

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR**

PETITION NO. 2239 OF 2023

In the matter of:

Petition under Section 86 of the Electricity Act, 2003 read with Regulations 3 (i) and 42 of the GERC (Terms and Conditions of Intra-State Open Access), Regulations, 2011 against recovery of excess amount of relinquishment charges from the Petitioner for allowing termination of extension agreements.

Petitioner : CERA Sanitaryware Limited,
Plot No. 9, GIDC Industrial Estate,
Kadi - 382715,
Dist.: Mehsana.

Represented by : Mr. D.S. Doshi
V/s.

Respondent No. 1 : Gujarat Energy Transmission Corporation Limited
Represented by : Ld. Adv. Mr. Aneesh Bajaj along with
Mr. Shobhraj Jayswal

Respondent No. 2 : Uttar Gujarat Vij Company Limited
Represented by : Mr. M.K. Makwana

CORAM:

**Shri Mehul M Gandhi, Member
Shri S.R. Pandey, Member**

Date: 02/09/2025

DAILY ORDER

1. The matter was kept for hearing on 19.08.2025.
2. Mr. D.S. Doshi, on behalf of the Petitioner - CERA Sanitaryware Limited, submitted that the present Petition is filed by the Petitioner against erroneous applicability of the Regulations of the Commission by the Respondent No. 1, GETCO and thereby recovery of excess amount of relinquishment charges from the Petitioner.
 - 2.1. He submitted that the Petitioner is having 1 MW (4 nos. x 0.250 MW) Wind Turbine Generators (WTGs), set up under Government of Gujarat Wind Power Policy, 1993 for captive use, which were commissioned on 20.09.1993 (0.25 MW) and on 22.09.1993 (0.75 MW) and as per the provisions of Gujarat Wind Policy, 1993, the agreement period for wheeling of power from 1 MW WTGs with the Respondent No. 1 was for 20 years from the date of commissioning of said WTGs i.e. up to 20/22.09.2013. The Petitioner is also having another 2.5 MW (10 nos. x 0.250 MW) WTGs which were commissioned on 30.03.1995 and the agreement period was for 20 years from the date of commissioning of said WTGs i.e. up to 29.03.2015.
 - 2.2. He submitted that since the 20 years transmission agreement period with Respondent No. 1 in respect of 1 MW WTGs was completed on 22.03.2013, the Petitioner requested Respondent No. 1 to extend the agreement period beyond 20 years for a further period of 7-10 years considering healthy condition of WTGs for generation of wind energy. As per the condition put forth by the Respondent No.1, the Petitioner signed extension in Transmission Agreement on 13.03.2014 for a period of 10 years with applicability of prevailing transmission charges and losses as applicable to normal Open Access consumers. Subsequently, the Petitioner also executed extended wheeling agreement on 23.05.2014 with the Respondent No. 2, Uttar Gujarat Vij Company Limited (UGVCL) for a further period of 10 years.

- 2.3. It is submitted that the Appendix-1 of the extension Transmission Agreement dated 13.03.2014 with Respondent No. 1 and wheeling agreement dated 23.05.2014 with Respondent No. 2, clearly notes that the 1 MW WTGs were already commissioned, which clearly demonstrate that the agreement dated 13.03.2014 with Respondent No. 2 was extension of earlier agreement after expiry of 20 years and not for new Open Access. The extension in transmission agreement dated 13.03.2014 for 1 MW WTGs with Respondent No. 1 contains pre-mature termination clause.
- 2.4. Moreover, with respect to 2.5 MW WTGs, the 20 years transmission agreement period with Respondent No. 1 was completing on 30.03.2015 and accordingly, the Petitioner requested the Respondent No. 1 to extend the agreement period beyond 20 years considering healthy condition of WTGs for generation of wind energy. As per the conditions put forth by the Respondent No.1, the Petitioner signed extension in Transmission Agreement on 01.05.2015 for a period of 10 years with applicability of transmission charges and losses as applicable to normal Open Access consumers.
- 2.5. It is submitted that the Appendix-I of the extension Transmission Agreement dated 01.05.2015 with the Respondent No. 1 clearly records that the 2.5 MW WTGs were already commissioned, which demonstrate that the agreement dated 01.05.2015 with the Respondent No.1 was extension of earlier agreement beyond 20 years and not for a new Open Access. The extension in transmission agreement dated 01.05.2014 for 2.5 MW WTGs with the Respondent No. 1 also contains pre-mature termination clause.
- 2.6. The Petitioner submitted that subsequent to signing of Transmission Agreement with Respondent No.1 on 13.03.2014 for 1 MW WTGS and Agreement dated 23.05.2014 for 2.5 MW WTGS, the Petitioner decided to discontinue the wheeling of energy from 3.5 MW WTGs at its Kadi Plant.

Accordingly, the Petitioner approached the Respondent No.1 for allowing termination of both extension agreements as per the applicable rules / regulations. In response, it was conveyed by the Respondent No.1 that the implementation of termination of transmission agreement will be effective only after the payment of compensation amount of ₹ 219 Lakhs.

- 2.7. He further submitted that the Respondent No. 1 had put a precondition for payment of compensation amount for allowing termination of transmission agreements. The Petitioner had shown its bona fide and deposited the compensation amount in good faith, which was realized by Respondent No. 1 on 11.09.2018 and 17.09.2018.
- 2.8. He submitted that in the Order dated 02.06.2020, the Commission in the similar case of M/s. Prashant India Ltd. in the Petition No. 1721 of 2018 had decided that it was erroneous on part of GETCO to compute the amount of compensation based on the formula provided under Regulation 42 (1) (b) of GERC Open Access Regulations and the Commission decided the principle that for the purpose of levy of compensation under Regulation 42, the use of Long Term Open Access rights need to be computed from the date of previous agreement and not from the date of extension agreement. Accordingly, the Commission directed GETCO to correct the computation of compensation amount payable for premature termination of extension agreement.
- 2.9. He submitted that in the Order dated 02.06.2020, the Commission set out the principles in regard to relinquishment charges which can be recovered by GETCO in a case where minimum period of long-term access has already been completed under previous agreement and the applicant is seeking to terminate extension agreement. The Order dated 02.06.2020 squarely covers the case of Petitioner also.

- 2.10. He submitted that upon realizing that the Respondent No.1 had collected excess amount of relinquishment charges from the Petitioner for allowing termination of agreements based on erroneous computation of compensation under the Regulation 42, the Petitioner vide letter dated 31.07.2020, giving reference to principle decided by the Commission in the Order dated 02.06.2020, requested the Respondent No.1 to correct the computation of compensation amount as per the formula provided under the Regulations 42 (1) (a) instead of Regulations 41 (1) (b) of GERC Open Access Regulations and refund the excess amount to the Petitioner.
- 2.11. In response, the Respondent No.1 denied Petitioner's claim on unsustainable grounds stating that the Petitioner's claim to recalculate the amount of compensation as per Regulation 42 (1) (a) of GERC Open Access Regulations is after a period of more than 2 years from the claim date of 17.03.2018 and therefore the claim is barred by limitation of time and cannot be processed.
- 2.12. Thereafter, the Petitioner vide letter dated 19.05.2021 made a representation to the Managing Director of GETCO to intervene in the matter for allowing refund of excess amount of compensation realized by Respondent No. 1 on the basis of erroneous calculation.
- 2.13. He submitted that even assuming that the limitation period of 2 years as per Section 56 of the Electricity Act, 2003 is applicable in the Petitioner's case the claim for refund made by the Petitioner on 31.07.2020, was well before 2 years limitation period considering that the cause of action arose only when the Respondent No. 1 had realized the amount of relinquishment charges on 11.09.2018 and 17.09.2018 and further that Respondent No. 1 had effected the termination of agreements only in the month of May 2019 and until that period the Respondent No. 1 had recovered transmission charges from the Petitioner.

2.14. The Petitioner submitted that the Respondent No.1, vide its reply dated 03.01.2022, changed its stands stating that as there was no objection by the Petitioner while making the payment of relinquishment charges, the amount cannot be refunded. This shows that Respondent No.1 had been deliberately changing its stands and avoiding refund of relinquishment charges on the unsustainable ground.

3. Ld. Adv. Mr. Aneesh Bajaj, on behalf of the Respondent No. 1, GETCO, submitted that the Transmission Agreement for 1 MW had expired on 22.03.2013 and the Petitioner had requested for extension vide letter dated 05.02.2014 i.e. much after expiry. Hence, there cannot be any extension, and it had to be a fresh agreement which was signed on 13.03.2014 and the same was signed for 10 years. This means that the Petitioner had blocked the capacity. In case of 2.5 MW also, the Petitioner had signed a fresh Agreement on 01.05.2015 for 10 years and blocked the capacity. The terms and conditions applicable are as applicable to normal Open Access consumers. Merely because the units were already commissioned does not mean that this is an extension agreement.

3.1. Ld. Adv. submitted that the Petitioner had agreed for payment of relinquishment charges as per the GERC Open Access Regulations 2011 in case of premature termination. At that time, the Petitioner did not raise any objection or protest about the terms and conditions nor challenged the BPTA before the Commission or otherwise.

3.2. He further submitted that the Petitioner was well aware of the age of its plant which had already completed 20 years in 2013 / 2015 and still the Petitioner sought the Open Access for 10 years. It was open to the Petitioner to apply for short-term, medium-term or long-term open access as per the Open Access Regulations. However, the Petitioner opted for 10 years, and the capacity was blocked for them.

- 3.3. He submitted that the Petitioner had duly paid the relinquishment charges in 2018 without raising any issues at the relevant time. The payment was made voluntarily and without any protest. The Petitioner has admitted that it had made the payment without raising any issue. The Petitioner has not produced any letter protesting the payment or even otherwise has not stated in the Petition that it had raised any protest. Now belatedly the Petitioner is raising issues. The relinquishment charges recovered are adjusted against the Aggregate Revenue Requirement (ARR) of Respondent No.1 and therefore accounts have been duly settled.
- 3.4. He submitted that the Respondent No.1 had acted as per the prevailing position at the time and sought the relinquishment charges. The Petitioner was aware of the Open Access Regulations 2011 and cannot now claim that it went on the basis of Respondent No. 1's computation. The Petitioner had accepted the position and cannot now claim any ignorance of law. The Petitioner did not raise any objection on either the applicability of the compensation or the calculation of the amount. The Respondent No. 1 had proceeded on the basis that the Petitioner cannot seek Open Access for a period of 10 years and then relinquish it prematurely without any compensation to the transmission licensee.
- 3.5. He submitted that the Petitioner having already submitted the amount without raising any objection, had suddenly after a long period, sought to claim from Respondent No.1 without filing any petition or proceedings which could not be entertained by Respondent No.1. Further, the Petitioner did not file the petition despite the initial rejection by Respondent No.1. It is submitted that the Petitioner cannot be permitted to now unsettle accounts which already stand settled.

3.6. With regard to Order dated 02.06.2020 in Petition No. 1721 of 2018 cited by the Petitioner, he submitted that it was a subsequent decision which had come more than two years after the claim had been raised by Respondent No.1 and nearly two years after the payment had been made by the Petitioner. It is submitted that there was no direction in the Order dated 02.06.2020 for Respondent No.1 to refund such relinquishment charges to persons not before the Commission in the said Order. It is submitted that the Petitioner who had accepted the position cannot now use the subsequent decision to claim relief.

3.7. He submitted that it is well settled principle that a person cannot sleep over its right and then claim relief when another person who had pursued its claim received relief:

3.8. The Respondent No. 1 relied on following Judgements of Hon'ble Supreme Court to support its arguments:

- a. V. Chandrasekaran -v- Administrative Officer, (2012) 12 SCC 133
- b. Sulochana Chandrakant Galande -v- Pune Municipal Transport, (2010) 8 SCC 467
- c. M/s. Rup Diamonds and Ors. v. Union of India and Ors. (1989) 2 SCC 356, AIR 1989 SC 674
- d. Jagdish Lal and Ors. v. State of Haryana and Ors. (1997) 6 SCC 538

3.9. He submitted that the Petitioner had agreed to pay the relinquishment charges and accepted the liability. It cannot now belatedly (after nearly five years) change its mind and raise issues that the charges were erroneous. The Petitioner is barred by principles of laches, waiver and acquiescence.

3.10. He submitted that the Petitioner's contention in regard to the cause of action for Limitation Act, 1963 arising only on 03.01.2022 is also incorrect. The cause of action arose in March 2018 when the claim was made and even as per the Petitioner, the claim arose in September 2018 when the payment was made. Mere writing of letters would not extend the limitation nor give rise to any fresh cause of action. If this was permitted, parties would keep writing letters raising new grounds and every time there is a rejection, would claim a fresh cause of action.

4. Mr. D.S. Doshi, on behalf of the Petitioner, submitted that the Respondent No. 1 has not disputed the facts that in respect of Petitioner's 1 MW and 2.5 MW capacity WTGs, the initial agreement period of 20 years was already expired on 22.03.2013 and 29.03.2015. This period is much beyond the minimum lock-in period of 12 years and therefore, there was no rationale on part of the Respondent No. 1 to seek relinquishment charges from the Petitioner by applying the Regulation 42 (1) (b) of the GERC Open Access Regulations, 2011.

4.1. He submitted that the Petitioner's case is squarely covered by the decision of the Commission in the Prashant India case and there is no logic and justification for the Respondent No.1 to treat the Petitioner differently. The Respondent No.1 has failed to point out as to how the fact involved in the present case is different from the facts of Prashant India case.

4.2. He submitted that it is also wrong and denied that the Petitioner has kept silence and sought refund after long period of time. It is stated that immediately after realizing that the Respondent No. 1 has committed mistake in applying the Regulation 41 (1) (b) for computation and recovery of relinquishment charges, the Petitioner had represented to the Respondent No.1 to correct the mistake. However, it was Respondent No. 1 who had not

only delayed the response to the Petitioner's representation but also keep on change its stand which has led to delay.

- 4.3. It is submitted that as per the catena of judgments of Hon'ble Supreme Court, the Respondent No. 1 is a "State" with the meaning of Article 12 of constitution of India. It is unexpected that the Respondent No. 1 being a "State" and also "Regulated Entity" would treat the Petitioner in an unequitable, unfair and arbitrary manner and apply the regulation of the Commission differently for similarly placed entities. With regard to the obligation on part of "State" to act in an equitable and lawful manner, the Petitioner has relied on the Judgement dated 16.11.2022 of the Hon'ble Supreme Court in case of M.P. Power Management Co. Ltd v/s. M/s. SKY Power Southeast Solar India (2012) 8 SCC 344.
- 4.4. He further submitted that the case laws referred by the Respondent No. 1 are on different factual matrix, distinguishable and therefore not applicable in the present case.
5. We note that the present Petition is filed under Section 86 of Electricity Act, 2003 read with Regulation 3(1) and 42 of the GERC (Terms & conditions of Intra-State Open Access) Regulations, 2011 against recovery of excess amount of relinquishment charges from the Petitioner for allowing termination of extension of transmission agreements. The dispute pertains to transmission agreement and relinquishment charges between the Petitioner and Respondent No.1
6. We note that the Respondent No. 1 has filed its reply in the present matter. We also note that the Petitioner has filed its rejoinder to reply filed by Respondent No. 1 GETCO in the present matter.
7. The parties are at liberty to file their written submissions, if any, within four weeks' time.

8. The next date of hearing will be intimated separately if required.

9. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar

Date: 02/09/2025

