



October 2023

Regulatory update on Renewable Energy Policy 2023 issued by the State of Gujarat

On October 4, 2023, the Government of Gujarat rolled out the Renewable Energy (“RE”) Policy, 2023 (“Policy”/ “RE Policy 2023”), superseding the following: (a) the ‘Gujarat Solar Power Policy 2021’ issued on December 29, 2020; (b) ‘Gujarat Wind Power Policy 2016’ issued on August 2, 2016; and (c) ‘Gujarat Wind Solar Hybrid Power Policy 2018’ issued on June 20, 2018. The RE Policy 2023 aims to attract investment of approximately INR 5 lakh crore (Indian Rupees five lakh crore) in the RE sector by leveraging the State of Gujarat’s potential of 36 GW (thirty six giga-watt) of solar capacity and 143 GW (143 giga-watt) of wind capacity. The benefits and incentives provided in the RE Policy 2023 are available for a period of 25 (twenty five) years from the date of the commissioning of the plant or its lifespan, as defined by Gujarat Electricity Regulatory Commission (“GERC”) or Ministry of Power (“MoP”) or Ministry of New and Renewable Energy (“MNRE”), whichever is earlier.

The Gujarat Energy Development Agency (“GEDA”) is appointed as a nodal agency for project registration, validation, issuing commissioning certificates and tracking monthly progress, whereas Gujarat Urja Vikas Nigam Limited (“GUVNL”) is appointed as the implementing, facilitating, coordinating and monitoring agency.

Highlights of the RE Policy 2023

The highlights of the RE Policy 2023, *inter alia*, are as under:

- 1. Period of Operation:** The Policy is valid for a period of 5 (five) years from October 4, 2023 to September 30, 2028 or notification of a new policy, whichever is earlier. All RE plants commissioned during the operation of the RE Policy 2023 are eligible for benefits and incentives of the Policy. Interestingly, the RE Policy 2023 has clarified that all the wind-solar hybrid projects commissioned after June 19, 2023 under the Gujarat Wind Solar Hybrid Power Policy 2018 but prior to the issuance of this Policy, are eligible for benefits under the RE Policy 2023.
- 2. Scope:** The Policy is applicable to all ground mounted solar, roof top solar, floating solar, canal top solar, wind, rooftop/ small scale wind and wind-solar hybrid projects. Policy is not applicable to RE projects set up for supplying power to units producing green hydrogen and green ammonia.
- 3. Eligibility Criteria:** The Policy permits any person to set up a RE power plant for (a) captive consumption of power; (b) supply power under open access mode, either under the renewal energy certificates (“REC”) mechanism or otherwise; (c) supply power to the distribution licensee.
- 4. Rooftop solar/ wind plants:** The Policy provides that the rooftop solar plants / small scale wind plants (i.e., plant within the premises) can be set-up only under the net-metering or gross metering arrangement. In case of gross metering arrangements, the power will be procured by the distribution licensees at the tariff equivalent to average of the tariff discovered and contracted under the competitive bidding process conducted by GUVNL in the

preceding 6 (six) months, (i.e., either April to September or October to March, as the case may be), plus 20 paise (twenty paise) per unit. The tariff so determined will be applicable for signing of power purchase agreements (“PPAs”) in the subsequent 6 (six) month period and the tariff so determined will remain fixed for 25 (twenty five) years.

5. **Hybrid:** Wind-Solar Hybrid plants are divided into 2 (two) broad categories – (a) Type A projects - includes conversion of existing or under-construction standalone wind or solar power plants into hybrid projects. The total power injection (combined wind and solar) after hybridization must not exceed the transmission capacity or connectivity sanctioned or allowed by the Gujarat Energy Transmission Corporation/State Transmission Utility (“GETCO/ STU”). If any augmentation or addition to the evacuation system is required, RE developers will have to undertake such addition or augmentation up to the receiving end-substation of GETCO/ STU at their own cost; (b) Type B projects – includes new wind-solar hybrid generation projects not registered with GEDA or awaiting evacuation permission from GETCO/ STU until the date of issuance of the Policy. In the absence of renewal purchase obligations (“RPO”) and tariff, only AC (alternating current) integration is permitted. DC (direct current) integration is contingent on DC metering standards. RE developer will have to mandatorily lay down dedicated line for evacuation of power from the pooling/sending – end sub-station of the project to the receiving end sub-station of GETCO/ STU. For both Type A and Type B projects, wheeling for captive use or third party sale is permitted on payment of charges.
6. **Renewable Energy Park:** The Policy seeks to promote the development of RE parks, including wind, solar and hybrid parks, to minimise the cost of common infrastructure and optimise the evacuation infrastructure. The Policy prescribes that the minimum capacity of RE park will be 50 MW (fifty mega-watt) and the maximum capacity must be as per the guidelines and schemes issued by the MNRE from time to time. The RE park developer may be Gujarat Power Corporation Limited or any other state government agency nominated by the government of Gujarat. Further, the central government guidelines for development of solar parks will be applicable to all park developers.
7. **Projects under REC mechanism:** The Policy also provides for setting up of RE projects under REC mechanism for captive use / third party sale in accordance with Central Electricity Regulatory Commission (CERC) regulations. Wheeling of power from such projects will attract levy of charges.
8. **Energy settlement and banking of electricity:** Banking of electricity is permitted for all RE plants in accordance with GERC’s regulations and MoP’s Green Energy Open Access Rules 2022. For consumers availing banking facility, energy settlement will be on billing cycle basis and appropriate banking charges will be payable. Residential consumers are exempt from paying banking charges on solar power consumption. Importantly, consumers not availing banking and consuming power under REC mechanism do not have to pay banking charges and their energy settlement will happen on 15 (fifteen) minute time block basis. Banking charges determined by GERC will be cost reflective. Unutilised energy after settlement period will be treated as inadvertent flow and no payment will be made by the distribution company.
9. **Grid Charges:** The consumer/ generator is liable to pay transmission charges/ losses and distribution charges/ losses, for transmitting/ wheeling of power, as determined by the GERC. Wheeling of electricity for captive user/ third party sale at more than 1 (one) location will attract levy of 5 paise (five paise) per unit of energy fed in the grid (over and above transmission charges/ losses) and will be payable to the area distribution licensee in whose area the power is consumed. Cross subsidy surcharge (CSS) and additional surcharge (AS) is not leviable power consumed under captive route.
10. **Procurement of power by distribution company (“DISCOM”):** Distribution companies can procure wind, solar and wind-solar hybrid power either through competitive bidding process (where the projects are covered by MNRE competitive bidding guidelines) or at a pre-fixed levelized tariff as per the mechanism adopted by GERC or lower of such pre-fixed tariff and GERC’s generic tariff (where projects are exempted from competitive bidding under MNRE’s guidelines).
11. **Electricity Duty:** It is governed by the Electricity Duty Act 1958 as amended from time to time.

12. **Plant and Machinery:** Solar PV modules and wind turbines approved by MNRE under the revised list of models and manufacturers (“**RLMM**”) or the list of approved models and manufacturers of solar photovoltaic modules (ALMM) are eligible.
13. **Prototype Projects:** The Policy aims to facilitate wind turbine manufactures and RE developers to install prototype wind turbines, given the benefits of technological advancements in wind turbines (higher hub height, higher capacity, etc.). Components or items procured or imported for manufacturing such prototype wind turbines are eligible for customs and excise duty exemptions. Such prototypes will be owned by the manufacturer and cannot be sold to any third party till it is included in the RLMM.
14. **Repowering of Wind Projects:** The Policy mandates re-powering of wind turbines (replacing old and inefficient wind turbines with bigger and technologically advanced wind turbines) by RE developers on or before the completion of 25 (twenty five) years from the date of commissioning of the project. RE developers whose wind turbines have already completed 25 (twenty five) years will have to mandatorily undertake re-powering within 6 (six) months of the issuance of the Policy. Non-compliance will result in decommissioning of the wind power project and surrender of connectivity.
15. **Sharing of Carbon Credit benefits:** RE projects are eligible for carbon credits. Developers of projects installed under competitive bidding route can retain the carbon credits. Projects where the GERC has determined tariff, carbon credits will be shared as per the GERC’s tariff order. Rooftop solar/ wind projects implemented under the central/ state government scheme have to pass on the benefit of the carbon credits to DISCOM.
16. **Regulations:** The Policy will act as a guiding light to the GERC while framing its regulations and passing orders.
17. **Mid-term review:** The government of Gujarat has retained to undertake a mid-term review of the Policy.
18. **Solar and wind projects registered under erstwhile policies:** Solar and winds projects registered with GEDA under Solar Power Policy 2021 and Wind Power Policy 2016 respectively can avail benefits by commissioning the solar projects within 6 months from this Policy and wind projects by December 31, 2023. It is clarified that all projects commissioned after December 31, 2023 will be governed by this Policy.
19. **Power to interpret:** The interpretation of the Policy by the Energy and Petrochemicals Department of the government of Gujarat is final and binding in the event of any dispute / ambiguity regarding the meaning, intent or purpose of the Policy.

Key Takeaways

Some of the key takeaways of the RE Policy 2023 are as follows:

1. **Clarity regarding eligibility criteria for setting up captive generating plants:** The erstwhile Gujarat Wind Solar Hybrid Power Policy 2018 had enhanced the ownership requirement for setting up captive power plant from 26% (as provided in the Electricity Rules, 2005) to 100%. This led to confusion and disputes between GEDA and RE developers while setting up wind-solar hybrid power plant in Gujarat. RE Policy 2023 clarifies that eligibility criteria for captive power plant would be as prescribed under the Electricity Rules i.e., the ownership requirement is 26% of equity shareholding with voting rights.
2. **No capacity restriction for setting up a RE power plants:** Previously, under the erstwhile policies of the State of Gujarat, the installed capacity of RE power plants for supply of power under captive route or under third party mode was linked and limited to the contract demand/ sanctioned load of the consumer/ captive user. However, the RE Policy 2023 clarifies that there is capacity restriction for setting up RE projects for captive use / third party sale with respect to the consumer/ captive user’s contract demand/ sanctioned load.
3. **Restrictions on setting up grid connected behind the meter RE plants:** The RE Policy 2023 only permits setting up of grid connected behind the meter rooftop solar and/ or small scale wind projects under the net-metering or gross-metering arrangement. Pertinently, GERC’s extant regulations for Net Metering Rooftop Solar PV Grid Interactive Systems (“**Net Metering Regulations 2016**”) does not contemplate the installation of behind

the meter small scale wind projects. In other words, the said Regulation would have to be amended and suitably aligned with the RE Policy 2023. Further, the approach taken by the GERC in the Net Metering Regulations 2016 to limit the installed capacity of behind the meter rooftop solar projects to 1 MW (one mega-watt) is a departure from other State Commission's where the installed capacity of behind the meter RE projects is limited to sanctioned load/ contract demand of the consumer.

4. **DC integration of new wind-solar hybrid plants:** The RE Policy 2023 permits DC integration of new wind-solar hybrid power plants once DC metering standards are made available over time.
5. **Ambiguity with respect to banking facility for projects under REC mechanism:** The RE Policy 2023 does not clearly specify whether banking facility will be available to projects under REC mechanism, resulting in ambiguity. However, it may be noted that as per tariff orders/ orders of the GERC, banking is not available for projects established under REC mechanism. Settlement of power where the green attributes have been availed by the consumer through REC is on a 15 (fifteen) minute time block basis.
6. **Excess energy unutilised after settlement period lapses:** The RE Policy 2023 provides that power generated must be utilised within the applicable settlement period. In other words, where banking is permitted, the banked energy must be utilised within the settlement period itself. Any excess energy that is unutilised after the settlement period is treated as lapsed. This is a departure from the erstwhile policies of the State of Gujarat where surplus energy after set-off was mandatorily compensated for by the DISCOM at a specified rate.
7. **No concessions in Grid Charges:** The erstwhile Wind Power Policy 2016 and Solar Power Policy 2021 granted certain concessions on payment of grid charges such as wheeling charges, transmission charges, additional surcharge etc. to RE developers and consumers sourcing power from developers under the said policies. However, under the RE Policy 2023 no such concessions have been provided. Having said that, it bears mentioning that developers registered under the erstwhile Policy who are yet to commission their projects can still avail the concessions under the erstwhile policies provided they commission their RE projects within the timelines specified under the RE Policy 2023, i.e., for solar projects – within 6 (six) months from the date of issuance of the RE Policy 2023, and for wind projects – by December 31, 2023.
8. **No exemption from payment of Electricity Duty:** Further, RE Policy 2023 has not provided any exemptions from payment of Electricity Duty and has instead linked it to the Gujarat Electricity Duty Act, 1958. It is noteworthy that under the erstwhile Wind Power Policy 2016 there was a specific exemption from payment of Electricity Duty which under the present Policy has been withdrawn.
9. **Non-compliance with mandate of re-powering will result in de-commissioning of wind power project:** The RE Policy 2023 mandates re-powering (i.e., replacing old wind turbines with new wind turbines) of wind turbines. However, failure to comply with this mandate will have a significant impact on developers as the wind power project will be decommissioned and the connectivity will stand surrendered. Pertinently, the RE Policy 2023 does not clarify whether a developer's failure to re-power one wind turbine in a wind power project comprising multiple turbines will result in the de-commissioning of only the individual wind turbine or the entire project. This ambiguity may result in unnecessary disputes.

JSA Analysis

The government of Gujarat's RE Policy 2023 seeks to attract investments in the RE space in Gujarat. To that end various critical issues, restrictions and controversies in the erstwhile policies – such as eligibility criteria for setting up RE projects under captive route, limiting the installed capacity of RE projects to sanctioned load/ contract demand, extension of the Gujarat Wind Solar Hybrid Power Policy 2018, etc – have been lifted / resolved / addressed in the RE Policy 2023. However, at the same time, concessional benefits from payment of grid charges, which were provided to investors in the erstwhile policies, are no longer being provided. Therefore, the RE Policy 2023 appears to be a balancing act with the government trying to bear in mind the interest of all stakeholders – developers, consumers, distribution licensee's, etc.

Having said that, it is worth noting that the jurisdiction to regulate RE projects lies with the GERC. Therefore, the true impact of the RE Policy 2023 will manifest itself only once the GERC passes tariff orders / orders implementing the RE Tariff Policy 2023.

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