IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 339 OF 2018

Dated: 03.12.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

PASCHIM GUJARAT VIJ COMPANY LIMITED
Off. Nana Mava Main Road
Near Bhaktinagar Railway Station
Laxminagar, Rajkot – 360004
Gujarat … Appellant

versus

1. **INVESTMENT & PRECISION CASTING LTD**
Through its Managing Director
Nari Road, Bhavnagar – 364006
Gujarat

2. **GUJARAT ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
6th Floor, GIFT ONE,
Road 5-C Zone 5, GIFT CITY
Gandhinagar – 382 355
Gujarat … Respondents

Counsel on record for the Appellant(s)	:	Ranjitha Ramachandran Anand K. Ganesan Swapna Seshadri Ashwin Ramanathan Harsha Manav Srishti Khindaria
Counsel on record for the Respondent(s)	:	Sakie Jakharia for Res. 1 Pallav Mongia for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal we are confronted with the issue with regards to the methodology to be adopted for energy accounting where a consumer obtains and consumes power from multiple sources.

2. The methodology evolved by respondent No.2 Gujarat Electricity Regulatory Commission (hereinafter referred to as the Commission) in the impugned order dated 15.07.2015, to which we shall refer in the later part of this judgment, is not acceptable to the appellant Paschim Gujarat Vij Company Ltd. (in short "PGVCL") and hence this appeal before us.

3. First, we think it appropriate to advert to the facts of the case in brief.

4. The 1st respondent Investment & Precision Casting Ltd. is a consumer of the appellant, a distribution licensee in the State of Gujarat, having consumer No.23031 with a contract demand of 2800 kVA and connected at 11 KV voltage level. It has set up 1.25MW wind turbine generator at Village Lamba, District Jamnagar under the Wind Power Policy 2002 which has been commissioned on 19.06.2006. It has signed a wheeling agreement with the appellant on 05.08.2006. As per the Wind Power Policy 2002 and the wheeling agreement, 1st respondent is required to pay wheeling loss @4% of the wheeling of energy from the generating place to the place of consumption. It is also eligible for banking of surplus energy for a maximum period of six months. When the said WTG was set up by the 1st respondent, no generic tariff order had been passed by the Commission and therefore, the same is governed by the provisions of Wind power Policy 2002.

5. The 1st respondent has also set up another 1.25MW wind turbine generator at Village Baradiya, District Jamnagar under the amended Wind Power Policy 2007 notified by the Government of Gujarat and during the control period of the order dated 30.01.2010 passed by the Commission. This WTG was commissioned on 03.03.2010. The 1st respondent has signed a wheeling agreement dated 23.02.2010 for wheeling the energy generated

from the project to the place of its consumption. Wheeling of energy from this WTG is governed by order No.1/2010 dated 30.01.2010 passed by the Commission regarding determination of tariff for wind turbine generators and related commercial issues.

6. In addition to wheeling of energy generated from its said two captive WTGs, the 1st respondent is also purchasing 1.2MW power through short term open access (STOA) as per the provisions of GERC (Terms and Conditions of Intrastate Open Access) Regulations, 2011. The accounting of such purchase has to be done on 15 minutes block wise basis.

7. Thus, the 1st respondent is sourcing power from its captive WTGs as well as STOA transactions and at the same time is maintaining its contract demand with the appellant distribution licensee. It is in this situation that the issue regarding accounting of energy availed by 1st respondent from different sources has arisen.

8. The Commission, in the impugned order has held that the energy purchased through STOA has to be accounted first against block wise consumption of the 1st respondent and the balance consumption in a month has to be accounted as either energy wheeled from its own WTG or the

energy supplied by the distribution licensee. In so far as the energy wheeled from the WTGs by the 1st respondent is concerned, the Commission has held that the energy generated from the 2nd WTG commissioned on 03.03.2010 has to be accounted for next in priority after the STOA transaction and in case total energy generated from its WTG cannot be accounted for in this way, the surplus available has to be treated as deemed sale to the distribution licensee at a rate equal to 85% of the tariff decided by the Commission in its order No.1/2010. It has been further held that the consumption remaining unaccounted for after above two adjustments shall be deemed to have been supplied by the energy generated from the first WTG commissioned on 19.06.2006. It has been further held by the Commission that any consumption left unaccounted for after all the above adjustments shall be treated as that supplied by the license i.e. the appellant and will be charged at the tariff rate applicable to the 1st respondent. The reasoning given by the Commission in reaching such conclusion is found in Paragraph No.8.6 to 8.9 of the impugned order which are extracted hereinbelow: -

> *"8.6 In this matter, we observe that the energy purchased through STOA has to be accounted for in 15 minutes time blocks and accounting of open access transactions*

is done on weekly basis, whereas the energy wheeled from the WTGs is to be accounted on monthly basis, after end of each month. As such, the energy purchased through STOA has to be accounted first against the block wise consumption of the petitioner.

8.7 The balance consumption in a month has to be accounted as either energy wheeled from its own WTGs or the energy supplied by the distribution licensee. Moreover, the banking facilities available to the two WTGs are different. Baking of the energy generated from the 2nd WTG commissioned on 03.03.2010 is available for one month only and this energy has to be consumed either during peak hours or during normal hours depending on the time of generation of the energy from this WTG. As such, the energy generated from this WTG is to be accounted for next in priority after the STOA transaction. In case, the total energy generated for this WTG cannot be accounted for in this way, the surplus available has to be treated as deemed sale to the distribution licensee at a rate equal to 85% of the

tariff decided by the Commission in its order No. 1 of 2010.

8.8 The energy generated from the 1st WTG commissioned under the Wind Power Policy, 2002 is eligible for banking for 6 months. As such the consumption remaining unaccounted for after above two adjustments shall be deemed to have been supplied by the energy generated from this WTG, either during the month of accounting or generated earlier and banked with the licensee.

8.9 Any consumption left unaccounted for after all the above adjustment shall be treated as that supplied by the licensee and will be billed at the tariff rate applicable to the petitioner."

9. We have heard the learned counsels appearing for the appellant and 1st respondent. We have also gone through the written submissions filed by the learned counsels.

10. One can easily discern that the only justification given by the Commission in evolving the said methodology i.e. giving preference to energy purchased

through STOA for accounting purpose, is that the energy purchased through STOA has to be accounted for in 15 minutes time blocks and the accounting of open access transactions is done on weekly basis whereas energy wheeled from WTGs is to be accounted on monthly basis, after the end of each month.

11. We find the reasoning so given by the Commission not only weak and unpersuasive but also bereft of any discussion on the implications in general of the methodology evolved by it as well as its impact on the common consumer in particular. While dealing with the complex issue at hand, the Commission ought to have been conscious about the interest of consumers. The preamble of the Electricity Act, 2003 specifically mentions “protecting interest of consumers” as one of the objectives for engrafting of the statute. Section 61(d) of the Act envisages that the appropriate commission shall safeguard the interest of consumers while specifying terms and conditions for determination of tariff. It is in order to achieve this object that Sections 62 and 64 of the Act provide that the tariff determination shall be made only after considering all suggestions and objectives received from the public. Therefore, while determining tariff or any issue related to tariff, interest of consumers should be of paramount consideration before the Commission.

12. Regrettably, in the instant case, the Commission has failed in its duty to consider the implications of the methodology evolved by it in the impugned order upon the consumers and thus has totally ignored the interest of the consumers.

13. Merely because the accounting for energy purchased through STOA is on 15 minute time block basis, cannot be made basis for it to be accounted for first of all. The energy accounting, whether it is on weekly basis or monthly basis alone cannot determine the priority. The recording of open access energy on 15 minute time block does not have any relevance to the adjustments to be carried out among multiple sources of power procurement. In any event, all adjustments have to be made on monthly basis.

14. We cannot lose sight of the fact that the intent and purpose of setting up the wind turbine generators by the 1st respondent was to utilize the power generated therefrom in its manufacturing unit i.e. captive use. The basic intent was never to sell power generated from these two WTGs to the appellant PGVCL. Concededly, no power sale agreement has been executed by the 1st respondent with the appellant. The only arrangement arrived at between the two is in the form of two wheeling agreements dated 05.08.2006 (in respect of 1st WTG) and dated 23.02.2010 (in case of 2nd WTG) which provide power

banking facility to the 1st respondent. The reason for allowing banking of the power generated by the WTGs is that the generation of power from WTGs is not constant even during a period of 24 hours of a day. It could be possible that WTG generates electricity when captive user does not require it and, in such case, energy generated is banked with the distribution licensee which supplies the same to its consumers at applicable tariff and later on returns the same to the generator whenever required. The concept of banking has been aptly explained by this Tribunal in judgment dated 18.03.2011 in appeal No.98/2010 titled Tamilnadu State Electricity Board v. Tamil Nadu Electricity Regulatory Commission and Ors., the relevant portion of which is quoted hereinbelow: -

> *"18. Before getting into the merits of Appellant Board's arguments, on this issue let us understand the very concept of Banking of Electrical Energy. Banking of energy is analogous to small saving bank account in a financial bank. A person deposits his surplus amount in a saving bank account. He can withdraw his money from bank any time according to his requirement. For this deposited money, he earns some interest. The bank in*

turn gives loan to some other needy customer at a higher rate of interest. In this process, saving account holder as well as bank are benefited. Now come to electricity banking. Electricity is a commodity which cannot be stored. It is to be consumed at the very instant it is produced. Generation by Wind Energy Generators solely depends upon availability of wind at a particular velocity. In other words it is periodical in nature. Its generation is not constant even during a period of 24 hours of a day. It could be possible that it generates electricity when captive user does not require it. In such a case energy generator banks it with distribution licensee who supplies this energy to its consumers at applicable tariff. However, for returning the banked energy, Licensee may have to procure additional electricity from other sources. Unlike the Banks which pay interest to saving account holder, here the licensee, banker of electrical energy, earns interest on this banked energy. Thus banking rate electrical energy should be nominal. In the light of above fact situation, we would

now examine the merits of Appellant Board's contentions vis-a-vis findings of State Commission on this issue."

15. Therefore, a power generator cannot be permitted to misuse the banking facility by keeping the banked units in abeyance and procuring power from power exchange through open access route at cheaper rates. It is only surplus energy which can be banked by a wind power generator and later on consume the same whenever the consumption need arises.

16. The methodology given by the Commission in the impugned order is against the interests of the consumers for the reason that it permits an entity to buy cheaper conventional power through open access for its own consumption and force the distribution licensee to procurer more expensive wind power generated by its WTGs thereby causing huge financial burden upon the end consumers.

17. As per the methodology suggested by the appellant, the energy accounting and the consumption of 1st respondent should be adjusted in the following manner: -

“

a. *captive wind energy generation first - among the wind generation, the adjustment to be chronological – generation under earlier Agreement dated 05.08.2006 / earlier Policy (2002) first and then the generation under Agreement dated 23.02.2010 / 2007 Policy;*
b. *then against open access purchase; and*
c. *thereafter the balance if any against the contract demand with the distribution license.”*

18. The impact of the difference in the methodology evolved by the Commission in the impugned order and the methodology suggested by the appellant can be seen by way of following illustration: -

a. ***“****Wind – 100 units*
b. *STOA – 50 units*
c. *Total injection – 150 units*
d. *Total Consumption – 70 units*
e. *The methodology of PGVCL*

	Actual injection	***Consumption as PGVCL***	***Consequence***
Wind	*100*	*70*	*30 units surplus*
STOA	*50*	*0*	*50 units inadvertent*

f. GERC /Respondent No.1

	Actual injection	***Consumption as per GERC***	***Consequence***
STOA	*50*	*50*	*-*
Wind	*100*	*20*	*80 units surplus*

"

19. It goes without saying that procurement of power is entirely within the control of 1st respondent and as per its choice it may procure power through STOA also even though it gets power supply from its wind power generators. Therefore, in case the 1st respondent despite having sufficient power available for its use from captive WTGs, sources power through STOA also, the burden of such power cannot be permitted to be passed on to the consumers.

20. Therefore, in view of the methodology adopted by the State Commission, the Appellant now has to allow for treatment of 80 units of wind power instead of only 30 units i.e. an additional 50 units has to be banked/treated as surplus by the Appellant. Thus, in effect, the Respondent No. 1 has procured the conventional energy of 50 units from STOA and sought treatment of the same as wind energy. This is not at all the intent with which the banking facility is provided.

21. The impact of this can be seen by considering the rates also as under:

a. The surplus wind power is to be banked or deemed to be procured by the Appellant depending on the applicable Policy:

    i. If banked, the said quantum (after banking charges) is required to be supplied by PGVCL free of cost in future instead of charging the HTP 1 Tariff which in FY 2013-14 was INR 4.55 per unit (for energy charges only and not considering other charges for the present).

    ii. If treated as surplus power, the same is required to be procured at INR 3.03 per unit.

b. The power exchange rate was maximum at INR 2.78 per unit during the period as stated in Rejoinder by the Appellant.

22. The above scenario allows the Respondent No. 1 to make profit at the cost of the Appellant and the consumers at large as illustrated hereinbelow: -

a. The Respondent No. 1 can procure 50 units from STOA at INR 2.78 per unit, while forcing PGVCL to procure the 50 units of wind power at INR 3.03 per unit, thereby making profit of INR 0.25 per unit at the cost of consumers. By the above, it has cost PGVCL the ability to procure the said 50 units (if needed by PGVCL) from

power exchange resulting in lower power purchase cost to the consumers.

b. The Respondent No. 1 can procure 50 units from STOA at INR 2.78 per unit while forcing PGVCL to bank the 50 Units of wind power and supply them free of cost instead of HT Tariff of INR 4.55 per unit (only considering energy charges for HTP 1 tariff – not including other charges for the present) thereby making a profit of INR 1.77 per unit at the cost of Appellant and therefore the consumers at large.

23. Hence, in our considered opinion, the methodology evolved by the Commission in the impugned order is faulty and cannot be approved by this Tribunal. On the other hand, we do not find any fault or error in the methodology suggested by the appellant according to which the wind power which is renewable and long term and must run, to be adjusted first and STOA power which is meant to supplement the wind power and is conventional, to be adjusted thereafter.

24. In case, the 1st respondent finds the power obtained through STOA cheaper and goes for it, the appellant cannot be compelled to procure more expensive wind power from the 1st respondent.

25. So far as the *inter se* priority between the WTGs of the 1st respondent is concerned, we find it profitable to refer the judgment of this Tribunal dated 23.09.2016 in appeal No.53/2016 titled Tamil Nadu Generation and Distribution Corporation Limited & Ors. v. M/s Century Flour Mills Limited and Anr. We extract the relevant portion of the judgment hereunder: -

> *"11. After having a careful examination of all the issues brought before us for our consideration, our observations are as follows:-*
>
> *…*
>
> *b) On the second issue for our consideration i.e. Whether the State Commission is required to amend the Regulations relating to procurement of wind energy and related issues?, we observe as follows;*
>
> *i. The State Commission in the Impugned Order acknowledged that there is no specific instruction*

regarding adjustment of energy from Wind Generators under REC and preferential mechanism. The State Commission has further stated that in the absence of expressed law, the Appellant must have approached the State Commission for further orders.

ii. *We have already held that the Regulation 8 of the "Power Procurement from New and Renewable Sources of Energy Regulations 2008" gives power to the State Commission to decide on the issue of mode of adjustment of wind energy of REC and Preferential mechanism.*

iii. *In view of above, this issue is decided against the Appellant.*

c) On the third issue for our consideration i.e. Whether the State Electricity Commission is justified in directing adjusting the wind energy from WEG under REC scheme first and then to adjust wind energy from other WEGs?, we observe as follows;

i. *The State Commission while fixing the priority for adjustment of energy generated by WEGs decided that the Appellant shall first adjust the wheeled energy generated from the WEG under REC scheme which has an adjustment or banking period of one month and then adjust the energy generated from other captive/third party generators which have a banking period of one year.*

ii. *The Wind Tariff order passed by the State Commission on 31.07.2012, specifically states that for the power generated from REC Wind generators, one month adjustment period is allowed as permitted for conventional power and any surplus unutilised energy remaining at the end of the month would be treated as lapsed as in the case of conventional power.*

iii. *Considering the above, we do not find any infirmity in the view taken by State Commission in this regard.*

iv. *In view of above, this issue is decided against the Appellant."*

(Emphasis supplied)

26. We are in agreement with the observations of this Tribunal on this aspect contained in the above noted judgment and see no reason to deviate from the same. Therefore, the methodology given by the Commission on this aspect is correct and in furtherance of the objective of electricity generated from the renewable sources.

27. Hence, in view of the above discussion, we hold that the energy wheeled from WTGs of the 1st respondent shall be accounted first and then the energy purchased through STOA and lastly the balance consumption, if any, against the contract demand with the distribution licensee. With regards to the wind power supplied by the two wind turbine generators of the 1st respondent, we affirm the methodology given by the Commission to the effect that the energy generated from second WTG commissioned on 03.03.2010 to be accounted first in priority. In case, the total energy generated by this WTG cannot be accounted for in a month, the surplus available has to be treated as deemed sale to the distribution licensee at a rate equal to the 85% of the tariff decided by the Commission in its order No.1/2010. The consumption remaining unaccounted for after the above adjustment shall be deemed to have been supplied by the generator from first WTG commissioned on 19.06.2006, either

during the month of accounting or generated earlier or banked with the licensee.

28. Accordingly, the appeal stands partly allowed. The impugned order dated 15.07.2015 of the Commission stands modified to the above extent.

Pronounced in open court on this the 3rd day of December, 2024

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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