



**JUDGMENT**

**Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**

1. Gujarat Energy Transmission Corporation Limited (GETCL) is the Appellant herein. Aggrieved by the order impugned dated 08.05.2009 passed by the Gujarat State Commission, this Appeal has been filed. The short facts of the case are as follows:

2. Gujarat Energy Transmission Corporation Limited (Appellant) is engaged in the business of transmission of electricity in the State of Gujarat. It also performs the statutory functions of the State Load Dispatch Centre for the State of Gujarat. The Oil & Natural Gas Commission (ONGC), Respondent-2 herein, is operating Combined Cycle Generating Power Plant. The electricity generated at the said power plant is used for captive consumption of ONGC at the place of generation.

3. ONGC sought permission for wheeling of its surplus power to its other installations namely Mehsana, Ahmedabad and from Ankleshwar Assets to the specific points of injection and to the specific points of delivery on the transmission system of the Appellant.

4. The above permission was granted under Section 28 of the Indian Electricity Act, 1910 in the year 2000 by the Gujarat Electricity Board (Predecessor of the Appellant) for wheeling of 15.9 MVA of power from its captive power plant at Ankleshwar Assets to its unit at various places referred to above. In the permission granted by the Electricity Board through the letter dated 27.11.2000 the points of drawl of electricity, the quantum of electricity to be wheeled, voltage, line through which the electricity was to be wheeled, etc. were specified.

5. Subsequent to the above, in the year 2004, in view of non-utilisation of the power generated at the exit locations where the wheeling permission was granted, the ONGC (R-2) requested

the Appellant for rationalization of its existing wheeling arrangement and for addition of new locations of ONGC for wheeling electricity from its captive generation plant.

6. ONGC filed a petition seeking permission to re-apportion of its wheeling capacity in the newly proposed installations. During the pendency of the petition, the ONGC (R-2) was constantly drilling new wells and mining from such wells, resulting in a need for more energy at such locations. At that stage, the ONGC (R-2) sent a letter to the Electricity Board on 08.07.2004 seeking rationalization of wheeling permission without increasing overall wheeling permission and thereby not causing any additional burden on Electricity Board. Initially there was no response. There were several meetings between the parties. Ultimately the Appellant rejected the representation made by the ONGC (R-2) for rationalization of wheeling. Thereupon ONGC (R-2) filed a petition before the High Court of Gujarat seeking for the relief. However, the High Court disposed of the said petition directing the ONGC (R-2) to

approach the Commission to settle the dispute raised in the petition between the parties.

7. Accordingly on 26.08.2008, the ONGC (R-2) filed a petition under Section 86(1)(f) of the Electricity Act before the State Commission seeking rationalization of the wheeling capacity from its existing rights for wheeling of power to specified point of injection and at other points of drawl. The said application was resisted by the Appellant contending that the permission for change in wheeling capacity and change of locations is not permissible without following a procedure prescribed in the Open Access Regulation namely relinquishing its existing rights over the specified transmission lines and applying for a fresh Open Access permission for the specified lines where Open Access was sought. After hearing both the parties, the State Commission by the order dated 08.05.2009 allowed the petition filed by the ONGC (R-2) holding that the ONGC (R-2) was entitled to change its point of drawl and the transmission lines for Open Access without the requirement of

making application for the new lines and further holding that a right of an Open Access consumer extend to the entire system of the licensee in the entire State and not to a particular line for which Open Access permission is granted.

8. Aggrieved by this order dated 08.05.2009 passed by the State Commission, the Appellant has preferred the present Appeal before this Tribunal.

9. The Learned Counsel for the Appellant has urged the following contentions.

- (i) The right to Open Access is always granted for specific lines and with specified capacity. Such right to Open Access does not extend to the transmission system with the liberty to change the points of injection and drawl at the will of the Open Access consumer. The finding of the State Commission to the effect that the ONGC (R-2), the Open Access consumer, is not required to follow any procedure under the Open Access Regulation for

rationalizing its open excess requirement by reduction of capacity and for using fresh transmission lines for open access to different locations is wrong. Hence this Appeal.

(ii) The Open Access Regulations provide for specific points of drawl, injection, capacity for open access, average load, etc. to be specified at the time of application for grant of Open Access. The Open Access is granted only for specified locations and transmission lines and for the specified capacity. Therefore, the State Commission cannot hold that ONGC (R-2) is entitled to Open Access through new lines for the different locations and different capacity without applying for such access in accordance with the Open Access Regulations.

(iii) Under Regulation 11 of the Open Access Regulations, ONGC (R-2) was required to relinquish its existing capacity to the extent of the reduced capacity and pay compensation to the Appellant. When Regulation 11

prefers right of Open Access granted to ONGC (R-2) which are for specified locations and lines and for a specified capacity, the State Commission cannot hold that there is no relinquishment of existing rights by ONGC (R-2). Therefore, the order impugned passed by the State Commission is liable to be set aside.

10. In reply to the above submissions, the Learned Counsel for ONGC (R-2) as well as the State Commission have made the elaborate submissions and have also filed written submissions.

The gist of the same is as follows:

- (i) From the various definitions and Sections under the Electricity Act, 2003 and Open Access Regulations as formulated by the State Commission, it is clear that the Open Access is for transmission lines and not for the system. Transmission lines mean all high pressure cables and overhead lines transmitting electricity from a generating station to another generating station or to a sub-station. Therefore, the term transmission lines used



in the Act refers to all the transmission lines established and operated by the licensee. Consequently it is clear that that the transmission lines represent the entire transmission system of the transmission licensee and it would not apply to any particular transmission lines or point to point transmission line as specified on behalf of the Appellant.

(ii) The provisions of Section 39 and 40 of the Act have to be read together. Under these Sections there is an obligation on the State Commission for the utility or the transmission licensee to grant non-discriminatory open access qua transmission system. These provisions which use the word transmission system in relation to grant of Open Access cannot be given a restricted interpretation so as to limit the grant of Open Access to a particular transmission line.

(iii) The Regulations of the Gujarat State Commission recognise the grant of Open Access in relation to the system as a whole. The fact that the Regulation require

disclosure of points of injection and draws do not affect the interpretation of the scheme as a whole.

- (iv) In the absence of any material to show that the Appellant in any way would suffer any loss or injury due to change of drawl points by ONGC (R-2), the grant of permission by the State Commission to re-apportion its wheeling capacity by allowing it to the newly proposed locations is perfectly valid.

11. In the light of the rival contentions referred to above, the following questions would emerge in the present case for consideration.

- (i) Whether the new locations which Open Access was sought would amount to relinquishment which requires ONGC (R-2) to file a fresh Open Access application in accordance with the Open Access Regulations along with the requisite details for the change of locations

- (ii) Whether the State Commission was justified in holding that the Appellant was entitled to change its points of drawl for various transmission lines for open access within the State of Gujarat without having to follow any procedure under the Open Access Regulation?

12. On these questions elaborate arguments were advanced by the Learned Counsel for both the parties. We have carefully considered the same. We have also gone through the entire records including the Written Submissions filed by the parties. According to the Learned Counsel for the Appellant, the rights of an Open Access consumer are not for the entire system as a whole. The relinquishment of the right and obligation by an Open Access consumer has to refer to right for a particular transmission lines with specified locations of injection and drawl points and relinquishment thereof.

13. According to the Learned Counsel for ONGC (R-2), the State Commission has correctly held calling for the change of locations for drawl points would not amount to relinquishment and as such no fresh application is necessary seeking for the same.

14. Let us refer to basic facts in the present case. The ONGC (R-2) sought permission for wheeling the surplus power generated at its power plant to its other units at various places. The above permission was granted under Section 28 of the Indian Electricity Act, 1910 by the Gujarat Electricity Board (the predecessor of the Appellant) through its letter dated 27.11.2000 for wheeling of 15.9 MVA power from its captive power plant at Ankleshwar asset to its units at specified locations. In view of non-utilization of this power generated at the exit locations, ONGC (R-2) requested the Appellant for rationalization of its existing wheeling arrangement with reference to new locations. There was delay in this. Therefore, ONGC (R-2) sent letters to the Electricity Board seeking for the

said permission but despite that the Appellant issued several bills for transmission charges. Challenging the same, ONGC (R-2) filed write petition before the High Court of Gujarat. Ultimately the said petition was disposed of by the High Court directing the ONGC (R-2) to raise this issue before the State Commission. Ultimately ONGC (R-2) approached the State Commission seeking for the said permission from the State Commission contending that it is not seeking reduction in the total wheeling capacity but it is only seeking for the additional locations. The said permission was granted by the State Commission holding that ONGC (R-2) is entitled to get this permission by the order dated 08.05.2009.

15. Aggrieved over this order impugned, the Appellant challenged the same in this Appeal.

16. As narrated above, the main issue relates to the change in the points of transmission sought for by the ONGC (R-2) in the

Gujarat Power system, transmission part of it owned and maintained by the Appellant.

17. The ONGC (R-2) had been having Open Access to the power system in Gujarat for transmission of its captive generation from the place of generation to the place of use by ONGC (R-2) at specified locations. This was as per the permission applied and obtained by the ONGC (R-2) from the erstwhile Gujarat Electricity Board through the letter dated 27.11.2000. The letter is as follows:

**“GUJARAT ELECTRICITY BOARD**

Head Office: Sardar Patel Vidyut Bhawan, Race Course, Vadodara-390 007

To

The Manager (CCPP)  
Oil & Natural Gas Co. (CCPP)  
IIIrd Floor, New Building, Ankleshwar Project  
Ankleshwar-

Sub:- Permission for wheeling of 15.9 MVA (12.72 MW) surplus SPP power fromk CPP – M/s Oil & Natural Gas Corporation Ltd. Ankleshwar to their own various units in Gujarat.

Ref:- 1) GoG letter No.CPG/11.2000/4232 dated 1`0.11.00  
2) GEB letter No. Com/ CPP/Wheeling/OBGC/4224 dated 13.7.00

Dear Sir,

Government of Gujarat has accorded permission under Section 28 of I.E. Act for wheeling of CPP power. Accordingly, you are permitted to wheel surplus CPP

power up to 15900 KVA (12720 KW at 0.8 p.f.) through Board's grid from your CPP at Ankleshwar to your various units through GEB network for ten years as under

S.No.	Name of Unit	Location	C.;D. quantum of power to be wheeled and voltage level.
1.	ONGC	Santhal, INSITU Ph. 1, Mehsana	3000 KVA (2400 KW) @ 66 KV
2.	ONGC	Balol, INSITU Ph. 1, Mehsana	3000 KVA (2400 KW) @ 66 KV
3.	ONGC	(A) South Santhal GGS CU MCTE Mehsana	2400 KVA (1920 KW) @ 11 KV
4.	ONGC	Ahmedabad CTGFC, Kalol	3500 KVA (2400 KW) @ 66 KV
5.	ONGC	CTF Navagam	3000 KVA (800 KW) @ 22 KV
6.	ONGC	Ankleshwar LPG Plant	1000 KVA (800 KW @ 22 KV
		Total	15900 KVA (12720 KW & at 0.8)

The Electricity Duty shall be recovered as per schedule-II of the Bombay Electricity Duty Act, 1958. You are requested to contact our Executive Engineer (O&M) GeB, Ankleshwar, Mehsana, Kalol, Sabarmati for further needful action.

Thanking you,

Yours faithfully,  
Sd/-  
GENERAL MANAGER (Comm)

C.C. to:

1. The Under Secretary, Government of Gujarat, D&P Deptt., Sachivalaya, Gandhinagar. This is in ref. To his letter dated 10.11.00
2. The Commissioner of Electricity, Government of Gujarat, Udyog Bhawan, Gandhinagar – For information please.
3. C.E.(TR/Dist) GEB, Surat, Mehsana – for information.
4. A.C.E. (Zone), GEB, Surat, Mehsana – for information
5. S.E. (O&M), GEB, Ankleshwar, Mehsana, Kalol, Sabarmati
6. E.E. (O&M), GEB, Ankleshwar, Mehsana, Kalol, Sabarmati
7. E.E. (O&M), GEB, Bharuch – To take necessary action for giving credit for CPP power wheeled as per Commercial Circular No. 687”

18. As per this letter the permission was granted for Open Access for wheeling the electricity of ONGC(R-2) to the 6 specified locations. Now the location was sought to be changed by the ONGC (R-2) by seeking permission from the State Commission.

19.. Let us now refer to some of the definitions/Sections

(i) Section 2(47) defines Open Access: “Open Access means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with regulations specified by the Appropriate Commission.”

(ii) “Section 9. Captive Generation – (1)Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:



Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no license shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made hereunder and to any consumer subject to the regulations made under sub-Section (2) of Section 42)

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have he right to open access for the purpose of carrying electricity from the captive generating plant to the destinations of his use:

Provided that such open access shall be subject to availability of adequate transmission facility such availability of transmission facility shall be determined by the Central Transmission Utility or State Transmission utility as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

(iii) **Section 39: State Transmission Utility and its Functions**

(2) The functions of the State transmission shall be –

- (d) to provide non-discriminatory open access to its transmission system for use by –
- (i) any licensee or generating company on payment of the transmission charges or
  - (ii) any consumer as and when such open access is provided by the State Commission under sub-Section (2) of Section 42 on payment of transmission charges thereon, as may be specified by the State Commission.

20. In exercise of its power under Section 39 and other applicable provisions of the Electricity Act, the State Commission had notified the Gujarat Electricity Regulatory Regulations for Open Access in inter-State transmission and distribution Regulation 2005

21. The Open Access Regulation deals with the terms and conditions to be satisfied by the Open Access customer such as ONGC (R-2) who seek open access of the transmission in the State of Gujarat for seeking open access for the Appellant.

22. The regulations relevant for the above purpose are Regulation 9 and Regulation 11. Regulation 9 deals with the procedure adopted by the long-term Open Access user and Regulation 11 deals with the exit option to such lo-tern Open Access user. Regulation 9 reads as under:

**“9. Procedure for long-Term Open Access User**

- (i) An application for long-term access shall be submitted to the concerned nodal agency.
- (ii) The application shall contain the details, such as capacity needed, point(s) of injection, point(s) of drawl, duration of availing open access, peak load, average load and such other additional information that may be specified by the nodal agency.

Provided that the nodal agency shall issue necessary guidelines, procedure and application forms within 30 days from the date of notification of these Regulations.

23. Under this Regulation, when an application has been filed for long-term Open Access, the consumer shall specifically mention about the details such as capacity needed, points of injection, points of drawl, etc.

24. Regulation 11 reads as follows:

**“11. Exit Option**

- (i) A long-term Open Access users shall not relinquish or transfer his rights and obligations specified in the Bulk Power Transmission/Distribution Capacity Agreement, without prior approval of the Commission.
- (ii) The relinquishment or transfer of rights and obligations by a long-term Open Access user

shall be subject to payment of compensation,  
as may be determined by the Commission”

25. This Regulation provides for the conditions to the effect that Open Access user shall not relinquish or transfer its rights specified in the agreement without the approval of the Commission and such relinquishment shall be subject to the payment of compensation.

26. In the present case the ONGC(R-2) actually wanted a change in the transmission lines. In respect of the 6 locations as mentioned above, the Open Excess permission was taken by ONGC(R-2) from the Gujarat Electricity Board by the letter dated 27.11.2000. Now ONGC(R-2) has sought modification of the above existing permission granted to them for Open Access by reducing the capacity in each of the said lines and adding 6 more locations for which Open Access was sought.

27. The question for consideration is as to whether such a change of location and reduction in Open Access capacity in the existing lines is a relinquishment of the existing Open Access permission given to ONGC(R-2) within the meaning of Regulation 11. It is the specific stand of the Appellant both before the Commission as well as before the Tribunal that the Open Access has been granted to ONGC(R-2) by the letter dated 27.11.2000 for a specific line and now ONGC(R-2) has sought modification to the lines including reduction in the capacity of the existing Open Access lines and adding such reduced capacity for all other lines and this would amount to relinquishment of the rights under the Bulk Power transmission.

28. On the other hand, the stand of the ONGC(R-2) that so long as the total capacity for the Open Access that was granted, is retained, the mere change in the points of delivery within the Gujarat system would not amount to relinquishment as no part of the capacity has been reduced.

29.. Accepting the stand of the ONGC(R-2), the State Commission has held that the Open Access is to the transmission system of the Appellant as a whole and not to the transmission line alone. Therefore, if there is a change in the points of delivery without there being a change in the total capacity, there is no relinquishment.

30. As noted above, Section 2(47) which defines Open Access as meaning non-discriminatory provision for the use of transmission lines or the distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation. Section 2(72) defines transmission lines. It means, high pressure cable and overhead lines transmitting electricity from (a) a generating station to another generating station and (b) a generating station to a sub-station. According to this definition, a transmission line is a point to point line to a generating station or to a sub-station. Thus, it is clear the Open Access is point to point in the

transmission system i.e. for a transmission line and not for the entire transmission system.

31. As we have stated earlier, Section 39 refers to non-discriminatory Open Access to its transmission system in the context of a State Transmission utility providing transmission. Similarly, Section 40 refers to transmission system in the context of a transmission licensee maintaining many transmission lines forming part of the system. The above does not mean that there can be open access only to the entire system.

32. There has to be a purpose as to why Regulation 9 contemplates that the applicant in the application shall specify the point of injection and point of drawl. This is not an empty formality. The entire process deciding to grant Open Access is based on the point of injection and point of drawl. Even before the Electricity Act 2003, the open access to the transmission lines and distribution lines were provided in the point of injection and point of drawl. This would be clear from the



approval letter dated 27.11.2000 which was granted by the Board only in respect of 6 transmission lines on which wheeling was allowed. This approval granted to ONGC(R-2) was on 6 specific lines with the point of injection, points of drawl and the capacity for which open access is sought.

33. As pointed out by the Learned Counsel for the Appellant it is a well accepted practice in the electricity industry that open access is restricted to specified transmission lines with specific injection and drawl points. Thus, there is no vested right to open access over the entire transmission system of the licensee.

34. Since the open access customer has no right whatsoever to shift point of drawl under the Regulations, the request for substitution of the new points of drawl would amount to surrendering capacity of the open access between the two specified points and seeking open access for the different point to point transmission.

35. Prior to the constitution of the State Commission, the tariff or terms and conditions for the transmission of electricity or wheeling of electricity were decided by the erstwhile Electricity Board under the powers vested with the Board under the Electricity Supply Act. The Government of Gujarat also had the power and authority to issue policy directive such as Captive Power Policy. After the constitution of the State Commission the power to determine and to regulate tariff of electrical industry including for the transmission of electricity on the transmission lines are exercised by the Appropriate Commission alone. In exercise of the powers vested in it, the State Commission notified the Open Access Regulations governing the transmission and wheeling of electricity on the transmission lines and distribution system maintained by the Appellant and other electricity utilities in the State of Gujarat.

36. The above Open Access Regulation defines the criteria for being classified as long-term Open Access user and short-term Open Access user, the rights, privileges, benefits, etc. applicable

to each of the above user. As per clause 24 of the Regulations all the existing users are deemed to be a long-term Open Access users. Therefore, the ONGC(R-2) was an existing user on the date when the Regulation came into force and accordingly it was to be treated as a long-term Open Access user.

37. In terms of the Captive Power Policy earlier announced by the Government of Gujarat, the permission for wheeling of 1.9 MVA surplus CPP from the ONGC(R-2) at Ankleshwar Asset to their own unit was granted. Subsequent to the above approval, erstwhile Gujarat Electricity Board accorded approval for wheeling to the specified six locations for a period of 10 years through their letter dated 27.11.2000. The arrangement for transmission wheeling of electricity as per the undertaking given by the ONGC(R-2) from the CPP of ONGC(R-2) located at Ankleshwar to the six identified places of consumption by the ONGC(R-2). The undertaking given by the ONGC(R-2) clearly means at clause no. 8 that the permission granted shall not be transferable.

38. Thus, the open access which the ONGC(R-2) is entitled to claim from the period from 01.04.2006 to the above six identified places and not to any other place. Any change or rationalization of the above open access including any addition or deletion of the locations can be only with the prior direction of the State Commission in accordance with the open access regulations.

39. Therefore, the order impugned does not satisfy the requirements as provided in the Open Access Regulations framed by the State Commission. Under those circumstances, we come to the conclusion that the change of locations at the point of drawl and the reduction in Open Access capacity in the existing lines would amount to relinquishment of the existing Open Access given to the ONGC(R-2) between the meaning of Regulation 11 and, therefore, the ONGC(R-2) has to file a fresh application seeking for the Open Access for the new locations . As far as the compensation is concerned, it is for the State Commission to decide as to whether the compensation is

compulsory, and if it is decided so, quantum of the same taking into consideration the various circumstances.

40. In view of the above discussions, the order impugned is set aside and the State Commission is directed to take steps to implement the order passed by this Tribunal as indicated above.

41. The Appeal is allowed. No costs.

**(H.L. Bajaj)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

**Dated: 31<sup>st</sup> March, 2010.**

**Reportable/Non-Reportable.**