

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

ORDER IN APPEAL NO. 140 OF 2014
ON THE FILE OF THE APPELLATE TRIBUNAL
FOR ELECTRICITY, NEW DELHI

Dated: 01st October, 2018

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member

IN THE MATTER OF:

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

2. Paschim Gujarat Vij Company Limited,
 Off. Nana Mava Main Road,
 Laxminagar, Rajkot – 360 004.

3. Dakshin Gujarat Vij Company Limited,
 Nana Varachha Road,
 Kapodara, Surat – 395 006

4. Uttar Gujarat Vij Company Limited,
 UGVCL Regd. & Corporate Office,
 Visnagar Road, Mehsana – 384 001.

5. Madhya Gujarat Vij Company Limited
 Sardar Patel Vidhyut Bhavan,
 Race Course Circle, Vadodara – 390007

.....Appellants

Versus

Gujarat Electricity Regulatory Commission
First Floor, Neptune Tower,
Opposite Nehru Bridge,
Ashram Road, Ahmedabad – 380009

.....Respondents

Counsel for the Appellant (s) : Mr. M.G.Ramachandran
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Swapna Seshadri
Ms. Neha Garg

Counsel for the Respondent(s) : Ms. Suparna Srivastava
Ms. Nehul Sharma

The Appellant has sought the following reliefs in Appeal No. 140 of 2014:-

- (a) Allow the appeal and set aside the order dated 12.03.2014 passed by the State Commission to the extent challenged in the present appeal.
- (b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

The Appellant has presented in this Appeal for consideration the following Questions of Law:

- A. Whether in the facts and circumstances of the case, the State Commission has correctly applied the methodology of determination of the Additional Surcharge payable by the Open Access consumers to the distribution licensees as per the provisions of subsection (4) of section 42 of the Electricity Act read with Regulation 25 of the Open Access Regulations, 2011?
- B. Whether the State Commission is right in deriving the stranded capacity of the Open Access taken by the customers on the basis

of average availability, average schedule etc as the measure to calculate the Additional Surcharge ?

- C. Whether in the facts and circumstances of the case, the State Commission is right in restricting the Additional Surcharge payable to Rs 0.42 per KWH as against the claim of Rs 1.35 per KWH made in the petition filed by the Appellants?
- D. Whether the State Commission is right in adjusting entire demand chares (excluding wheeling and transmission charges) recovered from open access customers by distribution companies against the stranded generation fixed cost?
- E. Whether the State Commission is right in determining additional surcharge by considering scheduled energy when additional surcharge is leviable on actual open access energy?
- F. Whether the State Commission is right in considering the average quantum of open access for determining additional surcharge ignoring that the reserved capacity needs to be shared by the entire consumer including open access consumers in proportionate basis?

ORDER

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

We have heard the learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant and learned counsel, Ms. Suparna Srivastava, appearing for the Respondent.

During the course of the submissions, learned counsel appearing for the Appellant has filed a memo dated 01.10.2018 for consideration and the same was taken on record.

Learned counsel, Mr. M.G. Ramachandran, submitted that, in the light of the statement made in the memo dated 01.10.2018 may be placed on record and the instant appeal may be disposed of in terms and for the reasons stated in the memo, reserving liberty to the Appellant to redress their grievance before the Gujarat Electricity Regulatory Commission for fresh consideration in the interest of justice and equity.

Per contra, learned counsel appearing for the Respondent, inter alia, contended and submitted that in the light of the submissions made by the learned counsel appearing for the Appellant and the statement made in the memo dated 01.10.2018 may be placed on record and appropriate order may be passed.

Submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent No.1, as stated above, are placed on record.

The statement made in the Memo dated 01.10.2018 reads thus:-

- a. In view of the fact that the impugned order of the State Commission was passed on 12.03.2014 and has been implemented during all these months till date, it will be appropriate to dispose off the present Appeal granting the liberty to the Appellants to file a petition before the Gujarat Electricity Regulatory Commission for determination of additional surcharge including the revised methodology as the Appellants wish to submit for the future periods. If such Petition is filed, the State Commission will consider the Petition on its merits in accordance with law.
- b. It is clarified that no views have been expressed by the Appellant Tribunal on the merits of the Impugned order.

In the light of the submissions made by the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent and in terms of the statement made in the memo and for the reason stated therein, the instant Appeal filed by the Appellant stands disposed of.

Order accordingly.

(S.D. Dubey)
Technical Member
Pr/js

(Justice N.K. Patil)
Judicial Member