU in non-solar RPO even though the licensee purchased REC to the tune 270 MU. Torrent Power entered into PPA with M/s. GPEC for sourcing 50 MW of wind power. Further it purchased surplus power from renewable captive consumers. The licensee published advertisements in newspapers inviting renewable energy power generators to supply power from renewable energy sources but it did not get any positive response. According to Torrent Power, they had invited bids after revision on the wind tariff for new control period beginning April 2012 and developers were approached but they were waiting for outcome of the Review Petition which was finally decided on

7.1.2013. It is, however, not clear whether Torrent Power had offered the tariff as per order dated 8.8.2012 or insisted for entering into PPA at the pre-revised tariff subject to the outcome of the review. Torrent Power also could not fulfill Solar RPO for which there is no finding that there was shortage of solar energy. Despite this the State Commission revised the RPO as per actual.

63. It is seen that the State Commission has exempted the SEZ (deemed licensee) from RPO compliance for FY 2010-11 and 2011-12 and again during 2012-13, they were exempted even though they did not make any efforts to fulfill their respective RPO. Low energy consumption of the distribution licensee, increase in tariff due to purchase of renewable energy as per the RPOs, nascent stage of operation etc. cannot be the reasons for which their RPO should have been reduced to zero. Smaller entities will have low energy consumption but their RPO will also be low as RPO is fixed as a percentage of energy consumption. These reasons are not related to supply constraints or beyond the control of the licensee and do not qualify for revising of the RPO under Section 4.2. However, we do not find any infirmity in finding of the State Commission to relax the RPO obligation of those distribution licensees who purchase power from GUVNL/ and its four distribution licensees to meet their energy consumption at the retail supply tariff determined by the State commission and their energy consumption is included in the RPO obligation of the supplying company.
64. Looking at the compliance report of GUVNL, we find that the compliance with respect to wind energy has been satisfactory. However, the compliance with respect of bio-mass and other renewable sources has been quite low due to

which there was default in fulfilling the non-solar RPO. Thus during 2012-13, not only there was reduction in capacity addition of wind energy projects but also biomass and other non-solar energy sources. The State Commission has to examine the reasons for reduction in capacity addition and take necessary measures for accelerating the capacity addition of biomass and other sources of renewable energy.

65. In view of above, we hold that the State commission has wrongly revised the RPOs for FY 2012-13 for different distribution licensees as per their actual consumption thereby fixing different RPOs from zero to 7.4% for different entities contrary to the Regulations. This differential RPO could not have been due to reason of reduction in capacity addition in wind and other sources of renewable energy in the State. The State Commission can revise the RPO target for wind and other energy sources in the State due to low capacity addition of wind energy/other sources uniformly for all the obligated entities. For those distribution licensees who have not fulfilled the revised RPO, action has to be taken by the State Commission under Regulation 9.
66. Let us examine the fifth issue regarding adjusting the excess solar energy purchased over the specified solar RPO to set off the shortfall in fulfillment of non-solar RPO.
67. This issue has been dealt with by this Tribunal in Appeal No.24 of 2013 that keeping in view the circumstances of case, the State commission can exercise its power under Regulation 4.2 to allow adjustment of excess solar energy procured for meeting the shortfall in non-solar RPO.

68. Solar energy is more expensive, therefore, distribution licensees should refrain from excessive procurement of solar energy as it would unnecessarily burden the consumers. Excessive procurement of solar energy is also not advisable as the price of solar energy has been declining over the years with advancement in technology and increase in production capacity due to increase in demand. In the initial years of implementation of the RPO Regulations there may be some variations in different sources of renewable energy and such adjustment may be justifiable. In such case the State Commission can exercise its power in the circumstances of the case to set off non-solar RPO with excess solar energy purchase. However, this should not be made as regular practice and the State Commission should ensure that the distribution licensees do not deliberately try to alter the technology specific RPOs to defeat the purpose of giving separate RPOs to solar and non-solar RPOs. Excessive procurement of solar RPO for adjustment of shortfall in non-solar RPO may also be uneconomical in comparison to purchase of non-solar REC to meet the shortfall in non-solar REC. This aspect should also be kept in view by the State Commission in future.
69. In view of our finding in Appeal No. 24 of 2013, we do not want to interfere with the findings of the State Commission in the present case.
70. The issue regarding public hearing has already been dealt with in our Judgment in Appeal No.24 of 2013 in which we have given certain directions with regard to public hearing which are being reiterated. The directives given in Appeal No. 24 of 2013 have been reproduced under paragraph 27.

71. Summary of our findings:

- (i) The National Tariff Policy and the Regulation of the Central Commission and the State Commission recognize REC as valid instrument for fulfilling Renewable Purchase Obligation cast upon the obligated entities under Section 86(1)(e) of the Electricity Act, 2003. Purchase of REC would be deemed as purchase of energy from renewable energy source for fulfilling RPO obligation. When a legal fiction has been created by a statute, the same should be given full effect.
- (ii) An obligated entity has option to fulfill its RPO either by procuring renewable energy in physical form or by REC or partly by REC and partly by physical renewable energy. However, a distribution licensee has to exercise the option based on economic principles. An obligated entity other than the distribution licensee may also opt for purchase of REC for fulfilling its RPO obligation to avoid the issues involved in banking, open access, sale of surplus power, etc., or if the RPO requirement is too small.
- (iii) Renewable energy generators like conventional generators have been given freedom under the Electricity Act in respect of choice of site, choice of counter-party buyer, freedom from tariff regulation when the generating company supplies to a trader or directly to a consumer. So far, the renewable energy generators were not able to exercise this freedom due to various constraints. The REC

mechanism has opened up the market for renewable energy generators helping in expeditious exploitation of renewable energy potential in the country thus, serving the object of the Electricity Act, 2003. Thus, REC mechanism has to be encouraged. By treating REC as a valid instrument for discharge of mandatory RPO as set out in the Regulations, the State commission has only followed the mandate of the Electricity Act, 2003 under Section 86(1)(e) for promotion of renewable sources of energy in the State.

- (iv) The State Commission can revise the RPO before or during a year or after passing of year under Regulation 4.2 of RE Regulation 2010 as explained under paragraphs 47 to 51 above. If the distribution licensee has not made efforts to procure requisite renewable energy to fulfill the RPO and also has not procured REC, the State Commission should not revise RPO under Regulation 4.2. However, while revising the RPO targets, the State commission has to ensure that such revision should not defeat the object of the Electricity Act and the Regulations.
- (v) If the RPO targets are revised under Regulation 4.2 due to inadequate capacity addition in a resource rich State, such reduction has to be uniform for all the entities.
- (vi) Under 5th proviso to Regulation 9, if the Commission is convinced that the obligated entity has faced genuine difficulty in meeting the RPO due to non-availability of power from renewable sources or the

REC, it may allow carry forward the compliance requirement to the next year. However, before exercising power under Regulation 9, the State Commission has to satisfy itself that there was difficulty in meeting the RPO from purchase of REC. Therefore, non-availability of REC is a pre-condition for carry forward under Regulation 9.

- (vii) Admittedly there was substantial reduction in capacity addition of wind energy and other sources of renewable energy in the State during FY 2012-13 due to reasons beyond the control of the distribution licensee. Under such a condition the State Commission can reduce RPO targets for the wind energy and other energy. However, such reduction due to capacity constraints has to be uniform for all the obligated entities in the State.
- (viii) In the present case, the State Commission has revised the RPO targets for various distribution licensees as per the actual. This way the State Commission has set up different RPO targets for four States owned distribution license, Torrent Power Surat and Ahmedabad at different levels for the same reason of inadequate capacity addition. This is not permissible. The State Commission has incorrectly revised the RPO for the deemed distribution licensees to zero or nearly negligible amount due to financial impact, low energy consumption, nascent stage of operation etc., in contravention to the Regulations.

- (ix) We find that RPO compliance of GUVNL for wind energy was satisfactory but compliance of biomass and other non-solar energy was quite low due to which there was default in fulfilling the non-solar RPO. Thus, during FY 2012-13 there appeared to be inadequate generation of biomass and other non-solar energy sources in the State. The State Commission has to examine the reasons for the same and take necessary measures for accelerating capacity addition of biomass and other sources of renewable energy in the State.
- (x) We remand the matter to the State Commission to reconsider the whole issue afresh in light of our findings in this judgment. The State Commission is empowered to reduce the RPO targets for all the entities uniformly in view of reduction in capacity addition of wind energy and other sources in the State during the FY 2012-13. However, the consequences of shortfall with respect to the revised RPO for different distribution licensees/deemed distribution licensees has to be decided by the State Commission according to Regulation 9.
- (xi) We do not find any infirmity in the State Commission relaxing the RPO for those deemed distribution licensees who purchase energy from GUVNL/distribution licensees at retail supply tariff and their consumption is included in determining the RPO of the supplying distribution licensee.

(xii) In the circumstances of the case, we do not want to interfere with the decision of the State Commission to set off the shortfall in non-solar energy purchase with excessive solar energy procured during FY 2012-13. However, we have given certain directions in this regard for future in paragraph 68 above.

(xiii) As regards public hearing for review of RPO, we have already given the necessary directions in our judgment in Appeal No. 24 of 20013 which have been reproduced under paragraph 27.

71. In view of the above, the Appeal is allowed in part as indicated above and the State Commission's order is set aside to that extent. The State commission is directed to pass consequential order as per the findings in this judgment within three months of the date of this judgment. No order as to costs.

72. Pronounced in the open court on this 16th day of April, 2015.

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓
REPORTABLE/NON-REPORTABLE
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