

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 198 of 2016

Dated : 7th August, 2025

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

In the matter of:

Sihor Steel Rerolling Mills Association
Plot No. 101, GIDC II,
Sihor 364240
Dist: Bhavnagar, Gujarat

.... Appellant

Versus

1. Gujarat Electricity Regulatory Commission.
6th Floor, GIFT ONE,
Road 5-C, Zone 5, GIFT CITY,
Gandhinagar-382 355
Gujarat

2. Paschim Gujarat Vij Company Limited
Registered & Corporate Office,
"Paschim Gujarat Vij Seva Sadan"
Off. Nana Mava Main Road, Laxminagar,
Rajkot - 360004

3. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan,
Race course, Vadodara 390007

.... Respondents

Counsel for the Appellant(s) : Ms. Sakie Jakharia

Counsel for the Respondent(s) : Ms. Suparna Srivastava
Ms. Divya Sharma for R-1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Mr. Ashwin Ramanathan
Ms. Poorva Saigal
Mr. Shubham Arya
Ms. Harsha Manav
Ms. Srishti Khindaria for R-2 & 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This appeal has been filed by the Appellant, M/s Sihor Steel Rerolling Mills Association against the order dated 31st March, 2016 passed by 1st Respondent – Gujarat Electricity Regulatory Commission (hereinafter referred to as “the Commission”) thereby approving the ARR and determining the tariff for Financial Year 2016-17 for the 2nd Respondent – Paschim Gujarat Vij Company Limited in Petition No. 1550 of 2015.
2. Even though the Appellant has raised various issues in this appeal upon which it has assailed the impugned tariff order of the Commission yet the learned Counsel for the Appellant restricted the appeal to only one issue i.e. Time of Use Charges, as recorded in the order dated 13th March, 2024.
3. Accordingly, we have heard Learned Counsels for the parties on the said issue alone.

4. Learned Counsel for the Appellant would submit that the specifying 0700 hours to 1100 hours in the morning as peak hours for the purpose of Time of Use tariff is neither justifiable nor relevant in the context of prevailing load curve. She further submitted that no specific study has been carried out for identifying morning peak hours for the purpose of imposing time of use tariff. According to her the Commission has followed incorrect method in determining the Time of Use charges.

5. Learned Counsel further argued that the 2nd Respondent has created this myth of morning peak hours only to make undue financial gain from consumers in the absence of any study to justify continuation of morning peak hours for levying Time of Use charges. She would further argue that Time of Use charges in the morning hours has no nexus, much less a reasonable nexus to the object which it purports to achieve. She also submitted that the Time of Use charges, as permitted to be levied vide the impugned order, are arbitrary, unjustifiable and in violation of the fundamental principle as settled by this Tribunal in the judgement in Appeal No. 257 of 2012, the Southern India Mills Association vs. Tamil Nadu Generation and Distribution Corporation Ltd. and Anr. decided on 9th April, 2013.

6. Per contra, the impugned order on the aspect under consideration has been supported by the Learned Counsels appearing on behalf of

Respondent Nos. 2 & 3. It is submitted that grievance of the Appellant is with regards to the time of use charges which is a matter of tariff design and the tariff design does not change the approved ARR to be recovered by the 2nd Respondent. It is submitted that once the ARR of the Distribution Licensees is approved by the State Commission, the Commission designs the tariffs applicable to various categories of consumers in such manner as to ensure the recovery of ARR and if the tariff design is modified in any manner, the entire design would have to be modified to ensure the recovery of ARR by the 2nd Respondent, which would impact other consumers in the area of 2nd Respondent also.

7. It is also argued that peak hour and non-peak hour determination cannot be changed retrospectively for the year 2016-17 at this stage for the reasons that the said period is already over and all the consumers have proceeded on the basis of the peak hours determined in the impugned order.

8. It is further argued on behalf of the Respondents that in the State of Gujarat, the concept of Time of Use charges and the peak hour time zones have been in place since very long and therefore, the consumption of consumers has been according to the said peak hour time zones and charges are levied for the same. It is submitted that the current patterns

or studies would not reflect the true position as was prevailing in the year 2016-17.

9. We may note that Learned Counsel for both sides have referred to and relied upon the data, which was produced by 2nd Respondent during the course of hearing of this appeal on our directions, to justify their rival submissions/contentions.

Our Analysis

10. The peak hours are those hours during the day when load demand is maximum and accordingly, Time of Use charges are levied by the Distribution Licensees during such hours. The concept of peak hours and time of use charges is recognized in the Electricity Act, 2003, Section 62(3) of which is relevant and extracted hereinbelow :-

Section 62(3):

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required

11. This concept is recognized by National Tariff Policy, 2016 also, the relevant portion of which is quoted hereinbelow :-

“8.4 Definition of tariff components and their applicability

1. Two-part tariffs featuring separate fixed and variable charges and time differentiated tariff shall be introduced on priority for large consumers (say, consumers with demand exceeding 1 MW) within one year and subsequently for all consumers within a period of five years or such period as may be specified. This would also help in flattening the peak and implementing various energy conservation measures.

12. This Tribunal has also approved the concept of peak hours and Time of Use charges in the judgement dated 12th August, 2014 find in Appeal No. 300 of 2013. The relevant portion of which is reproduced hereinbelow :-

18. We find that the State Commission has introduced Time of Day (TOD) tariff for all consumers (other than domestic) whose sanctioned load/MDI is 100 KW/ 108 KVA and above as a demand side management measure to give commercial signal to the consumers to curb peak hour consumption. The higher tariff during the peak hours reflects the higher cost of power purchase during the peak hours. At the same time rebate is offered on consumption during off-peak hours. This is meant to incentivise the consumers to shift a portion of their loads from peak hours to off-peak hours thus improving system load factor filling up the valleys and flattening the peaks in the load curve. TOD tariff is aimed at optimizing the cost of power purchase which constitutes a major cost of

the distribution licensee. It also assumes importance in implementing Demand Side Management and achieving energy efficiency.....

13. Therefore, no fault can be found in case a Distribution Licensee identifies certain hours to the day when the load demand is maximum, as peak hours and imposes Time of Use charges for consumption of electricity during those hours of the day. However, we hasten to add that such a determination must be made on the basis of an empirical and elaborate study of the consumption pattern as well as load curve during those hours of the day.

14. In the instant case, issue No. 21 before the Commission was with regards to the Time of Use Charges and the same has been dealt with as under :-

“Issue 21: Time of Use Charges

M/s Gujarat Granito Manufacturer’s Association, M/s Bhavnagar Induction Furnace Development Association and M/s Sihor Steel Rerolling Mills Association have stated that it is mentioned that in print No. 13.3 “For energy Consumption during the two peak periods, viz., 0700 Hrs. to 1100 Hrs. and 1800 Hrs. to 2200 Hrs.”

In the Tariff Order dated 31.03.2015 it was mentioned that the issue of change in designated peak hours shall be examined by the Commission separately.

No action is initiated by the Commission or DISCOMs in the matter. So Gujarat Granito Manufacturers Association had filed a review petition No. 1506/2015 which is pending.

Response of PGVCL

Cost of supplying power at peak hours is significantly higher and network requirement for peak hour supply is also high. Thus, tariff structure is devised recognizing this fact and allow recovery at higher rates for peak hour use.

As regards to morning peak, it is to state that two peak hours time zones are in place since very long, therefore, the consumers' consumption pattern has been set accordingly. It is natural that as Morning sets, the domestic loads get added in the System and also "Commercial", "industrial" loads etc. Consumers governed by the "Time of Use Charges" also set their consumption pattern accordingly. Therefore, present "Load Curve" reflects the present consumption pattern and behaviour of the consumer. Any change in the peak hour time zone shall change the consumption pattern and accordingly "Load Curve" will also change. Therefore, present peak hours time zones are appropriate and need not to change.

Commission's observations:

The response of PGVCL is self-explanatory. Since the present Load Curve is controlled due to defined peak hours it does not reflect the unrestricted peak demand during these hours."

15. It is evident that the Appellant had drawn attention of the Commission to the tariff order dated 31st March, 2015 where it was mentioned that the issue of change in designated peak hours shall be examined by the Commission separately. However, manifestly no such detailed examination has been done by the Commission on this issue. The Commission has simply gone by the response submitted by the 2nd Respondent. No independent empirical study has been undertaken by the Commission to ascertain whether it is necessary to continue prescribing 7 AM to 9 AM as peak hours, thereby permitting the Distribution Licensees to levy Time of Use charges for consumption of electricity during those hours. Even the response of the 2nd Respondent before the Commission was not based on any specific study on this aspect. The 2nd respondent had merely contended that no change in the present peak hours time zone is required as these are in place since very long and the consumers have set their consumption pattern accordingly. The mere fact that this time zone was being treated as peak hour for very long does not in itself justify its continuation for all times to come. It was incumbent upon the Commission to take note of the objections raised by the Appellant Association and to undertake a detailed study to determine whether or not to continue specifying this time zone as peak hour.

16. The impugned order, on this aspect, is manifestly cryptic and devoid of proper justification/reasoning. Therefore, the same cannot be sustained.

17. In so far the data filed by the 2nd Respondent during the hearing of this appeal on our directions, is concerned it is for the Commission to analyze the same to find out how is it, if at all, helpful in examining the contentions of the Appellant.

18. Accordingly, the appeal is hereby allowed and the case is remanded back to the Commission for fresh consideration of the issue No. 21 regarding Time of Use charges upon hearing the parties again and also upon taking note of the study reports filed by 2nd Respondent before this Tribunal in pursuance to our directions. Needless to say that the period in question being 2016-17, the Commission shall endeavor to pass a fresh decision within two months of the date of the judgement.

Pronounced in the open court on this 7th day of August, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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