

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.81 OF 2020

Dated: 09.09.2025

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

In the matter of:

Gujarat Urja Vikas Nigam Limited

Sardar Patel Vidyut Bhavan,
Race Course, Vadodara – 390 007

... Appellant

Versus

- 1. Ajanta Energy Private Limited**
Through its Managing Director
OREVA House, Third Floor,
Thaltej Circle, Titanium Square,
S.G. Highway, Ahmedabad – 380 054
- 2. Gujarat Electricity Regulatory Commission**
Through its Secretary
6th Floor, GIFT-1, Road No. 5-C,
Gift City, Gandhinagar – 332 335
- 3. Madhya Gujarat Vij Company Limited**
Through its Managing Director
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara – 390 007
- 4. Gujarat Energy Transmission Corporation Limited**
Through its Managing Director
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara – 390 007

- 5. Dakshin Gujarat Vij Company Limited**
Through its Managing Director
Urja Sadan, Nana Varachha Road,
Kapodara, Surat – 395 006
- 6. Uttar Gujarat Vij Company Limited**
Through its Managing Director
Visnagar Road, Mehsana – 384 001
- 7. Paschim Gujarat Vij Company Limited**
Through its Managing Director
Off Nana Mava Main Road,
Laxminagar, Rajkot – 360 004
- 8. Torrent Power Limited-Surat**
Through its Managing Director
Torrent House, Station road,
Surat – 395 003, Gujarat
- 9. Torrent Power Limited**
Through its Managing Director
Torrent House, Off. Ashram Road,
Ahmedabad – 380 009, Gujarat
- 10. Torrent Power Limited-Dahej**
Through its Managing Director
At & Po. Dahej, Ta: Vagra,
Bharuch – 392 130, Gujarat
- 11. Energy and Petrochemical Department
Government of Gujarat**
Through its Secretary
Block No. 5, 5th Floor, Sachivalaya,
Gandhinagar – 382010, Gujarat
- 12. Irrigation Department, Government of Gujarat**
Through its Secretary
Block No. 9, Second Floor,
New Sachivalaya, Sector 10,
Gandhinagar – 382010, Gujarat

13. Kandla Port Trust Limited

Through its Managing Director
Port & Customs Building, New Kandla,
Kutch – 370210, Gujarat

14. MPSEZ Utilities Private Limited

Through its Managing Director
Adani House, Nr. Mithakhali Circle
Navarangpura, Ahmedabad – 380 009, Gujarat

15. Aspen Infrastructure Limited

Through its Managing Director
Piparia, Waghodia,
Vadodara – 391 760, Gujarat

16. Jubilant Infrastructure Private Limited

Through its Managing Director
Plot No. 5, Vilayat GIDC, Vagra,
Bharuch – 390 012, Gujarat

17. Utility Users' Welfare Association

Through its Secretary
Laxmi Ginning Compound, Naroda,
Ahmedabad – 382330, Gujarat

... Respondent (s)

Counsel for the Appellant(s) : Ranjitha Ramachandran
Anand K. Ganesan
Swapna Seshadri
Ashwin Ramanathan
Harsha Manav
Srishti Khindaria

Counsel for the Respondent (s) : Sanjay Sen, Sr. Adv.

Anubhav Mishra
Pallav Mongia
Pratik Das for Res. 1

Abhijeet Swaroop
Tabrez Malawat
Ankita Bafna for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant Gujarat Urja Vikas Nigam Limited is aggrieved by the order dated 24.12.2019 passed by 2nd respondent Gujarat Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in petition no.1569/2016 filed by 1st respondent M/s Ajanta Energy Private Limited whereby the Commission has determined tariff for 12MW of hydro power project of the 1st respondent. The grievance of the appellant is that the Commission has allowed the project costs without appropriate prudence check of the expenses incurred by the 1st respondent and has approved the project cost higher than that recommended by the expert agency namely Alternate Hydro Energy Centre, Indian Institute of Technology, Rourke in its report submitted to the Commission.

2. The appellant is a company incorporated under the provisions of the Companies Act, 1956 and undertakes functions of bulk purchase of electricity from the generators and bulk supply of electricity to the distribution licensees in the State of Gujarat for onward retail supply to the consumers.

3. The 1st respondent is a generating company within the meaning of the term in Section 2(28) of the Electricity Act, 2003 and operates 12MW

(3x4MW) Hydro Power Project at Dolatpura, downstream of Kadana Dam across River Mahi, Taluka – Kadana, Dist. Mahisagar, Gujarat.

4. The respondent nos.3, 5, 6 & 7 are the state distribution licensees operating in the State of Gujarat. The appellant procures power on behalf of these respondents.

5. Stated briefly, the facts and circumstances of the case in which the instant appeal emanates, are given below.

6. The 1st respondent had submitted a Detailed Project Report (DPR) for setting up 12MW (3x4MW) hydro project at Dolatpura, Taluka – Kadana, Dist. Mahisagar, Gujarat, to Government of Gujarat under a Swiss Challenge Route under Section 10 (A) of the Gujarat Industrial Development Board Act, 1999. Under the Swiss Challenge Route, the Govt. publishes notice inviting bids for selection of bidders to establish the power project.

7. In the competitive bidding carried out by Irrigation Department, Govt. of Gujarat, the 1st respondent emerged as successful bidder and has been allocated the above project based on the royalty fees quoted by the bidders for establishment of the same. The bid criteria for selection of the successful bidder and for award of the project was specified as the royalty premium/license fee payable, the implication of which was that higher the

quantum of the royalty premium offered, better was the placement in the shortlisted bidders.

8. Since the 1st respondent was the project proponent which had conceived the project under the Gujarat Industrial Development Board Act, 1999 (GID Act), it was not allowed to participate in the bidding process. However, GID Act, 1999 provided an option to the project proponent to match the highest bid or quote higher royalty amount for award of the project. The 1st respondent quoted royalty @ 0.91/unit which was higher than the royalty amount quoted by the highest bidder @ 0.90/unit and hence, the project was awarded to it.

9. Subsequently, the 1st respondent signed a Concession Agreement with Narmada Water Resources, Water Supply and Kalpsar Department on 16.03.2015 and as per the said agreement, 1st respondent is required to pay premium royalty of Rs.0.91/unit to the Department for a period of 35 years.

10. The 1st respondent filed petition bearing no.1569/2016 on 11.04.2016 before the Commission for determination of project specific tariff for the said 12MW of hydro power project.

11. Subsequent to the filing of the said petition, the power project achieved commercial operation on 16.03.2018. On that very day, the appellant and

1st respondent entered into a Power Purchase Agreement (PPA) for sale and purchase of electricity from the said 12MW hydro power project for a period of 35 years. The PPA provided that until the State Commission determines project specific tariff in the pending petition, the appellant would pay generic tariff of Rs.3.29/unit as determined by the Commission in order no.5/2016 dated 14.12.2016.

12. It appears that in order to examine the claim of 1st respondent with regards to increase in the project cost as compared to the cost specified in the DPR, the Commission availed the expert services of Alternate Hydro Energy Centre, Indian Institute of Technology, Rourke (in short “AHEC”).

13. Thereafter, the Commission disposed off the petition vide impugned order dated 24.12.2019 thereby determining the project specific tariff of the power project of the 1st respondent at Rs.4.70/kWh (without Accelerated Depreciation) and at Rs.4.40/kWh (with Accelerated Depreciation).

14. Dissatisfied with such determination of project specific tariff for the power project of the 1st respondent, the appellant has preferred the instant appeal.

15. We have heard learned counsel for the appellant as well as learned senior counsel appearing for 1st respondent. We have also perused the written submissions filed by the learned counsels.

16. At the outset, it was vehemently submitted by learned counsel for the appellant that copy of the report submitted to the Commission by AHEC was not supplied to the appellant during the proceedings of the petition before the Commission. Accordingly, vide order dated 15.05.2025, Commission was directed to make available the said report submitted by AHEC and to supply its copy to the appellant's counsel. Thereafter, further arguments were advanced by the appellant's counsel upon perusal of the said report of AHEC.

17. Three main grounds have been urged by the learned counsel for the appellant while assailing the impugned order of the Commission and these are: -

(a)Allowing unreasonably higher capital cost (which is in aggregate more than 171% of the cost specified in DPR and to 209% considering the tender cost) without proper justification or supporting material and without conducting any prudence check, which cost is even higher than that mentioned by AHEC in its report;

(b)Consideration of premium/license fee of Rs.0.91/unit as passthrough;
and

(c) Non-consideration of implication of delay in commissioning of the power project.

18. We shall deal with each of these grounds one-by-one.

(a) Allowance of unreasonably higher capital cost:

19. It was argued by learned counsel for the appellant that the Commission has committed a grave error in ignoring the report submitted by AHEC which had recommended a cost of Rs.104.52 crores as against the actual cost projected by the 1st respondent at Ra.116.67 crores, without any cogent reason and proper justification. It is submitted that once an expert agency appointed by the Commission itself submits its recommendations, there was no justification for the Commission to allow project cost higher than that recommended by the expert agency. It is argued that the report of AHEC clearly indicates that the 1st respondent has not acted prudently and reasonably. The learned counsel has taken us through the report of AHEC to point out that the 1st respondent has not carried out due diligence during the design, selection and execution of the project resulting into the huge claim of cost overrun of the project. She further argued that: -

- (i) When the AHEC, IIT-Roorkee had specifically stated that the Respondent No. 1 could have incurred lower costs, such additional

costs incurred by the Respondent No. 1 are to be considered as imprudent and should not have been allowed by the State Commission. The purpose of engaging AHEC is to check prudence and reasonableness of the cost incurred by Respondent No. 1 and what would a reasonable prudent project developer would have incurred. The purpose was not to verify the quantities used by the Respondent No. 1. It is not correct that the AHEC did not fulfil its mandate. The full report has not been made available and it is therefore not open for Respondent No. 1 to make any such claims.

- (ii) The State Commission has simplicitor ignored the submissions of AHEC on the basis that AHEC has given a view as to how the project could have been executed in principle and as per standards. This is in fact the standard for prudence check. If the project had been executed as considered by the expert, AHEC IIT Roorkee, the costs would have been lower. AHEC has noted that the Respondent No. 1 had not carried out work in a proper and different methodology would have led to lower costs.
- (iii) The decisions and actions of Respondent No. 1 which lead to higher costs to GUVNL and consumers at large have to be examined for

prudence and reasonableness. Any prudence check occurs only after the Generator approached the State Commission with the actual costs. The prudence check cannot be only verifying whether the work was actually done, but whether work was done in a cost effective manner and whether any unreasonable or excess work was done and being claimed as pass through. In Maharashtra State Power Generation Co. Ltd -v- Maharashtra Electricity Regulatory Commission and others in Appeal No. 72 of 2010 dated 27.04.2011, the Hon'ble Tribunal held as under for prudence check:

“7.2...The dictionary meaning of the word ‘prudent’ are sensible and careful when you make judgments and decisions and avoiding unnecessary risk. The prudence check of capital cost has to be looked into considering whether the Appellant has been careful in its judgment and decisions while executing the project or has been careful or vigilant in executing the project”

- (iv) The basis of rejection of AHEC Report by the State Commission is flawed. The entire report makes it clear that the Respondent No. 1 has not been careful in its judgment and decisions or careful and

vigilant in execution of the project. AHEC has pointed out many flaws in the project undertaken by the Respondent No. 1 including the absence of cost control mechanism, poor decisions, selection and choices. If the Respondent has not been prudent in its construction and has incurred higher costs due to the same, there is no reason why GUVNL and the consumers at large should bear such higher costs.

- (v) Such action of the State Commission in allowing higher costs is contrary to the mandate of the Electricity Act, 2003 and the well settled principle of law. The State Commission could have further reduced the cost on factors not considered by the AHEC but should not have allowed higher costs than recommended by AHEC.

20. The learned counsel further argued that even the project cost recommended by AHEC in its report cannot be considered on the grounds, *inter alia*, that these are based on assumptions only and without any proper justification.

21. In order to buttress her submissions, the learned counsel cited the judgments of the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission v. CESE Ltd. (2002) 8 SCC 715, GUVNL v. Solar

Semiconductor Power Company Limited & Anr. (2017) 16 SCC 498 as well as the judgments of this Tribunal in Kerala State Electricity Board v. Kerala State Electricity Regulatory Commission, Appeal no.177/2009 decided on 13.01.2011, Lanco Amarkantak Power Ltd. v Haryana Electricity Regulatory Commission Appeal No.65/2013 decided on 03.01.2014 and Dodson-Lindblom Hydro Power Private Limited v. MERC & Anr. Appeal No.152/2010 decided on 20.10.2011.

22. On behalf of the 1st respondent, the learned senior counsel entirely supported the impugned order on this aspect stating that the Commission has conducted prudence check for determination of the tariff of the power project within the contours of statutory and regulatory framework. The learned senior counsel pointed out that the Commission had directed the 1st respondent to invite comments and suggestions from the stakeholders by uploading the petition on the website as well as by issuing public notice in the newspapers and had directed the 1st respondent to file details of actual costs and expenses certified by Chartered Accountant along with relevant original documents, which was duly done by the 1st respondent. According to the learned senior counsel, the Commission, upon prudence check, has rightly held that in any hydro power project the geological challenges may differ from project to project, and therefore, actual work carried out at the site

should not be ignored for arriving at actual project cost. He would contend that the report of AHEC validates the expenditure incurred by the 1st respondent in completion of the power project.

23. It cannot be gainsaid that while determining the capital cost of a power project, the Commission is duty bound to conduct a prudence check with regards to various expenses claimed to have incurred by the project developer. The prudence check does not involve only verifying whether the work was actually done but whether the work was done in a cost-effective manner or whether any unreasonable or excess work was done and is being claimed as a passthrough. In Maharashtra State Power Generation Company Limited v Maharashtra Electricity Regulatory Commission and Ors., Appeal No.72/2010 decided on 27.04.2011, this Tribunal has observed as under: -

“7.2...The dictionary meaning of the word ‘prudent’ are sensible and careful when you make judgments and decisions and avoiding unnecessary risk. The prudence check of capital cost has to be looked into considering whether the Appellant has been careful in its judgment and decisions while executing the project or has been careful or vigilant in executing the project”

24. In Dodson-Lindblom case (supra), this Tribunal has highlighted the factors involved in prudence check as under: -

“10. Both the Regulations and the judgement of the Tribunal would indicate that the State Commission was bound to conduct a detailed “prudence check” and prudence check is not limited to the verification of whether an expenditure has actually been incurred or not. The prudence check involves the following factors:

(a) Whether such expenditure has been incurred exclusively towards the project or not;

b) Whether such expenditure is justifiable having regard to the industry norms for such expenses;

(c) Whether such expenditure is such that a prudent businessman would have incurred on his business at the stage at which it was incurred;

(d) Whether such expenditure was necessitated having regard to all the surrounding circumstances of the project;

(e) Whether such expenditure is aligned to the “project specific requirements”;

(f) What is the efficacy of such expenditure and whether such expenditure has actually resulted in some benefit or likely benefit to the project;

(g) Whether such expenditure is such that it ought to be passed through to the consumers in a cost plus oligopoly situation”.

25. In the instant case, we find from the perusal of the impugned order that the Commission has not merely gone by the recommendations of the AHEC but has discussed in detail each and every claim of the 1st respondent with regards to the expenditure incurred by it on completion of the project. This is evident from bare reading of Paragraph 4.4 of the impugned order which spans over 30 pages and consists of 42 sub-paragraphs. The Commission has dwelled in detail on each objection raised by the appellant and has given

cogent reasons in rejecting the same. In Paragraph nos.4.4.5 to 4.4.8, the Commission has observed as under: -

“4.4.5. We note that the details of various major contracts awarded by the Petitioner for the project as submitted by the petitioner, are as follows:

Sr.	Work Head	Awarded to	Quoted Rate (Rs. Crore)	Actual Cost incurred (Rs. Crore) (as on 18.01.2018)	Total Cost for the Head (Rs. Crore) (as on 18.01.2018)	Total Cost for the Head (Rs. Crore) (as on 30.06.2018)
1.	Civil Works	M/s SCC Infrastructure Private Limited	37.88	82.06	79.13	79.390
2.	Electro & Mechanical Works	M/s Mecamidi HPP India Private Limited	19.45	16.50	16.76	16.767
3.	Gate Works	M/s Gayatri Construction	5.61	5.98	5.98	6.018
4.	Transmission line Works	M/s OM Power Transmission Limited	3.15	1.61	2.29	2.407

4.4.6. We note that out of the above major heads of Capital Cost, the Civil Works and E & M works were awarded by the Petitioner by inviting tenders which were published on 27.03.2015 in two Newspapers viz. Divyabhasker (Gujarati) and Financial Express (English). In response to the above tenders, the Petitioner received 5 bids for Civil Works and 3 bids for E&M works. Out of the above 5 bids

for Civil Works, M/s SCC Infrastructure Private Limited was selected based on the lowest quoted price and having all the requisite qualification and experience to undertake the work. Similarly for E M works, M/s Mecamidi HPP India Private Limited was selected based on the lowest quoted price amongst the three bids and considering their experience and qualification to undertake the works of Horizontal Pit Kaplan Turbine. However, the Gate Works had been allotted by inviting the quotations and comparing the bids. The Petitioner has filed the quotations of M/s Gayatri Construction and M/s K. L Engineering Works for the Gate Works along with the work schedules and based on the comparative statement prepared by the Petitioner, the work was awarded to M/s Gayatri Constructions for total contract price of Rs. 5.61 Crore For Transmission line works, the works was allotted to M/s OM Power Transmission Private Limited for Rs. 3.15 Crore, admittedly, without tendering/competitive bidding basis. In addition, the Petitioner has paid Rs. 0.677 Crore to GETCO towards estimation, supervision and service charges.

4.4.7. We also note that the in compliance to the contentions of the Respondents to substantiate the details of costs/expenses incurred with the invoices along with the payments made, the Petitioner has furnished the invoices for Civil Works, Electro-Mechanical Works, Gates Works and Transmission lines works.

4.4.8. We observe that the Petitioner has furnished the invoices for Civil Works totalling to amount of Rs. 82.12 Crore out of which the invoices of M/s SCC Infrastructures Private Limited total up to Rs. 82.06 Crore and the rest are the invoices of other Civil works. The Petitioner has also submitted that an amount of Rs. 3 Crore has been received from the Insurance Company towards damages to project works due to flood on 21.08.2016. As to the proof of the payments, we note that out of the aforesaid amount, the Petitioner has submitted the details of payment to the tune of Rs. 71.96 Crore net of deduction of Rs. 3 Crore towards receipt from the Insurance Company and has submitted that Rs. 7.15 Crore is yet to

be paid towards the Civil Works. We also note that payments worth Rs. 74.96 Crore and deduction of Rs. 3.00 Crore have been supported by the Bank Statements whereas transactions worth Rs. 43,526/- have been made through Cash on Hand as claimed by the Petitioner.”

26. With regards to the increase in civil cost, the Commission has discussed and observed in the impugned order as under: -

“4.4.12. As regards the Civil Cost, we note that the Respondents have objected the Civil Cost being comparatively higher considering the size of the project. The Respondents have also objected to the exorbitant increase in Civil cost from what is considered in the Detailed Project Report as well as the amount stated in the EPC contract given to M/s SCC Infrastructure Private Limited. The Respondents have also contested the justification given by the Petitioner towards such increase as well as non-compliance of the directive of the Commission vide Daily Order dated 14.2.2018.

4.4.13. In this regard, we note that the Petitioner has submitted that the work was awarded on the basis of preliminary drawings, but during actual execution of work, there has been significant increase in quantities on account of actual geological conditions and actual designs. Further, the work had been awarded not on EPC basis but standard PWD methodology B-2 work arrangement, where any variation in quantities of work is paid at tendered rate. When the Petitioner invited the tenders for civil works, the detailed engineering designs for structural components were not ready. Also various levels for soft rock and hard rock were assumed in the estimates based on the drill-holes data available for left retaining wall of Dolatpura weir and accordingly, in the estimates for civil works, various concrete quantities, reinforcement steel were provided on estimation basis. The excess has occurred mainly on three items:

- (i) Excavation in hard rock, due to the fact that hard rock was encountered at a very high level,

resulting into excess in quantity of excavation in hard rock.

(ii) Concrete for various structural components.

Based on the actual and detailed engineering designs, the quantity of concrete exceeded over the estimated quantities of concrete.

(iii) Reinforcement for various structural components.

Based on the actual and detailed engineering designs, the quantity of reinforcement exceeded over the estimated quantities of reinforcement.

4.4.14. We also note that the requirement of the Commission was to provide details for increase in the cost of civil works in a specific format. The Petitioner has, vide affidavit dated 19.02.2018 filed a statement showing item-wise comparison of quantity & cost of civil works between DPR, Tender and the actuals, a gist of Total Cost is reproduced below:

Sr.	Head	Total Cost as per DPR (Rs.)	Total Cost as per Tender (Rs.)	Actual Cost as per Final Bill (Rs.)	Net Variance between DPR & Actual Cost in price (+) Excess/ (-) Saving (Rs.)	Net Variance between Tender & Actual Cost in price (+) Excess/ (-) Saving (Rs.)
1	Power Channel	76998800	58365332	154679656	77680856	96314323
2	Intake Pool	10097270	10032314	37029987	26932717	26997673
3	Intake Structure	89534120	70122047	204000	-89330120	-69918047
4	Power House	148475940	116646578	404969150	256493210	288322572
5	Tailrace Pool	26285463	25434119	75145759	48860296	49711640
6	Tailrace Channel	111592200	98226143	88458026	-23134174	-9768116
7	Tailrace Protection	0	0	15678698	15678698	15678698
8	Total Before Taxes	462983793	378826533	776165276	313181483	397338743
9	Total Taxes	0	0	44504851	44504851	44504851
10	Total after taxes.	462983793	378826533	820670127	357686334	441843594

However, we also note that rather than giving reasons for item-wise variance, the Petitioner has furnished the reasons for overall variance as noted above.”

27. Further, the Commission has refused to consider additional expenditure incurred by 1st respondent during the period from 18.01.2018 to 30.06.2018 on the following reasoning: -

“ We note that as per the affidavit filed by the Petitioner, the Petitioner’s Plant achieved the Commercial Operation Date (COD) on 16.03.2018. Since, the expenses incurred towards the Project at Rs 111.40 Crore and towards the Civil Work & Foundation of P&M at Rs. 79.13 Crore as stated in the CA certificate dated 06.02.2018 was as on 18.01.2018, it appears that the Petitioner may have incurred the additional expenses towards various heads after 18.01.2018. However, we note that these additional expenses incurred as certified by the CA (certificate dated 17.07.2018) is not supported by any invoices or proof of payments by the Petitioner. Since the said expenditure is certified to be as on 30.06.2018, considering the fact the project was commissioned on 16.03.2018 and that no supporting documents for expenditure incurred during the period from 18.01.2018 to 30.06.2018 are submitted by the Petitioner, the Commission has decided not to consider the additional expenditure incurred during the period from 18.01.2018 to 30.06.2018.”

28. With regards to the transmission line works, the discussion in the impugned order is as under: -

“4.4.24. For the transmission line works the Petitioner has claimed an expenditure of Rs. 2.29 Crore including advance payment of Rs. 0.68 Crore to GETCO towards supervision charges.

4.4.25. The Respondents objected that the Petitioner had initially claimed Rs. 3.80 Crore in the petition. The Respondents submitted that the cost of line in the Petitioner's case would not be more than Rs. 2.10 Crore. The Respondents have, upon furnishing the actual cost towards transmission line works certified by CA, sought the details as to the tendering process for awarding the contracts and payments made supported by bank statements.

4.4.26. In this regard, we note that the Petitioner was required to erect 66 kV D/C line from the generating station to 66 kV Mowasa S/s. The Petitioner had awarded the work of laying of evacuation line to M/s OM Power Transmission Limited on 09.12.2015 for Rs. 3.15 Crore. However, the

actual expenditure as on 18.01.2018 towards the transmission/evacuation line as per CA Certificate filed along with affidavit dated 07.02.2018 is Rs. 2.29 Crore including Rs. 0.68 Crore towards the supervision charges paid to GETCO. We also observe that the Petitioner has filed the invoices in support of this claim as well as the bank statements for payments made thereof.”

29. Further, the Commission did not consider the incremental expenditure of Rs.0.117 crores on the transmission line on the following reasoning: -

“However, the Petitioner vide CA certificate dated 17.07.2018 has claimed the expenses of Rs. 2.407 Crore towards the transmission line works including the advance given to GETCO (Rs. 1.710 Crore towards transmission line works and Rs. 0.697 Crore towards advance given to GETCO), an increase of Rs. 0.117 Crore. We note that the aforesaid additional expenditure is neither supported by the invoices nor the bank statement for payment thereof. The Petitioner has also failed to substantiate that this additional expenditure was

incurred prior to the date of commissioning. The Commission, therefore decides, not to consider the incremental expenditure of Rs. 0.117 Crore.”

30. Lastly, the Commission has referred to the report dated 15.01.2019 submitted by AHEC in which it has been recommended as under: -

““

9.0 RECOMMENDED COST

Based on the review of DPR, Construction Drawings and Expenditure statements given by AEPL in its submissions to GERC, the recommended cost of the project has been shown in the Table below with remarks:

Table 1 : Recommended Cost for Dolatpura SHP

Sl No.	Particulars	DPR Estimate d Cost	Actual expenditure / Actual Cost	AHEC recommen ded cost	Remarks
1	Preliminary and pre-operative expenses	3.25	4.99	4.99	
2	Civil Works				

2.1	Power Channel	7.7	15.47	11.55	<i>Vertical wall should have been reduced only up to the full supply level plus three board instead of constructing additional height by 3.5 m. This should have resulted in lesser size and thickness substantially. A 25% cost would have been reduced.</i>
2.2	Intake Pool	1.01	3.70	3.70	
2.3	Intake Structure	8.95	0.02	0.02	
2.4	Power House	14.85	40.50	34.63	<i>Should have been reduced by (a) 11% due to excessive length provided for power house due to bad selection of location of control room and space between stop log and gate (b) 2.5% due to pit type of turbine instead of tubular causing higher excavation by 3.5 m in a length of 14 m, and (c) 1% on account of extra filling of concrete by 4.05 in a height of 31.5m and extra layers of center reinforcement of raft in power house.</i>
2.5	Tail Race Pool	2.63	7.51	3.75	<i>The tailrace pool has been provided with an exceptionally mild slope of 1:10 which should have been anywhere between 1:4 to 1:6. A length of 77.1 m would have been</i>

					<i>reduced to 50% and hence related 50% cost.</i>
2.6	<i>Tail Race Channel</i>	11.16	8.85	10.25	<i>In view of reduced tailrace pool, a length of additional 38 m length would have been constructed for tail race channel.</i>
2.7	<i>Hydro Mechanical Works</i>	7.50	6.02	6.02	
2.8	<i>Protection works</i>	1.50	1.57	1.57	
2.9	<i>Tax</i>		4.45	4.45	
	<i>Sub total</i>	55.30	88.09	75.94	
3	<i>Electromechanical works</i>	23.50	16.77	16.77	
4	<i>Transmission works</i>	6.00	2.41	2.41	
5	<i>Land Lease cost</i>	0.00	0.11	0.11	
6	<i>Interest during construction</i>	0.00	4.21	4.21	
7	<i>Establishment, audits, tools and plants, contingency</i>	8.28	0.09	0.09	<i>It seems that this expenditure have been built in the respective component of works as the same has not been shown as expenditure.</i>
	<i>Total</i>	96.33	116.67	104.52	

Based on data, details, information provided by AEPL and analysis carried out, it is recommended that a sum of Rs. 104.52 crore may be considered the cost of project.

... ”

31. The Commission has approved the capital cost of the power project at Rs.111.38 crores as compared to Rs.104.52 crores recommended by AHEC on the following reasoning: -

“It can be observed from the above that against the estimated cost of Rs. 96.33 Crore and actual expenditure of Rs. 116.67 Crore, AHEC, IIT-Roorkee has recommended the project cost of Rs. 104.52 Crore. The deductions have been made against Power Channel (Rs. 3.92 Crore), Power House (Rs. 5.87 Crore) and Tail Race Pool (Rs. 3.76 Crore). However, in respect of Tail Race Channel as against actual expenditure of Rs. 8.85 Crore, they have recommended expenditure of Rs. 10.25 Crore (increase of Rs. 1.40 Crore). It is apparent from their remarks against various heads of expenditure that the aforesaid deductions and increase in expenditure is based on their past experience of execution of hydro projects rather than checking the quantities substantiated in the documents filed under the petition and confirming the same. In its report AHEC has given its views as to how

the project could have been executed in principle and as per standards. The Commission is of the view that in any hydro project, the geological challenges at site may differ from project to project and therefore, actual work carried out at the site should not be ignored for arriving the actual project cost. We, also understand that after completion of the project including the civil, mechanical and electrical works, it will be quite difficult exercise to verify the bill of quantity with actual execution. Now the matter before us is to allow the total capital cost of a small hydro project after taking into consideration the actual cost, its prudence check, the normative standards of similar projects and the final figures arrived at in the expert AHEC report and our findings should not vary to a large extent. We, therefore, decide the project cost after doing the prudence check as under:

<i>Sr. No.</i>	<i>Head</i>	<i>Amount Approved by the Commission (Rs. Crore)</i>
<i>1</i>	<i>Preliminary & Pre-Operative Expenses</i>	<i>4.43</i>
<i>2</i>	<i>Civil Works</i>	<i>79.13</i>

3	<i>E & M Works</i>	16.76
4	<i>Gate Works</i>	5.98
5	<i>Transmission Line Works</i>	2.29
6	<i>Interest During Construction</i>	2.70
7	<i>Land lease[#]</i>	0.09
8	<i>Sub-Total Cost Incurred for Dolatpura SHP</i>	111.38
9	<i>Ongoing Operative Expenses (Including Interest on Term Loan) from 02.12.2017 to 18.01.2018</i>	-
10	<i>Trade Receivable</i>	-
11	<i>Cash and Bank Balance</i>	-
12	<i>Advance & Prepaid Expenses</i>	-
13	<i>TDS/GST</i>	-
14	<i>Furniture & Fixture (**)</i>	-
15	<i>Vehicles (**)</i>	-
16	<i>Investment (**)</i>	-
17	<i>Deposits (**)</i>	-
	<i>Total</i>	111.38

(**) These items are not pertaining to Dolatpura SHP
lease rent paid upto COD is considered as a part of
Capital Cost and amount thereafter for per MW basis of
Rs 29,177 per annum per MW is considered as revenue
expenses.”

32. We are unable to find any flaw or lacuna in the said reasoning given by the Commission. The Commission has minutely deliberated upon not

only each and every claim of 1st respondent as well as each and every objection raised by the appellant but also on the recommendations of AHEC. Nothing more is required of the Commission while conducting the prudence check at the time of determining the capital cost of the power project.

33. We may note here that the report submitted by an expert agency before the Commission with regards to the capital expenditure incurred by project developer in completion of a power project, at best, qualifies as an “expert opinion”. The Commission is not bound by said expert opinion and it may or may not accept the recommendations of the expert agency. What is required of the Commission is to give cogent reasons for differing with the recommendations of the expert, if it chooses to do so. The Commission is not expected to accept and act upon the recommendations of the expert agency blindfoldedly and if that is done, it will run contrary to the spirit of prudence check which the Commission is expected to conduct while determining the capital cost of the power project. Therefore, the Commission is free to approve capital cost of the project which may be higher or lower than that recommended by the expert agency, in case the facts and circumstances of a case warrant so. We are unable to countenance the submissions of the appellant’s counsel that once the Commission has

engaged an expert agency, the Commission was not justified to go beyond recommendations of the said agency.

34. In the instant case, it is manifest that the Commission has given sound reasoning in approving the capital cost of the power project of 1st respondent which is higher than that recommended by the expert agency AHEC. Therefore, the impugned order of the Commission on this aspect appears to be well reasoned and justified, which does not call for any interference from this Tribunal.

(b) Consideration of premium/license fee of Rs.0.91/unit as passthrough.

35. It is argued on behalf of the appellant that the Commission has failed to note that Rs.0.91/unit payable as royalty premium to the Govt. of Gujarat was a part of the bid and not a stipulation imposed by the Govt. of Gujarat or any other authority. She submitted that no minimum amount was prescribed by the Govt. in this regard and it was for the bidders to bid any amount they found suitable under this head. Therefore, when the amount of royalty premium was based upon the bids, it cannot be allowed as a passthrough in the tariff as it is not a cost which the 1st respondent has incurred in setting up the project. Reference is made to generic tariff order dated 14.12.2016

issued by the Commission for hydro power project wherein the Commission did not consider the royalty premium as part of the costs of the project saying that such premium offered by the developer for project allotment purpose is a commercial decision of the developer/investor.

36. The submissions on this aspect made on behalf of the appellant were strongly refuted by the learned senior counsel for the 1st respondent stating that the Commission has rightly considered the royalty fee payable to the Govt as part of reasonable cost of the project incurred by 1st respondent for the generation of electricity.

37. It is not in dispute that bids for the power project in question, it was mandatory for the bidders to quote royalty premium even though no minimum amount was stipulated for the same in the provisions of Gujarat Industrial Development Board Act, 1999. The highest bid received in the bidding for the power project in question carried a royalty premium of Rs.0.90/unit. In order to match the said bid, 1st respondent quoted Rs.0.91/unit, which is only Rs.0.001 i.e. one paisa higher than the earlier highest bidder. Therefore, it is not a case where 1st respondent had quoted royalty premium of Rs.0.91/unit on its own volition and without any reasonable basis. It was the compulsion of the 1st respondent to quote the said amount of royalty premium in order to outweigh the highest bidder and obtain the power project. In these

circumstances, we wonder as to why the requirement of payment of such royalty fee cannot be considered as part of cost of the power project and be permitted as passthrough in tariff.

38. When we enquired from the learned counsel for the appellant as to whether the bids without offering such royalty premium could have been entertained and accepted, the answer was “no”. It, therefore, follows that quoting of royalty premium in the bid was mandatory and the same cannot be left out of consideration merely because the successful bidder quotes a higher royalty premium in order to outsmart its rivals.

39. Hence, we do not find any error in the impugned order of the Commission on this aspect also.

(c)Non-consideration of the implication of delay in commissioning of the power project.

40. It is argued by learned counsel for the appellant that the Commission has failed to consider the issue of implication of delay in completion of the power project in terms of Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) as well as increase in cost due to time overrun. It is submitted that as per the DPR, the gestation period was

18-24 months and since the 1st respondent had initiated the project related activities in May, 2014, the likely commissioning date was June, 2016. It is stated that since the project was commissioned much later i.e. on 16.03.2018 and no justification has been offered for the delay, the consumers at large should not be forced to bear the additional cost due to such delay.

41. It is argued that the Commission has only gone on the basis of the statement of 1st respondent that there was no cost overrun due to delay in completion of the project, without conducting any verification. It is stated that even if there is no increase in the hard cost the project, certainly there is an impact of delay on the IDC and IEDC which ought to have been considered by the Commission.

42. On this aspect, we may note that undisputedly, land on the left bank was given on lease to the 1st respondent on 29.10.2015 and the permission to start the work was given by Irrigation Department vide letter of even date i.e. 29.10.2015. Accordingly, the project work was commenced in the month of October, 2015. As per the DPR, the time period for completion of the project was 24 months. Therefore, the project ought to have been completed by 29.10.2017. However, the project has been completed on 16.03.2018 i.e. with a delay of 04 months and 16 days only. At the same time, it also

emerges undisputed that there has been no cost overrun in the project on account of said delay.

43. Here we may note that the Commission has fixed certain benchmarks for small and large hydro power projects, the details of which are as under: -

“(A) SHP on Saurashtra Branch Canal- Three locations-

Date of work awarded- 27.08.2014, Total Capacity-

– 45 MW, Capital Cost- Rs. 411.13 Crore and

Capital Cost/MW- Rs. 9.13 Crore/MW

(B) SHP on Kutchch Branch Canal- Three locations-

Date of work awarded- 27.08.2014, Total Capacity-

23.31 MW, Capital Cost- Rs. 221.14 Crore and

Capital Cost/MW- Rs. 9.49 Crore/MW

(C) SHP on Miyagam Branch Canal- Six locations- Date

of work awarded- 07.10.2014, Total Capacity- 12

MW, Capital Cost- Rs. 141.99 Crore and Capital

Cost/MW- Rs. 11.83 Crore/MW

(D) SHP on Vadodara Branch Canal- Six locations-

Date of work awarded- 03.12.2015, Total Capacity-

*5.15 MW, Capital Cost- Rs. 82.50 Crore and Capital
Cost/MW- Rs. 16.01 Crore/MW”*

44. Thus, it is manifest that the capital cost per MW for the projects undertaken by Sardar Sarovar Narmada Nigam Limited varies from Rs.9.13 crore/MW to Rs.16.01 crore/MW with an average cost of Rs.11.615 crore/MW. Further, as noted by the Commission itself in the impugned order, AHEC has also published a report on “Benchmarking Costs for Small and Large Hydro Power Projects” in August, 2015. While preparing the report, actual project cost data of 167 small hydro and 69 large hydro power stations, from 18 States, was taken into consideration which were constructed between 2005 and 2015. Findings of the study for capital costs of the projects are under: -

“ *Cost in Rs. Crore/MW*

	<i>Series 2005-15</i>		<i>Series 2010-15</i>	
	<i>SHP</i>	<i>LHP</i>	<i>SHP</i>	<i>LHP</i>
<i>2005</i>	<i>5.30</i>	<i>5.14</i>	<i>-</i>	<i>-</i>
<i>2010</i>	<i>7.76</i>	<i>6.95</i>	<i>7.45</i>	<i>6.70</i>
<i>2015</i>	<i>10.20</i>	<i>8.76</i>	<i>10.50</i>	<i>9.00</i>

”

45. The capital cost of the power project of the 1st respondent in the instant case has been worked out at Rs.9.28 crore/MW which is at the lower end of the average cost of the small hydro power project in the State of Gujarat. Therefore, by no stretch of imagination can it be said that the capital cost of the power project of 1st respondent, as approved by the Commission in the impugned order, is exorbitant or on higher side.

Conclusion: -

46. Having regard to the above discussion, no error of infirmity is found in the impugned order of the Commission. The appeal is sans any merit and is hereby dismissed.

Pronounced in the open court on this the 09th day of September, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

√
REPORTABLE / ~~NON-REPORTABLE~~

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