

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal no. 39 of 2014

Dated: 29th September, 2015

Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of:

1. **Shree Renuka Sugars Limited** **...Appellant(s)/**
BC-105, Havelock Road **Petitioner**
Camp Belgaum – 590 001

Versus

1. **Gujarat Energy Transmission Corporation Ltd.**
Vidyot Bhavan
Race Course
Vadodara – 390 007

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

3. **Gujarat Electricity Regulatory Commission**
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City
Gandhinagar – 382 355
Gujarat **...Respondent(s)**

Counsel for the Appellant : Mr. Sanjay Sen, Sr. Adv.
Mr. Shubhanshu Padhi
Mr. Kush Chaturvedi

**Counsel for the Respondent : Mr. M G Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Saigal
Ms. Swagatika Sahoo for R-1 & 2**

**Ms. Suparna Srivastava,
Mr. J.J. Gandhi,
Ms. Venu,
Ms. Nishtha Sikroria,
Mr. Akshi Seen,
Mr. Mukherjee and
Mr. S.R. Pandey (Rep) for R-3**

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

The Appellant is a company named Shree Renuka Sugars Limited, engaged in the business of Integrated Sugar Refinery at village Barapar, Taluka-Gandhidham, District-Kutch, Gujarat. The Respondent no. 1 is the State Transmission Utility – Transmission entity in Gujarat, undertaking Intra-State transmission of electricity. The Respondent no.2 is the Distribution Licensee in the Paschim Gujarat area where the Appellant Sugar Refinery is situated. The Respondent no.3 is the Electricity Regulatory Commission for the State of Gujarat.

2. The Appeal no. 39 of 2014 has been filed by the Appellant under Section 111(1) of the Electricity Act, 2003 against the impugned order dated 08.08.2013 passed by the Respondent Commission, Gujarat Electricity Regulatory Commission (**“GERC”**) in Petition no. 1246 of 2012 rejecting the Petition filed by the Appellant.

3. The matter in issue relates to the liability of the Appellant to pay Parallel Operation Charges (**“POC”**)/Grid Support Charges (**“GSC”**) claimed by the Respondent no.1 Gujarat Energy Transmission Corporation Ltd. (**“GETCO”**) for the captive power plant (generating unit) for sugar refinery (consuming unit) located at the same premises (co-located) enabling the Appellant to draw electricity for its consuming unit and at the same time have the connectivity with the Grid operated and maintained by GETCO. By the impugned order dated 08.08.2013 in Petition no. 1246 of 2012, GERC has held that the Parallel Operation Charges (**“POC”**) are payable by the Appellant as per the earlier decision of the GERC dated 01.06.2011 passed in the Petition nos. 256 of 2003, 867 of 2006 and 941 of 2008.

4. The facts relevant for the decision in the Appeal are summarized as under:-
- A) The Appellant Sugar Refinery is supported by co-located captive co-generation power plant of 45 MW.
 - B) The Appellant has also taken HT connection for 2500 KVA (2.5 MW) contract demand from Respondent no.2, the Distribution Licensee.
 - C) The premises of the Appellant is connected to the Kidana sub station of GETCO falling within distribution area of Respondent no.2.
 - D) The Appellant exports the surplus power generated to the Grid.
 - E) By the above mentioned order dated 01.06.2011 passed by GERC, it was decided that the Parallel Operation Charges are payable by the Captive Power Plants (“**CPP**”) which are co-located with consuming unit at the rate and on the terms and conditions contained therein.
 - F) The Appellant on 01.02.2012 applied to GETCO in regard to the connectivity of the Appellant premises with the Grid. The Appellant gave an undertaking to pay the Parallel Operation Charges in terms of the above order dated 01.06.2011 of GERC. The

Appellant had also signed other agreements required for the above connectivity.

- G) Subsequent to the above, the Appellant realized that the undertaking given and agreement entered into providing for payment of Parallel Operation Charges was under wrong perception and understanding given to the Appellant by the respondent, GETCO. According to the Appellant, the connectivity to the grid was for export of surplus power and the Appellant had a separate connection for import of 2.5 MW (2500 KVA) for start up purposes for which the Appellant is paying usage charges in addition to POC and the Appellant does not require any grid support in excess of 2.5 MW for which it should pay Parallel Operation Charges. According to the Appellant, there is no intention of the Appellant to draw any power from the Grid in excess of 2.5 MW and even 2.5 MW is required only at the time of starting the unit. However, for sustaining the operation of the unit no power is required from the Grid since the Captive Power Plant is more than adequate for its purposes.

5. In this Appeal no. 39 of 2014, the Appellant states that this Appeal arises out of the actions of the Respondent no.1 in imposing POC on the Appellant. According to the Appellant this action of the Respondent no.1 is not only unjust, illegal but is also contrary to law. The Appellant further submits that he is being compelled to pay an amount of Rs. 16,87,000 (currently Rs. 14,90,625) per month as POC without any justification which the Respondent no.1 is not entitled to receive such amount from the Appellant and on the contrary the Appellant is entitled to refund of the entire amount.
- 5.1 The Appellant further submits that they being Cogeneration plant and impugned order dated 08.08.2013 passed by the Respondent no.3 was based on its earlier dated order 01.06.2011 which only cover Captive Power Plant and not the Cogeneration plant which as per the Appellant is different and distinct from the CPP models.
- 5.2 The Appellant further submits that he is engaged in the business of sugar refinery which needs two inputs viz. (a) Power and (b) Steam for process and the power generated by the plant is “incidental” in nature and is necessarily much more than the required quantity of power required for the captive use and this excess incidental power generated is exported and this aspect is distinct and peculiar in so

far as sugar refinery is concerned. As such the Appellant is connected with the Grid essentially for the purpose of exporting the excess power and the entire quantity of power required for the process is generated by the Appellant as stated above. For some limited requirement of power, the Appellant has a separate consumer connection taken from PGVCL, the Respondent no.2 and is paying the requisite charges. The Appellant further submits that the Cogeneration plant does not seek or take any Grid support in so far as requirement of power for the captive use is concerned.

5.3 For start up of sugar unit, the Appellant has a separate contract demand of 2.5 MW and the Appellant pays the contract load charges and also the energy charges against the said connection to Respondent no.2.

5.3.1 The Appellant submits that for the purpose of this power connection, the Appellant has installed the overhead transmission lines and other equipments as per the statutory requirements upto Kidana sub station. The Appellant submits that the Appellant has been granted import power connection with Consumer Account no. 32011 with contract demand of 2500 KVA. The Appellant submits that the Appellant is receiving separate bills for this power

connection from Respondent no. 2, which are both fixed and variable, and the same are being paid regularly.

5.4 As per the Appellant, in case of the Cogeneration plant, the power plant also gives certain support to the Grid as injects power into the Grid and does not draw from it (except 2500 KVA for start up). As such the issue as to whether a Cogeneration plant such as Appellant's also liable to POC charges has not been decided in the impugned order dated 08.08.2013.

5.5 An order dated 01.06.2011 was passed by the learned State Commission, that the POC is to be levied so as to compensate the transmission utility and the distribution licensee for the fixed costs they have incurred so as to provide the required infrastructure for the required power for the unit. The Appellant submits that the charges at the best can have nexus with the actual load or consumption of power by a unit. At this stage, the Appellant begs to reproduce some of the observations made by the State Commission in the order dated 01.06.2011 as under:

“23.28 In the base MVA support method, the Commission is of the view that the parallel operation charge has to be related to the fixed costs of the utilities. According to the tariff orders issues by the Commission for FY 2010-11 the transmission related fixed cost is Rs. 1172 Cr and distribution related fixed cost (upto 11 kV) for all

the distribution licensees is Rs. 625.95 Crores. The total connected load in the system is 28275.29 MVA. The transmission related fixed cost as Rs/kVA of connected load works out to be Rs. 34.54/kVA/month and distribution related fixed cost (upto 11Kv) works out to be Rs. 18.45/kVA/month. Thus, the total fixed cost of transmission and distribution systems works out to Rs. 53.09 KVA/month.

As analyzed in para 23.12 and in this para, the CPPs get support from the State transmission utility (STU) and distribution licensee as services. The Parallel Operation Charges thus received from CPP shall be shared between the transmission and distribution systems in proportionate of their fixed cost which is at present in the ratio of 2:1.

23.29 It is observed that parallel operation is beneficial to the CPP and at the same time, it is true that some benefit is also accrued to the grid. Considering the Pari passu it is proposed to levy 50% of the transmission and distribution related fixed costs on the CPP. Accordingly, the Commission decides that the POC should be levied at Rs. 26.50 per KVA per month for the installed capacity of the CPP.”

5.5.1 The Appellant submits that the State Commission considered the ‘total connected load in the system’ as a factor to determine the total fixed cost of transmission and distribution system. The phrase connected load is always understood in the context of the demand of a unit whereas the installed capacity of CPP is understood in the context of the supply of power generated from the CPP. It is submitted by the Appellant that the compensation of the cost can thus never be related to the installed capacity of CPP. It has to have nexus only with the connected load of the processing unit.

The Appellant submits that the connected load would have direct relation with the consumption pattern and not with the installed capacity of the CPP. The Appellant submits that the transmission utility and distribution licensee do not generate power. These entities are involved in transmission and distribution of power to the end consumers. The cost of transmission and distribution as computed by the State Commission is thus on the basis of the connected load to the system'. It is submitted by the Appellant that the said order has no application to the facts and circumstances of the present case. In their opinion, at best it should be limited to the connected load and not the installed capacity.

5.6 The Appellant submits that the Appellant also intended to Export the excess power through the Grid at the same interconnection point and hence entered into an agreement dated 1.2.2012 with GETCO as per their requirement.

5.6.1 By and under this agreement, the Appellant agreed to connect the Cogeneration plant having installed capacity of 45 MW with the Grid. The agreement does provide for operations of the Cogeneration plant in parallel with the Grid. The Appellant submits that the Appellant is not required to separately install the overhead

transmission lines and other equipments since the overhead transmission lines and the equipments were already installed for the purpose of getting the power connection for the purpose of start up of the Cogeneration plant and also for export purpose. Without prejudice, the Appellant submits that as required under the agreement, the Appellant also agreed to pay an amount of Rs. 16,87,000/-. However, PGVCL, vide its letter No. GDO/Rev/HT-POC/32011/13/3569 dated 19.7.13 PGVCL has informed Appellant that they had been erroneously deducting higher amount of Rs. 16,87,000/- instead of actual calculated amount of Rs. 14,90,625/- and have reimbursed Appellant the difference amount of Rs. 31.42 Lacs and have further agreed to pay the Appellant interest charges on this surplus amount. As such we may now consider the POC charges to be Rs. 14,90,625/- as applied by them for 45 MW capacity as POC per month.

5.6.2 The Appellant submits that the Appellant in fact never drew, nor intend to draw, any power from the Grid more than the connected load of 2500 KVA at any point of time. The Appellant submits that currently, the Appellant's sugar refinery is not fully operational. Even if the Sugar refinery runs at full expanded capacity i.e. 6000

tonnes per day, the question of drawing power to the extent of the installed capacity of 45 MW will not arise, since the Cogeneration power plant of the Appellant produces sufficient amount of Steam and Power and is capable of satisfying the inhouse requirements. Further, even in the event of failure of the Cogeneration plant, the Appellant will not require more than 2.5 MW (2500 KVA) power for start up of the Cogeneration plant auxiliaries.

- 5.7 Without prejudice to the contention, Appellant is not liable to pay POC, the Appellant had also requested the Respondent no. 1 to grant its approval for installation of a meter with 3 minutes integration for computing the maximum demand charges and the denial of the same to the Appellant is absolutely unreasonable and arbitrary.
- 5.8 The Appellant further submits that the undertaking given by them on 01.02.2012 should not be enforced and the amounts paid by them as per this agreement shall be refunded to the Appellant.
- 5.9 In view of the above, the Appellant has primarily raised the following contentions:

- (a) The impugned order does not recognize the different characteristics of Sugar Refineries cogeneration power plant with utilization of steam from operation in the Sugar Refinery being used to generate electricity and this plant is a Cogeneration plant as compared with various captive power plants considered leading to the GERC order dated 01.06.2011. In the case of the Appellant there is a higher quantum of generation of electricity which makes operation self-sustained and there is no import of power from the Grid for such operation except for the start up purposes. The Appellant had taken separate connection of 2.5 MW for the start up power. Their connectivity taken to the Grid system is for export of power and there being no Grid support required for the sustaining the operation of Sugar Refinery, hence, there can be no Parallel Operation Charges payable.
- (b) The Parallel Operation Charges should be limited to the actual load and not to the installed capacity of the Captive Power Plant.
- (c) In any event, the Appellant is to be given the benefit of 3 minutes integration with no Parallel Operation Charges as was given to other industries.

- (d) The undertaking given on 01.02.2012 by the Appellant should not be enforced as there is no estoppel against law.
6. We have heard at length the arguments of Mr. Sanjay Sen, the learned senior counsel for the Appellant and Mr. M.G. Ramachandran, the learned counsel for the Respondent no. 1 and 2 and Ms. Suparna Srivastava, the learned counsel for Respondent no. 3 and considered their written submissions.
7. The following issues would arise for consideration in this Appeal:-
- a) **Whether the State Commission erred in imposing Parallel Operation Charges to the Cogeneration Plant of the Appellant?**
 - b) **Even if it is found that POC is applicable, whether the State Commission erred in imposing POC to the entire installed capacity of the Power Plant in the Cogeneration Plant of the Appellant?**
 - c) **Whether the State Commission erred in denying the 3 Minute Integration facility to the Appellant?**
 - d) **Whether the State Transmission Utility (GETCO) erred in getting the Undertaking executed by the Appellant for payment of POC?**

8. Since all the above issues are inter-woven, we will deal with all the issues together.
9. Based on the above broad facts, the Appellant earlier filed Petition no. 1246 of 2012 before the GERC for following reliefs.
 - i) Direct the respondent to treat the petitioner as a consumer with the contract load of 2.5 MW required only for the purpose of start up of its cogeneration plant and for export surplus power;
 - ii) Declare and hold that the petitioner is not liable for any POC charges since the petitioner has never run its cogeneration plant in parallel with the Grid for import of more than 2.5 MW of sanctioned load at any point of time;
 - iii) Direct the respondent to take appropriate steps for cancelling/amending the agreement dated 1.2.2012 for releasing the petitioner from all obligations to pay any POC charges to the respondent, in the interest of justice and equity;
 - iv) Direct the respondent to refund the amount of Rs. 16,87,000/- paid by the petitioner to the respondent for the period from March 2012 till August 2012 or for any further period towards POC Charges with such interest as may be deemed appropriate by the State Commission;

v) Restrain the respondent from collecting the amount of Rs. 16,87,000/- per month from the petitioner on such terms as may be deemed appropriate by the State Commission.

10. By the impugned order dated 08.08.2013 GERC had rejected the petition of the Appellant, with the following observations and conclusions;

“6. The issue for decision of the Commission in this case is whether the petitioner is required to pay the Parallel Operation Charges on the ground that he does not import any power from the grid and only uses the connection for export of power from its CPP. In this context, the order of the Commission dated 1.6.2011, para 24, is required to be seen, which is reproduced below:

“24. Considering the above, the Commission orders as under:

.....

(iii) After hearing all the parties, and as discussed in the earlier para the Commission decides that POC is leviable for the CPPs operating in parallel with the state grid. The charge decided in this order is applicable to the respondents of the present petition, who have not executed any agreement with the petitioner as per the High Court of Gujarat order dated 28th April, 2009 in Misc. Civil Application No. 2967 of 2008. Moreover, the charges decided in this Judgement at the rate of Rs. 26.50/KVA shall also apply to the new CPPs, operating in parallel with State transmission utilities (Transmission licensee) and/or distribution licensee network in the grid.”

6.1 From the above, it transpires that the parallel operation charges decided by the Commission shall apply to all the new CPPs operating in parallel with the State transmission utilities and/or

distribution licensee network in this regard. Any CGP which is connected with the grid either for import or for export of power is required to pay the Parallel Operation Charges as determined by the Commission in the order dated 1.06.2011 in the petition No. 256 of 2003, 867 of 2006 and 941 of 2008.

- 6.2 *Further, the petitioner has also given an undertaking that he will pay the parallel operation charges as and when decided by the GERC as mentioned in the undertaking, which is reproduced below.*

“The GERC has made it known that the Parallel Operation Charges are livable under the provisions of the Central Act and Gujarat Act and issued the order for levy of Parallel Operation Charges in the Petition No. dated Whereas on due consideration of the request made by the obliger for grant of permission of parallel operation of its aforesaid CPP the obligee has agreed to accede to the same.

AND WHEREAS in consideration of our request by the obligee to grant permission for operation the CPP in parallel with the GRID of the obligee, we, the obliger hereby: Agree and undertakes to pay the parallel operation charges (POC) of the installed capacity to the obligee for 16, 87,000=00 (56.25 MVA x 1000 x 26.5) as stipulated here under immediately from the date of connectivity of the CPP in parallel with the GRID of the obligee. Such payment of POC will be made by the obliger to the obligee within 10 days from the date of billing to be recovered through DISCOM Bill.

GERC decides these charges in future, the charges so decided by GERC will be applicable from prospective date and till that date above charges will be paid by obliger.

Agrees to abide by all the prevailing norms/conditions/rules/regulations of the obligee and the GERC governing parallel operation of CPP from time to time.

Further undertakes to indemnify and keep always indemnified the obligee against all claims/losses/damages/compensation,

whatsoever nature that may at any time arise to the obligee on account of the grant of permission from the parallel operation of its CPP with the GRID of the obligee.

The obliger hereby acknowledges and declares that it has willingly and voluntarily agreed to make the payment of parallel operation charges against the GRID support services rendered by the obligee and the obliger has consented to the same in its best interest as a mutually agreeable, commercial transaction with the obligee. The obliger hereby further declares and undertakes that it will not challenge or dispute the levy of parallel operation charges by the obligee as agreed upon herein above, before any forum/court, in future.”

6.3 It is clear from the above undertaking that the petitioner had agreed to pay the parallel operation charges as and when determined by the GERC in future from a prospective date or till the date the above charges are applicable. It is further seen that the CGP was approved for operating in parallel with GETCO grid on 23.8.2011 much after the order dated 1.6.2011 of the Commission. The Electrical Inspector has given such approval on the above date. The petitioner has been using the grid for export of power of 5 MW or more to the Indian Energy Exchange as is evident from the approval given by the SLDC from time to time. It is clear that the benefit of power trading is possible only when it is connected in parallel to GETCO grid.

6.4 The concept of export or import of power is not different when the petitioner is connected to the grid. The very fact that the petitioner is availing of the transmission facility for export of power makes it liable to pay the parallel operation charges.

6.5 The other issue raised by the petitioner relating to payment of Parallel Operation Charges on the actual load contracted to PGVCL is also not valid. The parallel operation of CGP is with the GETCO grid for use of the petitioner to the extent of the full CGP capacity and not to the extent of the contracted demand with PGVCL. The petitioner is free to import/export power to the extent of the CPP capacity which is 45 MW. The facility by GETCO in this parallel operation is for the total CGP capacity

and not to the extent of the contracted demand from PGVCL. The Commission in its order dated 1.6.2011 has clearly indicated that the charges of Rs. 26.50 per KVA shall apply to all new CGPs operating in parallel with the State transmission utilities (Transmission licensee) and/or distribution licensee network in the grid.”

11. The GERC in the above order then relied on the decision of this Appellate Tribunal in M/s. SAL Steel Ltd. Vs. GERC and others decided on 31.05.2013 in Appeal no. 155 of 2012 upholding the order of Commission in other case stating that the Petitioner M/s. SAL Steel Ltd. is required to pay the Parallel Operation Charges as per the order dated 01.06.2011 and there was no option available to them for 3 minutes integration after the order of the Commission dated 01.06.2011. The conclusion reached by the GERC is as follows:-

“6.7. Hence, we decide that the parallel operation charge is applicable to the petitioner and the petitioner is liable to pay the parallel operation charges for the entire CGP capacity of 45 MW and not on the contracted demand from the PGVCL.”

12. The Respondents including the GERC have contested the above claim of the Appellant. The Respondent nos.1 and 2 have largely relied on the earlier decision of this Appellate Tribunal on different aspects on the aspect of admissibility of the Parallel Operation

Charges, reliance was placed on the decision dated 18.02.2011 in Appeal no. 120 of 2009 in CSPDCL Vs. Godawari Power, decision dated 12.09.2006 in Appeal no. 99 of 2006 in case of Urla Industries Association, and dated 24.04.2009 in Appeal no. 86 of 2008 of Indian Acrylics Ltd. Referring to the full Bench decision in Godawari Power, the objective and purpose of Parallel Operation Charges including the reason why it is levied on co-located captive power plant along with consuming unit was emphasized.

13. On the aspect of the claim of the Appellant for 3 minute integration and no liability to pay the charges for such 3 minute integration as given to some of the entities, it was urged by the Respondents that the same is available only to those who have availed specific option before passing the order dated 01.06.2011 by GERC and this has been decided by the Tribunal in SAL Ltd. case dated 31.05.2013 in Appeal no. 155 of 2012.
14. Likewise on the aspect of charging the parallel operation on installed capacity, reference was made to yet another decision of the Tribunal dated 05.11.2012 in Appeal no. 65 of 2012 of Shah Alloys Ltd. The enforceability of the Undertaking given by the Appellant to pay the charges as per the order dated 01.06.2011 of

the GERC was also emphasized. The Respondents also submitted that the order of GERC dated 01.06.2011 had considered cogeneration captive plant also being subject to the Parallel Operation Charges.

15. The above 4 aspects raised by the Appellant in light of the submissions made are being considered.

15 (a) **Parallel Operation Charges (POC) for Cogeneration plant**

i) In so far as the levy of Parallel Operation Charges for Cogeneration plant is concerned, the order dated 01.06.2011 passed by the GERC had decided as under:-

“23.13 In view of the above observations, we decide that the consumers having CPPs and connected with the grid shall have to pay POC. At present the consumers and open access users connected to the grid, consisting of interconnected transmission lines, S/S generating system, bear the transmission charges. The CPPs with connected load also enjoy the benefits of services of system operation from transmission licensees and distribution licensees. Hence, CPPs should pay POC, which would be shared by the STU and the distribution licensee concerned.

23.14 Now we deal with the issue of applicability of parallel operation charges. The load connected with CPPs is situated in the following manner.

(1) CPPs are situated at different places and part load of the consumer is connected at the place of CPP and part load receiving power through open access from it is situated at a different place.

(2) CPPs and load connected with it are situated at the same place and connected with grid.

(3) CPPs and load connected with it are having reverse flow relay provided at their end and power flow is possible only from CPP to grid.

23.15 In case of the first situation, the part load which is situated at the CPP premises is only eligible for levy of parallel operation charges as they receive services from the grid as stated in earlier para No. 23.13 above. While the load which is situated at another place and getting power generated from CPP by wheeling/transmission through open access is equated with a consumer without CPP. Hence, for such quantity of power wheeled from CPP, no POC is leviable.

23.16 In case of the second situation, the load of the consumer connected with CPP at the same premises is fully receiving support from the grid as stated in para 23.13, shall have to pay POC as decided in this order.

23.17 In case of the third situation, whenever the load of the consumer connected with CPP falls instantaneously due to failure of equipment of the consumer's machine etc. in such a situation, the excess generation of CPP will affect CPP adversely. It might lead to tripping of the CPP, and a transient effect on it. In such eventuality, the excess power of the CPP will be injected to the grid and avoid tripping and other adverse effect on the CPP. Moreover, they are benefited by way of injecting harmonics into the grid, increase in fault level etc. Hence, for the load of the consumer of CPP with reverse flow relay, it is desirable to apply POC as decided in this order."

- ii) Thus, in terms of the order dated 01.06.2011 of the GERC, there is no applicability of Parallel Operation Charges in case of the captive power unit and the consumption unit

are not co-located and it applies only when both are at the same premises integrated to one another.

- iii) The GERC order dated 01.06.2011 was challenged before this Tribunal in Appeal no. 65 of 2012 and the decision of the GERC was upheld in Shah Alloys Ltd. case by Tribunal's order dated 05.11.2012.
- iv) A Full Bench of the Tribunal in Appeal no. 120 of 2009 relating to Parallel Operation Charges in Chattisgarh by order dated 18.02.2011 has held as under:-

“17. The parallel operation is a facility in the nature of a Grid support to the Captive Power Plant. The Captive Power Plant gets the following advantages owing to the parallel operation with the Grid:

- (i) The fluctuations in the load of CPP are absorbed by the utility grid in the parallel operation mode. This will reduce the stresses on the captive generator and equipments. The CPP can operate his generating units at constant power generation mode irrespective of his load cycle.*
- (ii) Absorption of harmonics.*
- (iii) Negative phase sequence current is generated by unbalance loads. The magnitude of negative phase sequence current is much higher at the point of common coupling than at generator output terminal. This unbalance current normally creates problem of overheating of the generators and other equipments of CPP, if not running in parallel with grid. When they are connected to the grid, the negative phase sequence current flows into the grid and reduces stress on the captive generator.*

- (iv) Captive Power Plants have higher fault level support when they are running in parallel with the grid supply. Because of the higher fault level, the voltage drop at load terminal is less when connected with the grid.*
 - (v) The grid provides stability to the load of Captive Power Plant to start heavy loads like HT motors.*
 - (vi) The variation in the voltage and frequency at the time of starting large motors and heavy loads, is minimized in the industry, as the grid supply acts as an infinite bus. The active and reactive power demand due to sudden and fluctuating load is not recorded in the meter.*
 - (vii) The impact created by sudden load throw off and consequent tripping of CPP generator on over speeding is avoided with the grid taking care of the impact.*
 - (viii) The transient surges reduce the life of equipment of the CPP. In some cases, the equipment fails if transient is beyond a limit. If the system is connected to the grid, it absorbs the transient surges. Hence, grid enhances the life of CPP equipments.*
- 18. In short, the gain to the Captive Power Plant is quite substantial in case there is grid support. Owing to the above said substantial gains to the Captive Power Plant by operating in parallel with the grid, the parallel operation charges are levied from the Captive Power Plant.*
- 19. Therefore, the State Commission is empowered to deal with the question as to whether the levy of parallel operation charges is permissible or not. This aspect has been dealt with by this Tribunal in judgment dated 12.9.2006 in Appeal No.99 of 2006. In the said judgment, this Tribunal upheld the levy of parallel operation charges by the State Commission. The relevant observations of the Tribunal are as follows:*

.....”

v) Earlier to above, the levy of Parallel Operation Charges was held to be valid in two decisions of the Tribunal; in the decision dated 12.09.2006 in Appeal no. 99 of 2006 - Urla Industries Association Vs CSERC and dated 24.04.2009 in Appeal no. 86 of 2008 - Indian Acrylics Ltd vs. PSERC & Ors. And the relevant portions are reproduced below:

“1) Urla Industries Association V. Chhatisgarh State Electricity Regulatory Commission (Division Bench Judgment dated 12.09.2006 in Appeal No. 99 of 2006)

“11. Next we shall take up points C & D together, as the discussions overlap each other. The parallel operation is definitely a service that the second respondent renders to all the CPPs like the appellant. It is the contention of the appellant that no charges could be levied or collected for the said service. As rightly pointed out by the Expert who appeared for the second Respondent, the parallel operation is a service which extend support to the system and at the same it causes voltage dip in the system, harmonics, injection, additional reactive power requirement etc. By parallel operation the CPP gains more and hence it is liable to pay the charges for the service.

12. The contention that no charges at all is payable for parallel operation or transmission system cannot be sustained and such a claim is contrary to factual position. There is no escape for CPP to pay charges for parallel operation by which parallel operation the CPP gains while the

transmission system of the second respondent is affected apart from the admitted fact the transmission grid is strengthened by the power injected by CPP. Hence the contention that no charges at all is payable by CPP to the second respondent for parallel operation is not acceptable nor such a claim could be sustained.

13. *Concedingly for the past several years, CPPs were paying at the rate of Rs. 16/= per KVA per month and in the absence any scientific data placed or objection by the appellants and other CPPs, the commission just followed the same scale and fixed the same tariff viz Rs. 16/= per KVA per month. On a review the commission has slashed the said rate and fixed it at Rs. 10/= per KVA per month. This works out approximately paisas 2 to 3 per unit per month, a negligible rate when compared to services rendered by second respondent. The rates of parallel operation charges so fixed are till the next tariff fixation, which is under progress.*
 14. *It is strongly contended by the learned senior counsel that in the absence of scientific data and particulars the fixation is arbitrary and on the higher side. Per contra the second respondent while contending that the appellants could have very well placed the data to show the fair rate of charges for such parallel operation.*
 15. *We are informed by either side that the first respondent commission is seized of the very issue and the respondent after study and sample survey has placed required data, which will enable the Regulatory commission to fix parallel operation charges on a scientific basis and on the materials and data placed before it.”*
- II. *Indian Acrylics Ltd –v- PSERC & Ors (Division Bench Judgment dated 24.04.2009 in appeal No. 86 of 2008)*
- “5) *Before us it is submitted by Mr. Deepak Sabharwal that the respondent No.2 had requested the Commission to withdraw the parallel operation charges on the ground,*

inter alia, that levy of these charges is against the provisions of the Electricity Act, 2003. It is contended by Mr. Sabharwal that if the respondent No.2 itself says that the levy of these charges is against law then the same must have been against law from the very beginning and therefore the review petition should have been allowed. Having carefully considered the submissions we find that there is no merit in the same. Mr. Sabharwal could not explain to us how the parallel operation charges are against the provisions of the Electricity Act 2003. It may be that the Board submitted a proposal to the Commission to discontinue the levy of parallel operation charges. It is also correct that the Board in its representation submitted inter alia, that levy of these charges were against provisions of the Electricity Act, 2003 (as can be seen from Chapter 6 of the public notice issued by the Commission for determination of ARR and tariff for the year 2006-07 in respect of Punjab State Electricity Board). This, however, does not mean that the Commission or the respondent No.2 become bound by such a statement in respect of the legal position. Neither the Commission nor the Board is estopped from charging parallel operation charges simply because the Board expressed such an opinion about the legal position of parallel operation charges. The appellant had failed to make out any ground for review. Nor is there any ground to interfere with the impugned order. Accordingly, we have dismissed the appeal.”

- vi) The Appellant’s captive power Plant is co-located with the Sugar Refinery and therefore covered by the decision dated 01.06.2011 of the GERC on levy of Parallel Operation Charges. It cannot be denied that the Appellant Captive Power Plant/co-located units are in operation in parallel with the Grid. The other aspect in the contention

raised by the Appellant to be considered is the issue of Captive Power Plant being cogeneration and nature of steam availability and generation in a sugar refinery. The Appellant's submission on the nature of utilisation of steam generated power in Sugar Industry is being different from the other Captive Power Plan and even other types of cogeneration cannot be disputed. The quantum of power generated due to higher quantum of steam required in the Sugar Industry is significantly higher and much in excess of the quantum required for the consuming unit in the Sugar Industry, hence there will be surplus availability of electricity generated. This, however, would not make it outside the Grid support through the parallel operation. The various supports which the unit would derive are listed in the Full Bench decision in Godawari Appeal no. 120 of 2009 which substantially applies to the Appellant.

- vii) The Appellant had itself applied for Grid support and had given an unconditional undertaking to pay the Parallel Operation Charges as per the GERC order dated 01.06.2011 and implemented the scheme after the order

dated 01.06.2011 of the GERC. The Appellant did not raise any such aspect at that point of time. If there is no Grid support derived by the Appellant it is open to the Appellant to isolate its facilities from getting support and opt for other means to export power to the Grid.

viii) It is also an established fact that the Cogeneration plant though different from CPP so far as the operation is concerned but not different on the aspect of operation in parallel with the Grid.

The impugned order dated 08.08.2013 rejecting the claim of the Appellant and holding that the facilities of the Appellant of Cogeneration plant are operating in parallel and hence liable to pay the charges is correct and is being upheld by this Tribunal.

15(b) Parallel Operation Charges linked to installed capacity

- i) The issue of Parallel Operation Charges being linked to installed capacity of the Captive Power Plant has already been decided by the Tribunal in order dated 05.11.2012 in Appeal No. 65 of 2012 which states as under:-

“8.The second point to be considered is whether in the event of the POC being found leviable upon the appellant such levy should be on the installed capacity of 41000 KVA or on the alleged derated capacity of 22595 KVA as claimed by the appellant.”

.....

“This is a reasoned order which is difficult to be not acceptable. The appellant relies on a letter dated 20.8.2008 which is a reply to the letter of the appellant dated 29.7.2008. This letter of the office of the Chief Electrical Inspector records that the Chartered Engineer certified that the DG Sets were capable of generating electricity of about 40 to 60 % and the total derated capacity of the six sets except the two sets discarded earlier worked out at 22595 KVA. This letter concludes with the sentence “The above certificate is issued for the purpose of extension of load from UGVCL only and shall not be used for any other purpose”. A close look at the letter shows that the Chief Electrical Inspector addressed this letter to the appellant on the basis of a letter of the Chartered Engineer. The Chief Electrical Inspector gets a derivative knowledge and that is only to the extent that the records revealed that the sets were capable of generating electricity to the extent of 40% to 60%. The Chief Electrical Inspector did not himself or through any of his officer conducted any requisite test for derating. It is not that upon necessary tests it has been found that the engines were not at all able to generate electricity beyond 60%. It is also not clear that the Chartered Engineer who issued the letter on 29.7.2008 himself performed the tests for the purpose of certification about derating. The letter dated 20.8.2008 which is banked upon by the appellant is with reference to the appellant’s letter to the Chief Electrical Inspector dated 29.7.2008 and it is not known what was the content of that letter dated 29.7.2008. It is only beyond dispute that two DG Sets were discarded as it was verified by the Inspectorate. In the circumstance, the observation of the Commission to the effect that the certificate was issued by the Chartered Engineer on the ‘presumption’ that the units could generate only 50 to 60% of the installed capacity cannot be assailed to be preposterous because the author of the letter also did not appear to have

personally conducted any tests. Presumption cannot be equated with certification. Certification is preceded by all permissible engineering tests which this letter does not reveal. And, delinking cannot be a one way traffic as it requires affirmation from the authority alone which accorded permission for parallel operation. Mr. Sen, learned advocate appearing for the appellant cites a decision of this Tribunal in Appeal no. 120 of 2009 decided on 18.2.2011. The facts and circumstances of the case in that appeal were completely different. A number of issues including the issue on jurisdiction of the Commission was raised in that appeal but the important fact that needs to be recorded here is that it was only upon inspection in that case that it was found that the power cable connections of the two TG Sets were removed and the said TG Sets were found to be out of service and this was not a disputed fact and in such circumstances, the Commission itself came to the opinion that the effective connectivity of the generating plant with the grid would be 40 MW, not 60 MW and this Tribunal also did not disturb the finding, yet holding that parallel operation charges are payable on the installed capacity of the captive power plant.”

- ii) This was also decided by the Tribunal in Chhattisgarh State Power Distribution Co. Limited –v- Godawari Power & Ispat Ltd. (Full Bench Judgment dated 18.2.2011 in Appeal No. 120 of 2009 and the relevant part of the said judgment is reproduced below:-

“23. The parallel operation charges are payable on the installed capacity of the Captive Power Plant. The Captive Power Plant consists of number of machines, equipments of which the steam boiler forms a part. The Captive Power Plant can produce only such a quantum of electricity based on the steam which is dependent on the capacity of the steam boilers installed. Even if the Captive Power Plant has multiple turbine

generators for delivering the electricity of a substantially higher quantum of power, in case the boilers providing steam for electricity generation are of capacity less than the sum of capacity required for the turbine generators then the ultimate capacity of the Captive Power Plant will be less than the sum of rated capacity of the boilers to provide steam. In other words, the capacity of the Captive Power Plant cannot be considered in isolation of one or two equipments but in a comprehensive manner taking into account the limitations or restrictions of one or two equipments such as boilers providing steam.

24. Considering the capacity of the boilers to provide steam, it will ultimately fed into the turbine generators for the purpose of generation, the State Commission has correctly decided the capacity of Captive Power Plant as 40 MW for levy of parallel operation charges.”

Since power plant of 45 MW of the Appellant is operating in parallel with the Grid and the fact this issue has already been decided earlier by this Tribunal in number of cases of similar nature, Parallel Operation Charges for the entire capacity as decided by the Commission in their order dated 08.08.2013 are in line with Tribunal's earlier judgment and the same is being upheld by this Tribunal.

15 (c) **3 Minute Integration Scheme**

- i) The scheme of 3 minute integration was available for those projects which desired connectivity before the passing of the order dated 01.06.2011 of the GERC and not for the

projects like the Appellant's which sought connectivity after 01.06.2011.

- ii) This issue is also covered by the earlier decision of the Tribunal in SAL Ltd. case dated 31.05.2013 in Appeal no. 155 of 2012 as under:-

“34. The Captive Power Plants who have given option during the pendency of the proceedings on the undertaking that Parallel Operation Charges would be payable upon determination were permitted to enter into settlement through the main order dated 01.6.2011. If the permission for option at this stage is given to the Appellant as claimed, it would amount to re-open the matter in which event all the other parties would start demanding one of the two options on the grounds that no prejudice would be caused to the Respondent by giving such option to those parties also. This cannot be permitted at this belated stage.”

- iii) The claim of the Appellant that it is entitled to 3 minute integration scheme instead of paying the Parallel Operation Charges is also not maintainable in view of explicitly reasoned order of the State Commission dated 01.06.2011. Hence, the Appellant's claim for 3 minute integration is rejected and the State Commission's order is upheld by this Tribunal.

15(d) **Effect of Undertaking given by Appellant**

- i) The Undertaking reads as under:-

“The GERC has made it known that the Parallel Operation Charges are leviable under the provisions of Central Act and Gujarat Act and issued the order for levy of parallel Operation Charges in the Petition No.Dated 1.6.2011. Whereas on due consideration of the request made by the obliger for grant of permission of parallel operation of its aforesaid CPP the obligee has agreed to accede to the same.

AND WHEREAS in consideration of our request by the obligee to grant permission for operation the CPP in parallel with the GRID of the obligee, we the obliger hereby: agree and undertake to pay the parallel operation charges (POC) of the installed capacity to the obligee for Rs.16,87,000=00 (56.25 MVAx1000x26.5) as stipulated hereunder immediately from the date of connectivity of the CPP in parallel with the GRID of the obligee. Such payment of POC will be made by the obliger to the obligee within 10 day from the date of billing to be recovered through DISCOM Bill.

GERC decides these charges in future, the charges so decided by GERC will be applicable from prospective date and till that date above charges will be paid by obliger.

Agrees to abide by all the prevailing norms/conditions/rules/regulations of the obligee and the GERC governing parallel operation of CPP from time to time.

Further undertakes to indemnify and keep always indemnified the obligee against all claims/losses/damages/compensation, whatsoever nature that may at any time arise to the obligee on account of the grant of permission from the parallel operation of its CPP with the grid of the obligee.

The obliger hereby acknowledges and declares that it has willingly and voluntarily agreed to make the payment of parallel operation charges against the GRID support services rendered by the obligee and the obliger has consented to the same in its best interest as a mutually agreeable, commercial transaction with the obligee. The obliger hereby further declares and undertakes that it will not challenge or dispute the levy of

parallel operation charges by the obligee as agreed upon herein above, before any forum/court, in future.”

- ii) The levy of POC is as per the order dated 01.06.2011 under which the Appellant squarely falls. Even if the Undertaking was not there, the Appellant still would have been liable to pay the same.
- iii) Further, in the present case, it is not that the POC has been charged because of the Undertaking but because of the applicability of order dated 01.06.2011. The Undertaking is taken from all consumers asking for parallel operation facility to make them aware of the prevailing charges etc.

The Appellant is a commercial entity and is at liberty to run on its own without any grid support and in such an event, no POC would be applicable. The various provisions of the Undertaking were explicitly clear and unambiguous and the Appellant while executing the said Undertaking must have thoroughly understood its implications. After going through all the provisions, this Tribunal finds that the Undertaking executed by the Appellant would remain in force and upholds the order of the State Commission.

Order

16. We have dealt at length with all the issues in this Appeal. Since all the issues have been decided against the Appellant and the Instant Appeal is devoid of merits, the present Appeal is dismissed and the impugned order dated 08.08.2013 passed by the State Commission is hereby re-affirmed. No order as to costs.
17. Pronounced in the Open Court on this **29th day of September, 2015.**

(I.J. Kapoor)
Technical Member

(Justice Surendra Kumar)
Judicial Member

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