BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No. 2491 of 2025.

In the Matter of:

Filing of Miscellaneous Petition in compliance to the directions (Refund of pas period STOA charges) issued by the Commission in Order dated 29th March, 2025 in the matter of Truing up for FY 2023-24 and Determination of ARR & Tariff for FY 2025- 26 to FY 2029-30 for Gujarat Energy Transmission Corporation Limited (GETCO).

Petitioner	:	Torrent Power Ltd.
Represented By	:	Ld. Sr. Adv. Ms. Deepa Chawan, Ld. Adv. Ms. Reshmarani Nathani, Ld. Adv. Ms. Ruchi Patil, Mr. Chetan Bundela, Mr. Jignesh Langalia

V/s.

Respondent	:	Gujarat Energy Transmission Corporation Ltd. Sardar Patel Vidyut Bhavan Race Course Circle, Vadodara – 390007.
Represented By	:	Ld. Sr. Adv. Mr. M.G. Ramchandran, Ld. Adv. Ms. Shrishti Khindaria, Mr. M.J. Vasava, Mr. P. P. Shah, Ms. F. S. Patel.

CORAM:
Mehul M. Gandhi, Member
S. R. Pandey, Member

Date: 10/11/2025.

ORDER

1. The present petition has been filed by the Petitioner in compliance to the directions issued by Hon'ble Commission in its order dated 29th March, 2025 in the matter of truing up of FY 2023-24, Determination of ARR & Tariff for FY 2025-26 to FY 2029-30 for Gujarat Energy Transmission Corporation Limited seeking following reliefs:

a. Admit the Petition as submitted above.
b. Refund past period STOA charges as recovered by GETCO from TPL for the period FY 2017-18 to FY 2024-25;
c. Direct GETCO to treat all the Distribution Licensees including the Petitioner, TPL uniformly in its treatment for recovery of STOA Charges for future period.
d. Pending the hearing and final disposal of this Petition, direct GETCO to grant parity to TPL and its consumers with the State Discoms and their consumers in respect of the STOA charges on power procurement.
e. Allow additions/ alterations/ changes/ modification to the submissions.
f. Condone any inadvertent omissions/ errors/ shortcomings.
g. Grant any other relief/s as it deems fit and appropriate under the circumstances of the case and in the interest of justice.

2. The Petitioner, Torrent Power Limited ("TPL") is a company formed under the provisions of the Companies Act, 1956 working as a distribution licensee in the State of Gujarat. The Respondent, Gujarat Energy Transmission Corporation Limited ("GETCO") is company incorporated under the Provisions of the Companies Act, 1956. GETCO has been notified as the State Transmission Utility in the State of Gujarat within the meaning of Section 2(67) of the Electricity Act, 2003 w.e.f. 01.06.2004. GETCO is inter alia responsible for providing non-discriminatory intra-state open access to all beneficiaries in the State.

3. TPL has filed the present petition dated 02.05.2025 seeking parity and equitable treatment for its consumers with the consumers of the State Discoms, qua the levy of short-term open access charges for power procurement.

4. The facts of the case as submitted by the Petitioner is stated in brief as under:

4.1 The Commission, in its Order dated 29.03.2025 in Petition No. 2419 of 2024 regarding Truing up of FY 2023-24 and Determination of ARR & Tariff for FY 2025-26 to FY 2029-30 for GETCO, directed TPL to file separate Petition in respect of Short-Term Open Access Charges paid by TPL.

4.2 Tariff determination of GETCO involved hearing of suggestions and objections from public under Section 64 (3). A vital issue of tariff namely, discriminatory treatment to the consumers of Petitioner in the State came to the fore during the deliberations under Section 64 (3). TPL became aware of the differential treatment meted out to the consumers of its licence area. Accordingly, the Petitioner approached the Commission pursuant to the directions of the Commission and in continuation of the tariff related issue seeking parity and equitable treatment for its consumers with the consumers of the State Discoms, qua the levy of short-term open access charges for power procurement

4.3 GETCO had filed a Petition on 30.11.2024 for Truing up of FY 2023-24 and determination of ARR & Tariff for the 4th Control Period i.e. FY 2025-26 to FY 2029-30. The Petitioner, filed its comments/ suggestions on 23.01.2025 and made oral submissions during the public hearing on 24.02.2025. In response, GETCO has filed submissions dated 19.02.2025. TPL has also filed submission dated 11.03.2025 inter alia raising the following issue.

"Parity to the consumers of TPL in recovery of transmission charges & losses by GETCO / SLDC for procurement of power under short term open access, from power exchange/ bilateral arrangement with the consumers

of State Discoms & non-discriminatory treatment under the Regulatory Framework."

4.4 In the Tariff Order dated 29.03.2025, the Commission has directed to file separate Petition on the aforesaid issue. The relevant extract is as follows:

"Issue No. 10: Determination of Transmission Charges

....

Commission's View

The Commission has noted the objections and the response of the Petitioner. In this regard, the Commission observes that the matter is important & needs to be examined in depth and accordingly suggests TPL to file a separate Petition with the Commission."

4.5 TPL submitted that GETCO's submissions in Petition No. 2419/2024 clearly reveal that there is discrimination between TPL and State Discoms with regard to recovery of Short-term open access charges (Power Exchange and Bilateral). In other words, for the power procurement by TPL for its consumers, the ultimate consumers are required to pay short term open access charges. In contrast, GETCO does not levy short term open access charges on the State Discoms and in turn, State Discoms' consumers.

4.6 TPL submitted that the State Discoms and TPL are Distribution Licensees distributing and supplying electricity in the State of Gujarat. In terms of the Regulatory Framework governing all the entities, there cannot be a difference in the treatment meted to any particular entities. The practice being followed by GETCO would be not only contrary to Section 61 and 62 of the Act but also contrary to the mandate of equal treatment enshrined under the Constitution of India.

4.7 TPL submitted that GETCO has recovered about Rs 484 Cr from FY 17-18 to FY 23-24 from TPL on account of STU Transmission charges on short term open access for purchase through Power Exchange. Details of the same is summarized hereunder:

Year	GETCO Transmission Charges (Rs. Cr.)		
	TPL-D (A)	TPL-D (S)	Total
FY 17-18	38	16	54
FY 18-19	53	22	84
FY 19-20	22	9	32
FY 20-21	7	2	9
FY 21-22	40	17	57
FY 22-23	88	39	128
FY 23-24	89	41	130
Total	**336**	**147**	**484**

In addition to above, GETCO has charged Rs 161.24 Cr of STOA Charges from TPL-D(A) and Rs 69.31 Cr for TPL-D(S) in FY 24-25 towards power purchase from power Exchange and continued to charge in FY 25-26 as well continuing discrimination between State Discoms and TPL. This amount is in addition to the STOA Charges recovered by GETCO / SLDC towards the bilateral power purchase. It may kindly be noted that GETCO needs to confirm whether the uniform treatment is given to consumers of TPL Discoms and the consumers of State Discoms.

4.8 TPL submitted that during the proceedings of Petition no. 2419/2024, GETCO in its submissions dated 28.02.2025 replying the issues raised by the TPL, perfunctorily responded to this regulatory issue by relying on CERC Open Access Regulations, 2008.

4.9 The concept of equality in levy of STOA charges by a Section of consumers in the State means that consumers being equal the applicable regulatory framework should be equally administered and likes should be treated alike. Regulatory Framework does not provide for any such discrimination and therefore, there cannot be any discrimination in terms of recovery of Short Term open access charges by GETCO as TPL is also a part of the State. Thus, the charges recovered by GETCO from TPL should be refunded to TPL in order to pass on to its consumers.

4.10 TPL submitted that the delegated legislation like Regulations is framed to operate within the area of operation conferred by the Statute. GERC Regulations do not facilitate an intention by the STU to discriminate about recovery of State Transmission charges within the distribution licensees of the State. GERC Open Access Regulations do not contemplate any discrimination.

4.11 Under the circumstances, Short term transmission charges recovered from TPL by GETCO for procurement from Power Exchange needs to be refunded to TPL so as to pass on to the consumers of TPL and exemption should be granted to TPL from payment of STOA charges for future period as being done for State Discoms. Further, in case there is any discrimination in terms of recovery of STOA Charges towards the bilateral power purchase, same needs to be corrected and amount paid by TPL Discoms needs to be refunded to TPL Discoms so that the same can be passed on to the consumers.

5. The Commission registered the Petition vide letter dated 16.05.2025. Subsequently. The Petitioner served the Copy of its Petition to GETCO on 03.09.2025. The Commission heard the matter on 16.09.2025 and vide Daily Order dated 20.09.2025 directed the Respondent to file its reply and scheduled hearing on 30.09.2025. In turn, GETCO filed its Reply

dated 25.09.2025 and the Petitioner also filed its Rejoinder dated 26.09.2025.

6. In its Reply dated 25.09.2025, GETCO submitted as follows:

6.1. The issue raised by the Petitioner in the tariff proceedings and in the present proceedings relate to the alleged discrimination in the levy of transmission charges for short term open access ('STOA') being payable by the Petitioner vis-a-vis the procurement of power by Gujarat Urja Vikas Nigam Limited (' GUVNL') for the 4 distribution licensees, namely, PGVCL, UGVCL, MGVCL and DGVCL, in the state of Gujarat.

6.2. There is no discrimination of the 4 State DISCOMs vis-a-vis either Torrent Power Limited, the Petitioner, or any open access consumer in regard to the transmission charges payable in the procurement of power on short term open access basis from power exchange, or from any other source outside the state of Gujarat.

6.3. There is valid rationale for differentiation of the 4 State DISCOMS represented by GUVNL in a composite manner in regard to the charges payable for use of the intra-state transmission system of GETCO as compared with others including Torrent Power -Distribution licensee. GUVNL / 4 State DISCOMs as successor of the erstwhile Gujarat Electricity Board (GEB), have been paying exclusively committing the capacities for upgradation of the entire intra -state transmission system in the State in a composite manner. The transmission planning in the State has been done and GETCO has undertaken the establishment of the transmission systems from time to time based on the commitment from GUVNL/ 4 State DISCOMs to meet the Revenue Requirements of GETCO as determined by the Hon'ble Commission in the tariff orders passed from time to time. Such payment by the 4 State DISCOMs of the transmission charges is absolute except that to the extent of the identified capacity of other including Torrent Power for the specific capacities for which the open access is taken, the necessary adjustment is made, these would be clear from the Tariff Orders passed by this Hon'ble Commission for GETCO from time to time.

6.4. In terms of the above, the entire load of the intra- state transmission system, the Revenue Requirements for the same for laying down, upgradation, maintenance etc. are met from the load considered for GUVNL/ 4 State DISCOMs after identifying and adjusting the identified capacities for open access for others, namely deducting other than the transmission charges recovered from users of the transmission system other than the 4 State DISCOMs, are all paid by the 4 State DISCOMs/GUVNL. In view of the above since the beginning there is no such concept that the GUVNL/ 4 State DISCOMs are required to take any open access in the nature of LTOA or MTOA or STOA, as the case maybe and they have the right to use the transmission system without the need to specify any identified capacity or opt for LTOA or MTOA or STOA, as the case maybe. In other words GUVNL/ 4 State DISCOMs in fact are required to pay on a continuous basis the full charges of not less than Open Access without any right to relinquishment etc. and the concept of option available to Torrent Power or other open access consumers on the nature of open access they can plan and avail is not available to GUVNL/ 4 State DISCOMs.

6.5. Unlike others, for 4 State DISCOMs the transmission charges are paid in a composite manner for the entire capacity of the transmission system of GETCO, excluding the identified capacity taken on open access by others. It is not on the basis of any identified point-to-point connection of using the transmission system. GUVNL/ 4 State DISCOMs are making payment on the comprehensive basis to meet the revenue requirements of GETCO (after adjustment of the transmission charges paid for LTOA, MTOA and STOA paid by others) and there is no further requirement for additional levy of any STOA charges.

6.6. Short-term open access sought for by the Petitioner for the conveyance of electricity procured from outside the State through the GETCO lines is to the identified interconnection point of the Petitioner in its area of supply. Whereas in the case of 4 State DISCOMs it is up to Gujarat periphery and thereafter dealt under the rights of the State DISCOMs over the entire network of GETCO for which GETCO is being paid the transmission charges towards meeting the Annual Revenue Requirement entirety after adjusting the transmission charges received from other.

6.7. TPL is not subjected to the above mechanism as in the case of the 4 State DISCOMs/GUVNL on the payment of the transmission charges and TPL had duly availed the option to identify the capacity of LTOA, MTOA or STOA from time to time. There is no commitment from TPL for contribution to the upgradation of the intra-state transmission system as in the case of 4 State DISCOMs/GUVNL, whereas without any reservation 4 State DISCOMs/GUVNL have to necessarily make commitment for augmentation from time to time for the entire intrastate network of GETCO.

6.8. If TPL is required to share the entire revenue requirement of GETCO in regard to the intra-state transmission in the State of Gujarat, in the same manner as done by GUVNL based on entire load of all power procurements TPL would become liable to share much higher transmission charges than it is currently paying for identified transmission system only. TPL cannot retain the benefits of the present dispensation of consideration of the identified open access quantum only and at the same time claim parity on STOA charges with GUVNL/ 4 State DISCOMs.

6.9. All the upgradation of the intra-state transmission system in the State of Gujarat as per the transmission planning is done on the basis of the capacity being primarily required for the 4 State DISCOMs. In the case of the Petitioner or other users of the transmission system, the transmission system is upgraded only for the specific transmission assets required by them and not in the manner as dealt for the 4 State DISCOMs. In this regard, GETCO has filed the Transmission Services Agreement dated 01.04.2005 entered into by GETCO with the 4 State DICOMs (and GUVNL and GSECL). GETCO has also filed samples of LTOA and MTOA Agreements entered into by TPL with GETCO.

6.10. GETCO has further submitted that it is inherent in the nature of things that the capacity for which the transmission charges are allocated for sharing to the GUVNL/4 State DISCOMs is much higher than the capacity that could be contracted by GUVNL/4 State DISCOMs if they are in the same position as that of the Petitioner or other users of the transmission system by identifying selected lines. There is therefore a clear intelligible differentia of contribution to the transmission charges by GUVNL/4 State DISCOMs as compared to the Petitioner or other users of the transmission system as the entire load of the power purchase agreements contracted by GUVNL including from renewable power sources is considered as an aggregate capacity for sharing of transmission charges proportionately with others.

6.11. The transmission charges payable by the 4 State DISCOMs taken in the absolute manner covers all types of open access charges irrespective of whether it is LTOA/MTOA/STOA. This is distinct and separate from the transmission charge payable by TPL or other users of the transmission system for identified transmission system.

6.12. GETCO has further submitted that the present Petition filed by Petitioner cannot be proceeded with for misjoinder of necessary parties, namely, GUVNL, the 4 State DISCOMs, open access consumers including generators seeking such open access as well as public at large who are the people heard during determination of tariff of GETCO- in particular this Hon'ble Commission should implead GUVNL and the 4 State DISCOMs. GETCO has also submitted that any decision needs to be taken after proper proceedings and any impact on tariff has to be given prospectively. The Petitioner cannot proceed in the present proceedings as if it is seeking an amendment to the Tariff Order dated 29.03.2025.

6.13. The issues raised also relate to the aspects of STOA which are dealt with by State Load Despatch Centre which has not been made a party. The

Petition suffers from non-joinder of parties. Further the Petitioner is raising issues of distribution companies which are also not made a party.

6.14. There can be no issue or dispute that the Petitioner is liable to pay state transmission charges for the inter-state open access. The Petitioner cannot claim that it is not liable to pay the transmission charges which is clearly payable as per law. The attempt of the Petitioner to claim exemption from the payment of transmission charges is not correct. The Petitioner has not shown any basis for it to be not liable to pay state transmission charges and it has in fact paid the state transmission charges.

6.15. GETCO has denied Petitioner's claim that it came to know of any alleged discriminatory treatment and submitted that the Petitioner was always aware of all aspects and there cannot be any claim of parity. The Petitioner seeks open access for specific quantum, whether long term, medium term or STOA and is liable to pay transmission charges accordingly.

6.16. The Petitioner had never challenged either the NOC/Standing Clearance given by SLDC and had in fact on the said basis proceeded with the Open Access. Therefore, clearly at no point did the Petitioner have any issue or dispute with the applicability of the state transmission charges. The liability of the Petitioner would not change merely because of the aspects relating to other persons. The Petitioner has raised issues without the consideration of the facts and circumstances governing the aspects of open access for the state distribution companies.

6.17. The state distribution licensees may be required to use the transmission system and distribution system in the State in a manner that it may on long term basis or medium term basis or on short term basis or from time to time depending on the load in the system and power flow, pathways, the generating stations operating in the State, procurement of Power from outside the state, as the case may be. Further considering the peculiarities the total power procurement may be shifted amongst the state distribution licensees as per the requirement. The above changes in the source of generation and pathways to reach the consumers of a Distribution licensee is dynamic at all times and is not static. However, the 4 State Distribution Licensees having the right to use the entire GETCO network in a composite manner without being identified to any particular area or power flow path are required to contribute in the fall-back manner the entire annual revenue requirements of GETCO, after adjustment of identified transmission charges for LTOA/MTOA/STOA payable by others.

6.18. The State Distribution Licensees are held liable to service, on a comprehensive basis the entire revenue requirements of the transmission Licensee (GETCO) subject only to reducing the amount that may be recovered from other open access users whether long term, medium term or short term. The quantum of such liability discharged by the State Distribution Licensees are substantial proportion of the total revenue requirements of GETCO (presently more than 86%). While there are aspects of surrender, relinquishment of transmission capacity etc available to other open access users there is no such thing in the case of state distribution licensees, the obligation of the State Distribution Licensees is of a continuing nature namely they will have to be liable to discharge the liability to meet towards meeting the entire revenue requirements of GETCO.

6.19. The 4 State DISCOMs are incurring the entire quantum of open access as full transmission charges on per MW basis. There is no aspect of any STOA, since the entire quantum is paid on per MW basis which is in fact higher than the STOA charges which is on per unit basis. The State Distribution Companies under GUVNL have the access on the entire mesh network and is not point to point. They therefore can under the open access take the power from any point in the state to any other point. Once the same is established, the source/transaction is not relevant and even whether the same is intra-state or inter-state level until the state periphery.

6.20. Such aspects of consideration of the State Utility differently was also recognised by the Central Commission in CERC (Open Access in Inter-State Transmission) Regulations 2008. The issue in the present case is in relation to treatment of State Utility under such CERC (Open Access in Inter-State Transmission) Regulations 2008

""State utility" means a State Electricity Board, or Electricity Department of the State, or a State Government organization authorized to sell or purchase electricity on behalf of the State;"

6.21. In regard to aspect of Collection and Disbursement of Transmission Charges, the following provision is made under Regulation 25(4):

"(4) In case a State utility is the short-term customer , the operating charges and the transmission charges collected by the nodal agency shall not include the charges for use of the State network and the operating charges for the State Load Despatch Centre."

6.22. Admittedly the Petitioner is not a State Utility. However, the State Government Companies which are Distribution licensees fall within the definition of "State Utility" and therefore as per Regulation 25(4), the charges for State Network are not included. The said Regulation chooses to provide a specific provision 'or State Utility which it does not provide for private distribution companies.

6.23. There can be no dispute that the Regulations of the Central Commission are also binding. It is not open to GETCO to on its own decide that the Regulations are not applicable or otherwise are discriminatory or contrary to any provision of the Electricity Act, 2003.

6.24. The Hon'ble Tribunal has in fact held that it cannot ignore the Regulations framed by the Hon'ble Commission on any argument that the same is contrary to Electricity Act, 2003. The Hon'ble Tribunal in Fatehgarh Badla Transmission Company Limited v. Central Electricity Regulatory Commission and Others in Appeal No. 352 of 2022 dated 02.05.2023 has held that the Tribunal lacks jurisdiction to examine the vires of the Regulations as that would amount to exercise of power of Judicial review. Further the Hon'ble Tribunal rejected the contention that the Tribunal may ignore the Regulations as contrary to the Electricity Act, 2003. Therefore, the Petitioner is not entitled to claim that this Commission override or ignore the provisions either. The Petitioner is seeking vaguely to refer to the regulatory framework or GERC Regulations but the same cannot have any impact on the validity of the Central Commission Regulations. It is not appropriate or permissible to the Petitioner to override the said Regulations and seek the Commission to grant any exemption etc.

6.25. The Petitioner is repeatedly referring to the concept of equality or aspects of non-discrimination but does not address the fundamental fact on the provisions of the Central Commission Regulations. Further, even otherwise, there is no aspect of discrimination as the very concept of the allocation of open access to the State Distribution Companies is different.

6.26. The Petitioner has not disputed at any stage that it is liable to pay the state transmission charges in addition to inter-state transmission charges for inter-state open access. The only issue raised is comparison with other Discoms. The Petitioner is not claiming to be a state utility and therefore seeking parity in terms of the CERC Regulations. The Petitioner is not referring to any provision of law which would entitle it to claim exemption from the liability to pay the state transmission charges but on the other hand, the law is clear that the Petitioner as open access customer is liable to pay state transmission charges as determined by the Commission for inter-state open access also.

6.27. Further the Petitioner is not similar to the State Distribution Companies and is liable to pay the transmission charges only as per the open access identified and availed by it, whether LTOA/MTOA or STOA. When it avails STOA. it pays on per unit basis. On the other hand, the

GUVNL/state distribution companies bear the cost of the entire network.

6.28. The claim of the Petitioner in regard to the charges being recovered from Petitioner requires verification. The STOA charges are recovered by SLDC and therefore need to be verified by SLDC. The claims are not admitted. The prayers/reliefs sought by the Petitioner is not maintainable. In any case there cannot be any refund for the past period let alone from FY 2017-18. The Petition is time barred. The Petitioner is also barred by delay and lathes.

6.29. The Petitioner has not shown any aspects of conditions of interim relief and in any case, there cannot be any interim relief at this stage, when the same aspect has been continuing for such long period.

7. The Petitioner has filed Rejoinder on 26.09.2025 and has contended as under:

7.1. The Respondent has raised the issue of non-impleadment of State distribution companies and SLDC. In this regard, the Petitioner submitted that the present Petition seeks parity in treatment by GETCO of the consumers of TPL with the consumers of State DISCOMS. The reference to the Regulatory treatment qua State Distribution companies is only as a precedent, in support of the plea of the Petitioner. TPL has neither pleaded against State Distribution Companies nor claimed any relief against them. TPL has not sought any adverse or prejudicial order against the State Distribution Companies. TPL has sought only parity for its consumers. Therefore, the question of non-joinder of State Discoms does not arise. As regards SLDC, the Petitioner submitted that SLDC is a nodal agency. The STOA charges recovered by SLDC are as approved by the Hon'ble Commission in the tariff order of the Respondent, GETCO. TPL has not sought any relief against SLDC. Therefore, the question of non-joinder of SLDC does not arise. GETCO has been made a party as the decision qua the mode and manner of charging the Transmission charges which is the core issue in respect of which Petitioner seeks equality has been determined by GETCO. Further, SLDC ensures integrated operation of power system and is a functional unit of GETCO. No relief qua the operations of the power system are sought in the present Petition. The contention of non-joinder of parties is raised by GETCO to delay the present proceedings and thereby defeat it.

7.2. With regard to contention of the Respondent that the Petitioner is not a "State Utility" unlike State Distribution licensees which fall within the definition of "State Utility" and therefore as per Regulation 25(4) of CERC Open Access Regulations, 2008, the charges for State Network are not included, the Petitioner submitted that GERC Open Access Regulations do not provide for any discrimination in terms of recovery of STOA charges by GETCO as TPL-D is also a part of the State. The benefit of such exemption should also be extended to TPL-D consumers as they are also part of the State. The definition of State Utilities which is defined in the CERC Open Access Regulations is extracted hereunder:

"(q) "State utility" means a State Electricity Board, or Electricity Department of the State, or a State Government organization authorized to sell or purchase electricity on behalf of the State"

7.3. The Hon'ble CERC could not have intended to discriminate consumers of State Discoms and Private Discoms in respect of recovery of State Transmission charges as Hon'ble CERC is well aware that same is not within its jurisdiction.

7.4. Further, CERC (Open Access in inter-State Transmission) Regulations, 2008 has been repealed in 2022 with the implementation of CERC GNA Regulations. The Respondent has not disputed that same. GETCO has further submitted that the Petitioner has reproduced the relevant extract of the CERC GNA Regulations as under:

"Definition 2.1. In these regulations, unless the context otherwise requires:

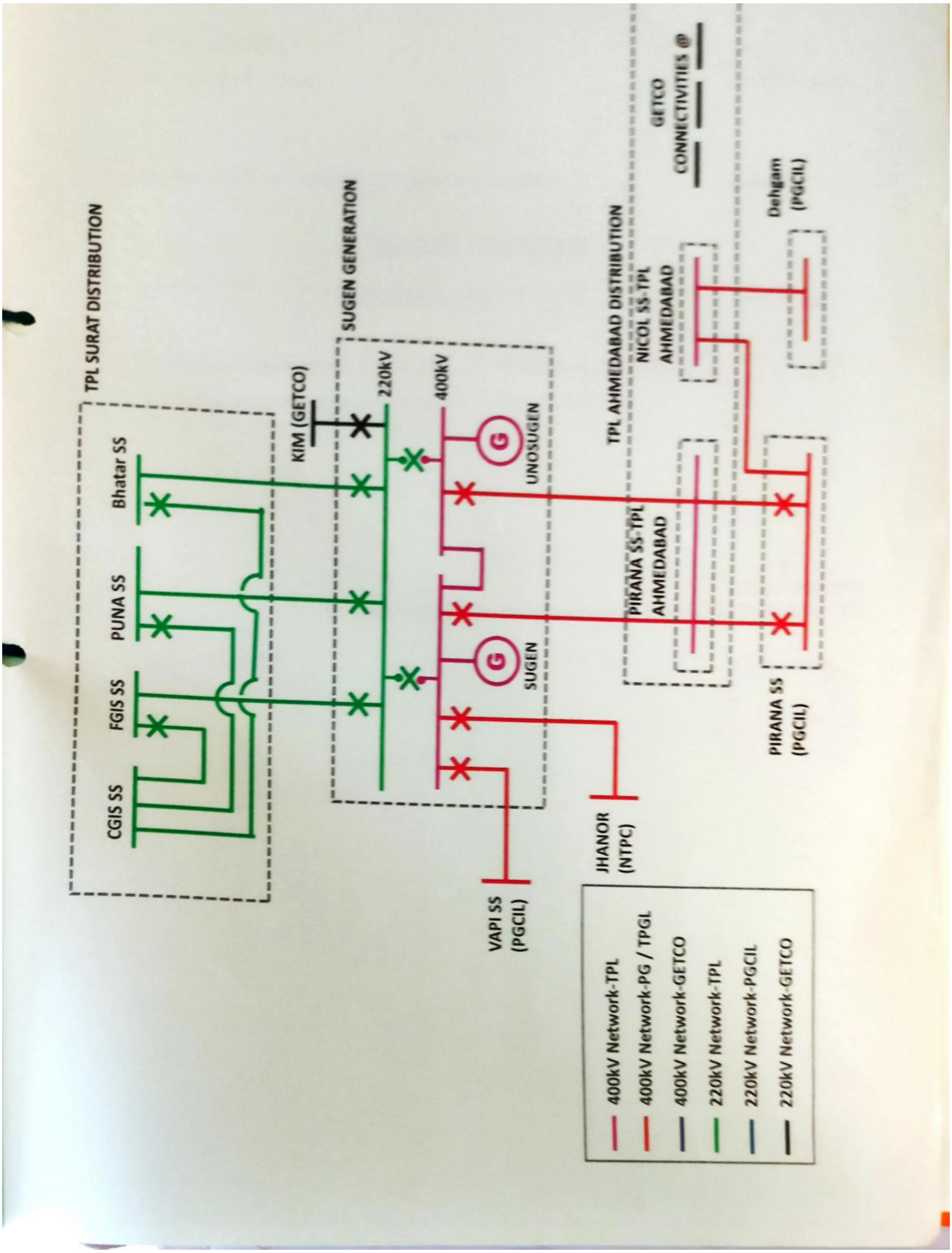
……….

(ac) "Open Access Regulations" means the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008;

43.2. Save as otherwise provided in these regulations, the Open Access Regulations and the following Procedures issued thereunder, are hereby repealed: (a) Procedure for Scheduling Short-Term Open Access in Inter-State Transmission (Bilateral Transaction) dated 30.6.2011 (b) Short-Term Open Access in Inter-State Transmission (Collective Transaction) Procedure for Scheduling dated 30.6.2011. (c) "Procedure for Short Term Open Access in inter-State Transmission System through National Open Access Registry (NOAR) dated 1.4.2022" under Regulation 4 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Fifth Amendment) Regulations, 2018."

7.5. However, the benefit of exemption has been continued to Government DISCOMs and in turn, their consumers even, after repeal of CERC Regulations; whereas TPL-D Consumers are required to pay towards the STOA Charges. Under the circumstances, STOA charges recovered from TPL-D by the Respondent GETCO need to be refunded to TPL-D, so as to be passed on to the consumers of TPL-D.

7.6. Further, the Petitioner submitted that it has direct connectivity with CTU apart from connectivity with STU. TPL has submitted a schematic Diagram of Connectivity for TPL-D Ahmedabad and Surat as under.



7.7. Basis the above, Petitioner submitted that power flow through interconnection with State Network and ISTS would reveal that quantum scheduled through Power Exchange does not utilize the State network. Same can be verified by GETCO from the actual records of electricity recorded at Interface points. On the other hand, though Govt DISCOMs utilize the Intra-state network for sourcing of power under short term arrangement, they have been exempted from payment of STOA charges. Under the circumstances, the Petitioner STOA charges recovered needs to be refunded to TPL-D.

7.8. With regard to contention of the Respondent that the Petitioner was always aware of all the aspects (about exemption of STOA Charges to State Discoms) and there cannot be any claim of parity, the Petitioner submitted that it is during the Tariff proceeding of Petition No. 2419/2024 that the Respondent has revealed about exemption of STOA Charges from the State Discoms. The same is further elaborated by the Respondent in the Reply dated 25th Septmber.2025, wherein the Respondent stated that State Discoms are not subjected to mechanism of recovery of Open access charges stipulated by the State Commission. The Petitioner is unaware whether the Respondent had duly apprised this Hon'ble Commission of this aspect. This is particularly imperative as Open Access by Distribution Licensee to procure power for their consumers does not differentiate between Distribution Licensees.

7.9. As regards contention of the Respondent that mechanism of LTA/MTOA and STOA is not applicable to the State Discoms, the Petitioner submitted that such a revelation should have been not only non-discriminatory but also transparent. The Petitioner came to know about differential treatment of the consumers of State Discoms and TPL-D for payment of STOA Charges only now. Thus, the Respondent cannot claim that the Petitioner has not challenged NOC/ Standing Clearance by SLDC.

7.10. The Petitioner functions under the same Act and Regulations. As such, the consumers of Petitioner cannot be made to pay STOA Charges for that would be non-discriminatory. It ought to be firmly comprehended that the Petitioner merely seeks parity for its consumers. It is the duty of GETCO being a neutral statutory body to ensure uniform treatment / parity to consumers of TPL-D, particularly, when GETCO network is not being used.

7.11. The Petitioner further submitted that the Respondent, GETCO has relied on Transmission Service Agreement (TSA) between GETCO, GUVNL and State Discoms to contend that Transmission Charges are paid by the State Discoms in residual manner as per TSA i.e. all other Open Access

Consumers are required to bear the Transmission Charges as per LTA/MTOA/STOA availed by them and only residual revenue requirement of the GETCO is to be borne by State Discoms after deducting payments made by others. To substantiate its claim, the Respondent has stated that the Network is essentially created for State Discoms only. In response, the Petitioner submitted that as per Electricity Act, 2003 read with applicable Regulations, there cannot be any discrimination in respect of grant of Open Access as well as mechanism of recovery of transmission charges. Open Access Regulations and Tariff Regulations notified by the Hon'ble GERC are uniformly applicable to all the beneficiaries without any discrimination. Therefore, there is no question of applicability of TSA for the purpose of usage of Transmission Network and recovery of corresponding charges. Without prejudice, even assuming that TSA is applicable, it is clearly mentioned in TSA that Transmission Charges shall be recovered as determined by Hon'ble GERC. The Petitioner has referred recitals (14), Clause 3.5, 3.6, 5.1 and 5.2 read with Schedule C of TSA.

7.12. The Petitioner submitted that in Gujarat, Transmission Charges recovery mechanism is based on Postage Stamp Method wherein Open Access Charges are required to be recovered from all DISCOMs uniformly as Regulations does not provide any differential treatment to

State DISCOMs vis-à-vis Private DISCOMs. Under the circumstances, any particular method followed by GETCO for State Discoms would be applicable for other Discoms as well. The Respondent cannot cite TSA to deny the same treatment to consumers of the Petitioner.

7.13. As regard contention of the Respondent that the Petition is time barred, the Petitioner referred and relied on the order of this Commission in Petition no. 1740 of 2018 dated 22.07.2020 wherein the SLDC was allowed to raise supplementary invoices for correcting the bills of the past periods. The Petitioner also submitted that recovery of STOA Charges being continuous activity, there is no question of limitation. Also, it is for the first time during the proceedings of Petition no. 2419/2024 – GETCO MYT Tariff that the Respondent revealed about the discriminatory treatment being given to the State Discoms. Additionally, the present Petition is not a contentious matter but a tariff related issue on principle of non-discriminatory actions mandated to be undertaken by GETCO. The present Petition is in the Regulatory domain invoked by the Petitioner to substantiate its entitlement to be treated similarly as other Discoms so that the consumers in its area of supply are not differently treated and affected, although, both sets of consumers are governed by the same Statutory and Regulatory framework.

7.14. The Petitioner submitted that the role of GETCO is that of a State Transmission Licensee which has to apply financial and economic principles in a non-discriminatory manner for grant of Open Access to the Distribution Licensees for sourcing power. There is no distinction or differentiation under the Statutory provisions qua Distribution Licensees being charged Transmission charges for grant of Open Access to the Transmission system of the GETCO.

7.15. As regards the contention of the Respondent on prayer for interim relief, the Petitioner submitted that despite being on equal footing under the Regulatory framework, TPL-D has been asked to pay STOA charges unlike State Discoms. Therefore, it is just and reasonable in the interest of end consumers of TPL-D that similar treatment is considered for the payment of STOA Charges till the time final order is issued by the Hon'ble Commission.

8. The hearing in the matter was held on 30.09.20225.

8.1. Senior Advocate Ms. Deepa Chawan, on behalf of the Petitioner, submitted that the present Petition has been filed in compliance to the directions issued by the Commission in its Order dated 29.03.2025 in the matter of Truing up of FY 2023-24, Determination of ARR & Tariff for FY 2025-26 to FY 2029-30 for Gujarat Energy Transmission

Corporation Limited (GETCO) on the issue of refund of past period STOA charges.

8.2. She submitted that during the aforesaid tariff proceedings under Section 64(3) of the Electricity Act, 2003, which involved public consultation, an issue of discriminatory treatment in tariff emerged, revealing that consumers of TPL licensed areas were subjected to differential treatment compared to consumers of State-owned Distribution Companies. Therefore, in continuation of these proceedings and as directed by the Commission, the Petitioner has approached this Commission seeking parity and equitable treatment for its consumers with those of the State DISCOMs, particularly in respect of the levy of short-term open access charges for power procurement.

8.3. She further submitted that the State Discoms and TPL are Distribution Licensees, distributing and supplying electricity in the State of Gujarat. In terms of the Regulatory Framework governing all the entities, there cannot be a difference in the treatment meted to any particular entities. The practice being followed by GETCO is contrary to the mandate of equal treatment enshrined under the Constitution of India.

8.4. She referred the Section 40 of the Electricity Act, 2003. She submitted that the principle of equality in the levy of Short-Term Open Access

(STOA) charges mandates that consumers, being similarly situated, must be governed by an equally administered regulatory framework wherein likes are treated alike. She further submitted that that the prevailing regulatory framework does not envisage or permit any form of discrimination, and consequently, there can be no differential treatment in the recovery of STOA charges by GETCO. Therefore, the charges recovered by GETCO from TPL ought to be refunded so as to be duly passed on to its consumers. She further submitted that delegated legislation, such as the GERC Regulations, must operate strictly within the statutory ambit and does not empower the State Transmission Utility to discriminate in the recovery of transmission charges among distribution licensees. Additionally, the GERC Open Access Regulations do not contemplate any such discrimination.

8.5. Per Contra, Senior Advocate Mr. M. G. Ramchandran, on behalf of the Respondent, submitted that there is no discrimination of the four State DISCOMs vis-à-vis either Torrent Power Limited, or any open access consumer in regard to the transmission charges payable in the procurement of power on short term open access basis from power exchange, or from any other source outside the state of Gujarat.

8.6. He submitted that there exists a valid and rational basis for distinguishing the four State-owned Distribution Companies

(DISCOMs), represented collectively through GUVNL, from other licensees such as Torrent Power Limited in the matter of payment of transmission charges for the use of the intra-state transmission system of GETCO. The GUVNL and its four DISCOMs, being successors of the erstwhile Gujarat Electricity Board (GEB), have historically borne the responsibility of financing and committing capacities for the upgradation and expansion of the State's transmission infrastructure in an integrated manner. He further submitted that the transmission planning and development by GETCO have been undertaken based on such commitments, with the entire revenue requirement of GETCO being met primarily through charges recovered from GUVNL/its four DISCOMs as determined by the Commission from time to time, after duly adjusting identified capacities used by other open access users such as TPL. Consequently, the four State DISCOMs are not required to obtain open access (whether long-term, medium-term, or short-term) for use of the transmission system, as they continuously bear the full transmission charges akin to open access users without any right of relinquishment, unlike Torrent Power and other open access consumers who avail access on an optional and capacity-specific basis.

8.7. He submitted that, unlike other licensees, the four State-owned DISCOMs pay transmission charges to GETCO on a composite basis covering the entire capacity of the intra-state transmission system, excluding only the identified capacity utilized under open access by others. He further submitted that their payments are made comprehensively to meet GETCO' s approved revenue requirement and are not based on specific point-to-point usage, thereby negating any need for an additional levy of STOA charges. He further submitted that TPL seeks short-term open access for specific identified interconnection points for power procurement from outside the State, whereas the four State DISCOMs' usage extends across the entire State network up to the Gujarat periphery, fully covered under their composite payment. He further submitted that TPL, unlike the State DISCOMs, has no obligation or commitment toward the upgradation or augmentation of the State transmission system and merely avails open access capacities (LTOA, MTOA, or STOA) at its discretion, while the State DISCOMs bear an ongoing statutory responsibility to fund and support the entire intra-state transmission infrastructure of GETCO.

8.8. He submitted that if TPL were to share GETCO's total revenue requirement for the entire intra-state transmission system on the same basis as GUVNL/its four State DISCOMs, it would be liable to bear substantially higher transmission charges than those currently applicable for its identified transmission capacity. He further submitted that TPL cannot simultaneously enjoy the benefits of paying only for specific open access capacity while also claiming parity in STOA charges with GUVNL/its four State DISCOMs. He further submitted that all transmission system upgradations in Gujarat are planned primarily to meet the requirements of the four State DISCOMs, whereas for TPL or other users, such upgradations are undertaken only to the extent of their identified and specific transmission needs, and not on a comprehensive, system-wide basis as in the case of the State DISCOMs. To substantiate this, he submitted the Transmission Services Agreement dated 01.04.2005 entered into by GETCO with the Four State DISCOMs (and GUVNL and GSECL) and also the samples of the LTOA and MTOA Agreements entered into by TPL with GETCO.

8.9. He submitted that the transmission capacity allocated for cost sharing by GUVNL/its four State DISCOMs is substantially higher than what could have been contracted had they been situated similarly to the Petitioner or other open access users identifying specific lines, thereby establishing a clear and reasonable differentiation in their contribution towards transmission charges. The charges paid by the State DISCOMs comprehensively cover all categories of open access - LTOA, MTOA, and STOA - unlike the Petitioner, whose liability is confined to identified transmission usage/Point-to-point connection. He further submitted that the present Petition suffers from misjoinder and non-joinder of necessary parties, as essential stakeholders such as GUVNL, the four State DISCOMs, open access consumers, generators, and the State Load Despatch Centre have not been impleaded. He further submitted that any decision affecting tariff must be made only after due proceedings and applied prospectively, as the Petitioner cannot, under the guise of this Petition, seek a modification or amendment of the Tariff Order dated 29.03.2025.

8.10. He submitted that there is no dispute regarding the Petitioner's liability to pay State transmission charges for inter-State open access, as such payment is mandated under law. He further submitted that the Petitioner's attempt to seek exemption from these charges is misconceived and unsupported by any legal or factual basis, particularly when it has already been making such payments. The contention of alleged discriminatory treatment is denied, as the Petitioner has always been fully aware of the applicable regulatory framework and has availed open access for specific quantum—whether long-term, medium-term, or short-term—being liable to pay corresponding transmission charges. He further submitted that the Petitioner never objected to or challenged the NOC or Standing Clearance issued by the SLDC and has acted upon the same, thereby accepting the applicability of State transmission charges. The present claims have been raised without proper reasons for the factual and regulatory distinctions applicable to the State-owned distribution companies.

8.11. He submitted that the State Distribution Licensees utilize the transmission and distribution system of GETCO on a dynamic and composite basis, depending on varying system load, power flow, generation patterns within the State, and procurement of power from external sources. He further submitted that owing to such operational flexibility, the four State Distribution Licensees are entitled to use the entire GETCO network without limitation to any specific area or power flow path and are, therefore, obligated to bear the entire annual revenue requirement of GETCO as determined by the Commission from time to time, after adjusting the identified transmission charges recovered from other open access users under LTOA, MTOA, or STOA. He further submitted that these State DISCOMs collectively discharge a substantial portion (over 86%) of GETCO's total revenue requirement on a continuous basis, without the benefit of surrender or relinquishment of transmission capacity, unlike other open access users whose liability is limited to identified capacities and specific access periods.

8.12. He submitted that the four State-owned DISCOMs bear the entire open access liability by paying full transmission charges on a per MW basis, which effectively covers all categories of open access and is higher than the per unit-based STOA charges. The GUVNL/DISCOMs have unrestricted access to the entire mesh network of GETCO, not limited to any point-to-point configuration, thereby enabling them to draw power from any location within the State to any other point. Once such comprehensive access is established, the nature of the transaction—whether intra-state or inter-state—up to the State periphery becomes immaterial for the purpose of determining transmission charges. He further submitted that such aspects of consideration of the State Utility differently was also recognised by the Central Commission in CERC (Open Access in Inter-State Transmission) Regulations 2008 at Clause 25(4). He further submitted that the Petitioner is not a State Utility. However, the State Government Companies which are Distribution licensees fall within the definition of "State Utility" and therefore as per Regulation 25(4), the charges for State Network are not included. The said Regulation chooses to provide a specific provision for State Utility which it does not provide for private distribution companies.

8.13. He submitted that the Regulations framed by the Central Commission are binding and cannot be disregarded or selectively applied by GETCO on the ground that they are discriminatory or inconsistent with the provisions of the Electricity Act, 2003. He further submitted that the Hon'ble Tribunal in Fatehgarh Badla Transmission Company Limited v. Central Electricity Regulatory Commission & Others vide Appeal No. 352 of 2022, dated 02.05.2023, has categorically held that it has no jurisdiction to examine the vires of the Regulations, as such scrutiny would amount to judicial review, which lies exclusively within the domain of constitutional courts. The Hon'ble Tribunal further ruled that it cannot ignore or bypass the Regulations on any contention that they are contrary to the Electricity Act, 2003.

8.14. He submitted that the Petitioner is not entitled to seek that this Commission override or disregard the provisions of the applicable Regulations, particularly those framed by the Central Commission, whose validity cannot be questioned or superseded by the Petitioner's vague reference to the regulatory framework or the GERC Regulations. It is neither permissible nor appropriate for the Petitioner to seek any exemption or deviation inconsistent with such binding Regulations. He further submitted that the Petitioner's reliance on the principles of equality and non-discrimination is misplaced, as it fails to consider the distinct regulatory and operational framework governing the allocation of open access to State Distribution Companies, which is inherently different and justified in law.

8.15. He submitted that the Petitioner is liable to pay State transmission charges in addition to inter-State transmission charges for inter-State open access, and such liability has never been disputed by the Petitioner. The issue raised pertains only to comparison with the State DISCOMs; however, the Petitioner, not being a State utility, cannot claim parity under the CERC Regulations and has not cited any legal provision granting exemption from payment of such charges. As an open access consumer, the Petitioner is bound to pay State transmission charges as determined by this Commission. He further submitted that the Petitioner's position is distinct from that of the State Distribution Companies, as it pays transmission charges only for the specific open access capacity availed, whether long-term, medium-term, or short-term, on a per-unit basis, whereas GUVNL and its State DISCOMs bear the cost of the entire State transmission network on a comprehensive basis.

8.16. He submitted that the claim of the Petitioner regarding the STOA charges recovered, require verification by the State Load Despatch Centre (SLDC), which is the competent authority for such matters, and the same are not admitted by GETCO, which reserves its rights in this regard. He further submitted that the reliefs sought by the Petitioner are not maintainable, and no refund can be granted for the past period, particularly for years as far back as FY 2017-18. He further submitted that the Petition is further barred by limitation, delay, and laches. He further submitted that the Petitioner has not demonstrated any grounds warranting interim relief, especially when the matter pertains to a long-standing and settled practice. He further submitted that the Petition is devoid of merit and is liable to be dismissed with costs, as all allegations and contentions raised by the Petitioner are baseless and denied.

8.17. Senior Advocate Ms. Deepa Chawan, on behalf of the Petitioner, submitted that the objection raised by the Respondent regarding non-impleadment of State Distribution Companies and the State Load Despatch Centre (SLDC) is misconceived. She further submitted that the present Petition merely seeks parity in treatment by GETCO between the consumers of TPL and those of the State DISCOMs, referring to the regulatory treatment of State Distribution Companies only as a precedent supporting the Petitioner's plea. She further submitted that TPL has neither made any allegation against the State DISCOMs nor sought any relief prejudicial to them. Similarly, as SLDC functions only as the nodal agency and a functional unit of GETCO, recovering STOA charges, no relief has been sought against SLDC. Accordingly, the question of non-joinder of either the State DISCOMs or SLDC does not arise, and the said objection has been raised by GETCO merely to delay and frustrate the adjudication of the present proceedings.

8.18. She submitted that the Respondent's contention that the Petitioner, being a private distribution licensee, is not a "State Utility" under Regulation 25(4) of the CERC (Open Access) Regulations, 2008, and hence not entitled to exemption from State network charges, is misconceived. She further submitted that the GERC (Open Access) Regulations, 2011 do not envisage or permit any discriminatory treatment in the recovery of STOA charges of GETCO, particularly since TPL-D operates within the State and its consumers are equally part of the State. The benefit of parity in levy of such charges must, therefore, extend to TPL-D consumers as well. She further submitted that the Hon'ble CERC could not have intended to differentiate between consumers of State-owned and private distribution licensees. She further submitted that the CERC (Open Access in inter-State Transmission) Regulations, 2008, relied upon by the Respondent, stand repealed upon implementation of the CERC GNA Regulations, 2022, a fact not disputed by the Respondent. She further submitted that even after repeal of the CERC (Open Access) Regulations, the exemption from STOA charges continues for State DISCOMs and their consumers, while TPL-D consumers are still charged by GETCO. Hence, the STOA charges recovered from TPL-D ought to be refunded to ensure parity and fair treatment to its consumers.

8.19. She submitted that during the tariff proceedings in Petition No. 2419 of 2024, the Respondent disclosed for the first time that the State DISCOMs were exempted from payment of STOA charges, a position further clarified in its Reply dated 25.09.2025, wherein it was stated that the State DISCOMs are not subjected to the mechanism for recovery of open access charges prescribed by the State Commission. She further submitted that the Petitioner was unaware whether this aspect had been duly brought to the notice of this Commission. Hence, it became aware of this differential treatment only recently, and the Respondent's contention that the Petitioner did not challenge the NOC or Standing Clearance issued by SLDC is untenable. Given that open access availed by any distribution licensee for power procurement does not distinguish between licensees, such exemption ought to have been applied transparently and without discrimination.

8.20. She submitted that it operates under the same statutory and regulatory framework as the State DISCOMs, and therefore, imposing STOA charges on its consumers amounts to discriminatory treatment. It merely seeks parity, and GETCO, being a neutral statutory entity, is obligated to ensure uniform treatment, particularly when its network is not utilized. She referred SLD submitted in Rejoinder to highlight Petitioner, TPL's direct connectivity with inter-state network. She further submitted that the Respondent's reliance on the Transmission Service Agreement (TSA) between GETCO, GUVNL, and the State DISCOMs to justify differential treatment is misplaced, as under the Electricity Act, 2003 and the GERC Regulations, open access and recovery of transmission charges must be non-discriminatory and uniformly applied to all beneficiaries. Even assuming the TSA's applicability, it expressly provides that transmission charges shall be as determined by the Commission, as reflected in recitals (14), Clauses 3.5, 3.6, 5.1, 5.2, and Schedule C thereof. She further submitted that under the Postage Stamp Method applicable in Gujarat, transmission charges are to be uniformly recovered from all DISCOMs without distinction. Hence, any method applied to State DISCOMs must equally extend to TPL-D, and reliance on the TSA cannot justify unequal treatment.

8.21. Regarding contention of the Respondent that the Petition is time barred, she submitted that recovery of STOA charges is a continuous activity and not time-bound. She referred the Commission's Order in Petition No. 1740 of 2018 dated 22.07.2020 and submitted that SLDC was permitted to issue supplementary invoices for past periods. She further submitted that the issue of discriminatory treatment came to light only during the GETCO MYT Tariff proceedings in Petition No. 2419 of 2024. The present Petition, being regulatory in nature and based on the principle of non-discrimination, merely seeks parity for TPL-D consumers within the same statutory and regulatory framework as State DISCOM consumers.

8.22. She submitted that GETCO, as the State Transmission Utility, is obligated to administer the grant of open access and levy of transmission charges on a non-discriminatory basis, as no statutory provision distinguishes between distribution licensees in this regard. She further submitted that since TPL-D, despite operating under the same regulatory framework, is being subjected to STOA charges unlike the State DISCOMs. She submitted that parity in treatment be extended to TPL-D consumers, at least on an interim basis, pending final adjudication by the Commission.

8.23. She submitted that it maintains direct connectivity with the Central Transmission Utility (CTU) in addition to the State Transmission Utility (STU). The power scheduled through Power Exchange by TPL-D

Ahmedabad and Surat does not utilize the State transmission network, as verified from GETCO's interface point records. Conversely, while the State DISCOMs source power through the intra-state network under short-term arrangements, they remain exempted from STOA charges. Hence, the STOA charges recovered from the Petitioner ought to be refunded to TPL-D.

8.24. Ld. Senior Advocate Mr. M. G. Ramchandran, on behalf of the Respondent, submitted that the Petitioner's claim of not using the State network is incorrect, as TPL-D remains interconnected with the STU system and its power flow cannot be isolated from the State grid. He further submitted that power scheduled through Power Exchange utilizes the State network for system stability and balancing; hence, levy of STOA charges is justified. The exemption to State DISCOMs arises from their obligation to bear GETCO's entire annual revenue requirement, unlike TPL-D's limited usage. Therefore, the Petitioner's claim for refund is untenable.

9. On the issue of non-impleadment of State Discoms and SLDC, we have already noted that the Respondent has contended that the present Petition suffers from misjoinder and non-joinder of necessary parties, including GUVNL, the four State DISCOMs, open access consumers, generators, and SLDC, and that any determination having tariff

implications should be made only after affording due opportunity to all affected stakeholders in our Daily Order dated 17.10.2025. We also noted that the Petitioner has clarified that the Petition is confined to seeking parity in treatment by GETCO between the consumers of TPL and those of the State DISCOMs, referring to the latter only as a regulatory precedent and not as parties against whom any adverse relief is sought. We also noted that the Petitioner has submitted that since the functions of SLDC as a nodal unit of GETCO and no independent relief is claimed against it, accordingly, the question of non-joinder of either the State DISCOMs or SLDC does not arise, and the said objection has been raised by GETCO merely to delay and frustrate the adjudication of the present proceedings.

10. Considering submissions as above, we directed both the parties to file their written submissions, if any, within 3 weeks' time from the date of hearing. Both TPL and GETCO has filed their Written Submissions.

11. The Petitioner filed issue-wise Written Submission dated 27.10.2025 as under:

11.1. TPL has submitted that the present Petition is preferred pursuant to the directions dated 29.03.2025 issued by this Commission in the tariff proceedings of GETCO namely, Petition No. 2419 of 2024. It is submitted that tariff determination of GETCO involved hearing of suggestions and objections from public under Section 64 (3). A vital issue of tariff namely, discriminatory treatment to the consumers of Petitioner in the State came to the fore during the deliberations under Section 64(3) of Petition No. 2419 of 2024. The Petitioner, TPL submitted that it became aware of the differential treatment meted out to the consumers of its licence area. Pursuant to the directions of this Commission and in continuation of the said tariff related issue, the Petitioner approached this Commission seeking parity and equitable treatment for its consumers with the consumers of the State Discoms, qua the levy of short-term open access charges for power procurement.

<u>Different treatment for Consumers of TPL, qua non levy of STOA charges – an Admitted fact:</u>

11.2. TPL submitted that in respect of the actions of GETCO in not granting parity to consumers of TPL with consumers of State Utilities qua STOA charges, it is imperative to comprehend the admitted factual position. TPL submitted that GETCO's submissions in Petition No. 2419/2024 clearly reveal that there is discrimination between TPL and State Discoms with regard to recovery of Short-term open access charges (Power Exchange and Bilateral). In other words, for the power procurement by TPL for its consumers, the ultimate consumers are required to pay short term open access charges. In contrast, GETCO does not levy short term open access charges on the State Discoms and in turn, State Discoms' consumers. GETCO, being a parent entity, cannot discriminate on the levy of transmission charges for the State Discoms & TPL

All Discoms governed by same legal and regulatory framework:

11.3. The Petitioner submitted that the State Discoms and TPL are Distribution Licensees distributing and supplying electricity in the State of Gujarat. In terms of the Regulatory Framework governing all the entities, there cannot be a difference in the treatment meted to any particular entities. The practice being followed by GETCO would contrary to the mandate of equal treatment enshrined under the Constitution of India. The Section 40 of the Electricity Act 2003 also provides for non-discriminatory Open Access to the transmission system. Hence, GETCO is required to provide parity to TPL with the State Discoms qua STOA charges.

TPL's connectivity with CTU and non-utilization of State network:

11.4. The Petitioner submitted that it has direct connectivity with CTU apart from connectivity with STU. Also, power flow through interconnection with State Network and ISTS would reveal that quantum scheduled through Power Exchange does not utilize the State network which can be verified by GETCO from the actual records of electricity recorded at Interface points. On the other hand, though Govt DISCOMs utilize the Intra-state network for sourcing of power under short term arrangement, they have been exempted from payment of STOA charges. Under the circumstances, STOA charges recovered from the Petitioner needs to be refunded.

11.5. The Petitioner further submitted that during the hearing on 30.09.2025 the Respondent admitted that there is no point to point (i.e. Postage Stamp) open access in case of State Discoms and instead given access to entire mesh network without any limitation or identification of any point to point transmission. The Petitioner submitted that GETCO could not have treated TPL and the State Discoms differently in terms of recovery of STOA Charge as State DISCOMs are also governed by the provisions of same GERC OA Regulations.

<u>Erroneous contention of non-impleadment raised by GETCO:</u>

11.6. Regarding the issue of non-impleadment of State distribution companies and SLDC, the Petitioner submitted that the present petition only seeks parity in treatment by GETCO to the consumers of TPL with that of the consumers of State DISCOMS. The reference to the Regulatory treatment qua State Distribution companies is only as a precedent, in support of the plea of the Petitioner. TPL has neither pleaded against

State Distribution Companies nor claimed any relief against them. TPL has not sought any adverse or prejudicial order against the State Distribution Companies. TPL has sought only parity for its consumers. Therefore, the question of non-joinder of State Discoms does not arise.

11.7. Regarding SLDC, the Petitioner submitted that SLDC is only a nodal agency for collection of STOA charges. The STOA charges collected by SLDC are as approved by the Commission in the tariff order of the Respondent, GETCO. TPL has not sought any relief against SLDC. Therefore, the question of non-joinder of SLDC does not arise. The contention of non-joinder of parties is raised by GETCO only to delay the present proceedings. In any case, GETCO is acting not only as a State Transmission Utility - STU but also as SLDC. GETCO has in its Tariff Petition and even in these proceedings sought to justify the action of treating the consumers of TPL differently from the consumers of the State DISCOMs. Having accepted and carried the role of justifying and defending its actions, it cannot raise the issues of misjoinder / non-joinder of parties to defeat adjudication of the claim of the Petitioner on merits. GETCO has never denied its decision and action not to charge the State DISCOMs towards STOA charges. In that event of the matter, any other entity which in fact is very well related entity and connected entity to GETCO would be bound by the decision of GETCO. In the present case, SLDC is not even the separate legal entity but part of GETCO only unlike Grid India/ POSOCO being separate legal entity from PGCIL. To that end, the issue of non-joinder / misjoinder of parties has been raised by GETCO to further delay and defeat the claims of the consumers of TPL. Hence, issue raised is not tenable.

11.8. With regard to GETCO's contention that the Petitioner is not a "State Utility" unlike State Distribution licensees which fall within the definition of "State Utility" and therefore as per Regulation 25(4) of CERC Open Access Regulations, 2008, the charges for State Network are not included, TPL submitted that GERC Open Access Regulations do not provide for any discrimination in terms of recovery of STOA charges by GETCO as TPL-D is also a part of the State. The benefit of any exemption given to State Discoms' consumers should also be extended to TPL-D's consumers as they are also part of the State. TPL referred the definition of State Utilities which is defined in the CERC Open Access Regulations as under:

"(q) "State utility" means a State Electricity Board, or Electricity Department of the State, or a State Government organization authorized to sell or purchase electricity on behalf of the State"

11.9. TPL submitted that the CERC could not have intended to discriminate consumers of State Discoms and Private Discoms in respect of recovery of State Transmission charges. TPL further submitted that CERC (Open Access in inter-State Transmission) Regulations, 2008 have been repealed in 2022, with the implementation of CERC GNA Regulations and that the Respondent has not disputed the same. In support, TPL as referred the extract of the CERC GNA Regulations as under:

"Definition 2.1. In these regulations, unless the context otherwise requires:

....

(ac) "Open Access Regulations" means the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008;

....

43.2. Save as otherwise provided in these regulations, the Open Access Regulations and the following Procedures issued thereunder, are hereby repealed: (a) Procedure for Scheduling Short-Term Open Access in Inter-State Transmission (Bilateral Transaction) dated 30.6.2011 (b) Short-Term Open Access in Inter-State Transmission (Collective Transaction) Procedure for Scheduling dated 30.6.2011. (c) "Procedure for Short Term Open Access in inter-State Transmission System through National Open Access Registry (NOAR) dated 1.4.2022" under Regulation 4 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Fifth Amendment) Regulations, 2018."

11.10. The Petitioner submitted that despite the repeal, the benefit of exemption has been continued to Government DISCOMs since 2022 till date and action was also justified by GETCO during the public hearing held on 24.02.2025 in Case No. 2419 of 2024. Under the circumstances, STOA charges recovered from TPL-D by the Respondent GETCO need to be refunded to TPL-D, so as to be passed on to the consumers of TPL-D. TPL submitted that GETCO's reliance on CERC Open Access Regulations, 2008 which are already repealed with the implementation of CERC GNA Regulation is untenable on following counts:

(i) On the ground of inapplicability of the CERC Regulations in the State of Gujarat.

(ii) On the distinguishing features of transmission system, its legal framework and regulatory regime at ISTS and at the State level.

(iii) The CERC regulations have been repealed in 2022 and GETCO continues to exempt the STOA transactions from charges.

On all three grounds, the consumers of TPL are entitled to be treated with parity and equally by GETCO. So, such reliance on repealed regulation is bad in law. Submissions made by GETCO results into perjury by GETCO.

11.11. The Petitioner submitted that in Gujarat, for InSTS, the Postage Stamp method is used for collection of transmission charges whereas there is no Postage Stamp method for ISTS network. So, when there is specific methodology prescribed in the Regulation issued by the Commission, GETCO cannot rely on CERC Open Access Regulations 2008 to give different treatment to the consumers of TPL and State DISCOMs.

Erroneous reliance on TSA to justify the discrimination in recovery of STOA Charges between the consumers of State DISCOMs and consumers of TPL

11.12. Regarding GETCO's reliance on unbundling during 2005 and entering into Transmission Service Agreement (TSA) between GETCO, GUVNL and State Discoms under Section 131 read with Section 39 of the EA, 2003 to contend that Transmission Charges are paid by the State Discoms in residual manner as per TSA i.e. all other Open Access Consumers are required to bear the Transmission Charges as per Tariff Order issued by the Commission for the quantum of LTA/MTOA/STOA granted to them whereas State Discoms bears only residual revenue requirement of the GETCO after deducting payments made by others, the Petitioner submitted that as per Electricity Act, 2003 read with applicable Regulations, there cannot be any discrimination amongst the State DISCOMs and other Distribution licensees in respect of grant of

Open Access as well as mechanism of recovery of transmission charges. Open Access Regulations and Tariff Regulations notified by the GERC are uniformly applicable to all the distribution licensees without any discrimination. The GERC OA Regulations do not provide for any other mechanism for the State Distribution Licensees. Therefore, there is no question of applicability and overriding of TSA entered into between GETCO and State Discoms for the purpose of usage of Transmission Network and recovery of corresponding charges. Without prejudice, even assuming that TSA is applicable, it is clearly mentioned in TSA that Transmission Charges shall be recovered as determined by GERC. The Petitioner also relied on recitals (14), Clause 3.5, 3.6, 5.1 and 5.2 read with Schedule C of TSA.

11.13. The Petitioner further submitted that it was contention of GETCO that the Commission was aware about mechanism being followed by GETCO for recovery of Transmission Charges. In this regard, the Petitioner submitted that if that be the case, the Commission is requested to ensure parity in the charges paid by the Petitioner till date for STOA.

11.14. The Petitioner submitted that with implementation of GERC Open Access Regulations, 2005, the Commission had issued the order for operationalization of Intra-State ABT vide Order No. 3 of 2006 dated 11th August, 2006. In turn, State DISCOMs along with GUVNL approached the

Commission seeking relief from implementation of provisions of Intra-state ABT Order issued under the GERC Open Access Regulations. The Petitioner placed on record the order of the Commission in Petition no. 1037 of 2010 filed by GUVNL requesting to consider all the subsidiary Distribution Licensees of GUVNL as a single beneficiary under Intra State ABT Regime. TPL submitted that in its order dated 05.10.2010, the Commission has dismissed the petition instead of granting any relief. However, despite such clarity given by the Commission about implementation of provisions of GERC Open Access Regulations, GETCO, which is entrusted with the statutory responsibility to grant non-discriminatory open access, is discriminating between TPL Discoms and State Discoms by allowing only State Discoms to be exempted from payment of STOA Charges without taking any such approval from the Hon'ble Commission.

Non applicability of law of limitation

11.15. Regarding the Respondent's contention that petition is time barred, the Petitioner submitted that vide order dated 22nd July, 2020 issued by this Commission in Petition no. 1740 of 2018, the Respondent SLDC was allowed to raise supplementary invoices for correcting the bills of the past periods. Hence, the contentions of the Respondent are not tenable.

The Petitioner further submitted that recovery of STOA Charges being continuous activity, there is no question of limitation.

11.16. The Petitioner submitted that it is for the first time during the proceedings of Petition no. 2419/2024 – GETCO MYT Tariff that it was revealed that a different and discriminatory treatment was being given to the consumers of State Discoms. Additionally, the present Petition is not a contentious matter but a tariff related issue on principle of non-discriminatory actions mandated to be undertaken by GETCO. The present Petition is in the Regulatory domain invoked by the Petitioner to substantiate its entitlement to be treated similarly as other Discoms, so that the consumers in its area of supply are not differently treated and affected, although, both sets of consumers are governed by the same Statutory and Regulatory framework.

11.17. The Petitioner submitted that the role of GETCO is that of a State Transmission Licensee which has to apply financial and economic principles in a non-discriminatory manner for grant of Open Access to the Distribution Licensees for sourcing power. There is no distinction or differentiation under the Statutory provisions qua Distribution Licensees being charged Transmission charges for grant of Open Access to utilize the Transmission system of the GETCO.

11.18. Without prejudice to its contention that there is no issue of limitation, the Petitioner further submitted that the tariff application always has impact of the decisions of the earlier pending litigations before the higher forum (i.e. APTEL or Supreme Court). The present matter is similar to wrong charging of tariff under Section 62 (6) of the EA, 2003.

The conundrum of alleged commitment by State Discoms to GETCO:

11.19. As regards GETCO's contention that the State Discoms contribute largely to the transmission system development in the State and that they service GETCO and make commitment to GETCO for development of InSTS Network which constitutes an intelligible differentia and has a reasonable nexus with objective with which STOA charges are not being levied on the consumers of GETCO, the Petitioner submitted that such contention is contrary not only to law but also to the established Uniform Regulatory Framework and Mechanism in the State of Gujarat, under which all the Distribution Licensees operate. In terms of prevailing Regulatory Framework in Gujarat, it is always the commitment of all long-term Transmission System Users and not only State Discoms who bear the cost of the network. The Petitioner submitted that a clear illustration of the same can be found when one considers the laying of transmission system and network in the country by the CTU; wherein ISTS network gets planned and executed based on requirements of the long term customers as all long term customers are bound to service the ARR of the ISTS Network. Therefore, the so-called contention that commitment made by State Discoms made it possible the development of Intra-state network in the State of Gujarat is erroneous and misleading. In response to the GETCO's argument that the State Discoms paid 86% of total revenue requirement of GETCO, the Petitioner submitted that the entire picture would reveal that it is the State Discoms which mainly use the network of GETCO. The Petitioner submitted that expenses or payments made by Discoms at State level as long term TSUs and similar situation at the central level can be considered as parallels. The justification for denying relief to consumers of TPL is therefore not tenable.

Judgements cited by GETCO are distinguishable and not applicable to the present case:

11.20. The Petitioner referred to the judgements cited by GETCO during the course of hearing and submitted that all the judgements cited are prior to the 2003 Act and completely distinguishable. The Petitioner submitted that it is trite law that laws do not have universal application. A Classification under law and under Article 14 of the Constitution of India is permissible.

11.21. The Petitioner submitted that GETCO has miserably failed to show any semblance of classification. Its reliance on repealed CERC Regulations, the alleged commitment of the State Utilities to GETCO and not establishing any reasonable nexus with the object of the Act itself reveals that the judgements cited which deal with the question of classification and equality are inapplicable in the facts and circumstances of the case. GETCO has cited the following judgments:

(i) State of West Bengal Vs. Unwar Ali Sarkar - AIR 1952 SC 75

(ii) Kallakkurichi Taluk Retired Officials Assn. v. State of T.N., (2013) 2 SCC 772

(iii) Murthy Match Works v. CCE, (1974) 4 SCC 428

(iv) Budhan Choudhry v. State of Bihar, (1954) 2 SCC 791

(v) Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594

(vi) U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra, (2008) 10 SCC 139

(vii) Venkateshwara Theatre v. State of A.P., (1993) 3 SCC 677

(viii) Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217

(ix) Jayesh A. Joshipura Vs State of Gujarat dated 09.10.1982 in SCA No. 3032 of 1982

11.22. The Petitioner submitted that these judgements are clearly distinguishable and not applicable to the present case. The interpretation of equality and classification with intelligible differentia and reasonable nexus to the object i.e. sought to be achieved is a well-established and settled position of law. TPL as a Petitioner has no quarrel with the same. In fact, aspect of intelligible differentia supports the prayer of the Petitioner for refund of STOA charges recovered by GETCO as the Petitioner does not utilize the Intra-state Network of GETCO for sourcing of power through STOA. The Power flow from GETCO Network and ISTS network for TPL's Short term Power Procurement clearly establish that TPL does not use GETCO network for short term power purchase. However, GETCO cannot merely rely on judgements without fulfilling factual and material onus and burden of establishing that in fact the classification between consumers of the State utilities and TPL consumers is permissible in law. Having failed miserably to establish the same, the aforesaid judgments are clearly not applicable to the contentions of GETCO.

<u>Hon'ble Supreme Court judgments relied upon by TPL</u>

11.23. TPL relied on the various Supreme Court judgments in support of its Petition and to refute the contentions of GETCO as detailed hereinbelow.

(i) The following judgement of Hon'ble Supreme Court defining the term "means" relied upon by Petitioner for interpretation of Definition of "State Utility"

National Insurance Co. Ltd. Vs. Kirpal Singh, 2014) 5 SCC 189 - (Para 11 & 15)

(ii) Section 22 of Limitation Act, 1963 relied upon by the Petitioner to establish that use of transmission system, raising of bills by GETCO, payment thereof by inter alia Distribution Licensee all reveal a continuous action within the ambit of Section 22 of Limitation Act, 1963

Samruddhi Coop. Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction (P) Ltd., (2022) 4 SCC 103 - (Para 13 to 15)

(iii) ISTS and Postage Stamp Method are different methods of transmission regulation and an element of one cannot be imported into the other of justify an action

Indian Wind Power Assn. Vs. Eastern Power Distribution Co. of Andhra Pradesh Ltd. - (Para 19)

MSEDCL Vs. CERC, 2011 SCC OnLine APTEL 119 - (Para 22)

(iv) In the present proceeding the Petitioner is claiming parity for its consumers with the consumers of State Discoms and not any relief against the other State Discoms hence there is no issue of misjoinder / non joinder of parties

LIC Vs. Gangadhar Vishwanath Ranade, (1989) 4 SCC 297 - (Para 17)

(v) Regulations framed under CERC is not binding to the State Commission

Transmission Corporation of Andhra Pradesh Ltd. Vs. M/s. Spectrum Power Generation Limited, APERC Judgement dated 26.11.2012 in O. P. No. 30 of 2009 – (Para 13)

(vi) Article 14 of Constitution of India explains the concept of Equality that classification must be on intelligible differentia and the differentia must have rational relation

Sukanya Shantha Vs. Union of India - (2024 SCC Online SC 2694) - (Para 26, 33 & 34)

(vii) The Regulations makes inroad into even the existing contracts

PTC Vs. CERC, (2010) 4 SCC 603 - (Para 66 & 79)

(viii) Law of limitation does not apply to Administrative or Regulatory Function of State Commission.

A.P. Power Coordination Committee Vs. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468 – (Para 31)

(ix) Each Tariff Order is distinct and separate

Delhi Transco Ltd. Vs. DERC, 2009 SCC Online APTEL 6 - (Para 15 to 17)

(x) The courts have taken action against a person who has made wrong statement or material in the proceedings which he knew to be false.

RE: Suo Motu Proceedings against R. Karuppan, Advocate, (2001) 5 SCC 289 - (Para 14 to 16)

12. The submissions made by the Respondent in its Written Submission dated 27.10.2025 is as under:

12.1. The Respondent GETCO submitted that there is no such discrimination in the treatment of the four distribution licensees vis-a-vis the Petitioner as alleged by the Petitioner by apparently showing that the Petitioner and four state distribution licensees have the same status under the Electricity Act, 2003.

12.2. The State Distribution licensees have been paying through GUVNL, ARR of GETCO determined by the Commission from time to time on the basis of being long term access with the adjustment of the actual charges for open access by others, long term or short term or medium term open access. While the State Distribution Licensees are being levied transmission charges to cover the entire transmission system of GETCO as a mesh system covering all facets of cross flow without any limitation or identification of any point to point transmission, the others including the Petitioner herein are availing the use of the system on point to point connection basis where both the injection point and delivery point are being clearly identified. In contrast to the above the Agreement between GETCO and GEB/GUVNL etc. does not provide for such point to point connection.

12.3. The Respondent submitted that the Petitioner is mixing up the short term open access involved in the inter state transmission system when the power is procured from outside Gujarat including through power exchange collective transaction and the open access required to convey such power from the Gujarat Periphery to the destination within Gujarat i.e. the distribution licensee's substation. Whereas in the case of the Petitioner, the capacity to be conveyed through the GETCO system there is no existing open access coverage and there is a need to take short term open access for such quantum, in the case of state Distribution Licensees there already exists open access coverage duly laid for the said licenses. The recovery of short term open access charges on the State Distribution licensees for such quantum would amount to charging twice. If the Petitioner takes a long term open access even on point to point connection basis from the point of injection (Gujarat Periphery) and point of delivery and then chooses to use the same from time to time on short term basis the petitioner may not be required to pay short term open access charges. The Petitioner cannot seek to avoid taking long term open access, minimise its financial exposure of paying long term charges and then further seeking exclusion from payment of open access charges applicable to short term open access.

12.4. There is therefore no discrimination of the four state distribution Licensees vis-à-vis either Torrent Power Limited, the Petitioner, or any other open access consumer in regard to the transmission charges payable in the procurement of power on short term open access basis from power exchange, or from any other source outside the state of Gujarat. There is valid rationale for differentiation of the four state distribution Licensees represented by GUVNL in a composite manner in regard to the charges payable for use of the intra-state transmission system of GETCO as compared with others including Torrent Power - Distribution licensee.

12.5. GUVNL / four state distribution Licensees as successor of the erstwhile Gujarat Electricity Board (GEB), have been paying and exclusively committing the capacities for upgradation of the entire intra -state transmission system in the State in a composite manner. The transmission planning in the State has been established and GETCO has undertaken the establishment of the transmission systems from time to time based on such commitments to meet the Revenue Requirements of GETCO as determined by the Hon'ble Commission in the tariff orders passed from time to time.

12.6. In terms of the above, the entire load of the intra- state transmission system, the Revenue Requirements for the same for laying down, upgradation, maintenance etc. are met from the load considered for GUVNL/ four State distribution Licensees after identifying and adjusting the identified capacities for open access for others, namely deducting other than the transmission charges recovered from others.

12.7. Unlike the others, for the four state distribution Licensees the transmission charges are paid in a composite manner for the entire capacity of the transmission system of GETCO, excluding the identified capacity taken on open access by others. It is not on the basis of any identified point-to-point connection of using the transmission system. GUVNL/ four state distribution Licensees are making payment on the comprehensive basis to meet the revenue requirements of GETCO (after adjustment of the transmission charges paid for LTOA, MTOA and STOA paid by others) and there is no further requirement for additional levy of any STOA charges.

12.8. The State Distribution Licensees are held liable to service, on a comprehensive basis the entire revenue requirement of the transmission Licensee (GETCO) subject to reducing the amount that may be recovered from other open access users whether long term, medium term or short term. The quantum of such liability discharged by the State Distribution Licensees are substantial proportion of the total revenue requirements of GETCO (presently more than 86%). While there are aspects of surrender, relinquishment of transmission capacity etc available to other open access users, there is no such thing in the case of State distribution licensees. The obligation of the State Distribution Licensees is of a continuing nature namely they are always liable to discharge the liability to meet towards meeting the entire revenue requirements of GETCO.

12.9. The 4 State DISCOMS are incurring the entire quantum of open access as full transmission charges on per MW basis. There is no aspect of any STOA, Since the entire quantum is paid on per MW basis which is in fact higher than the STOA charges which is on per unit basis. The State Distribution Companies under GUVNL have the access on the entire mesh network and is not point to point. They therefore can under the open access take the power from any point in the state to any other point. Once the same is established, the source/transaction is not relevant and even whether the same is intra-state or Inter-state level until the state periphery.

12.10. Such aspects of consideration of the State Utility differently was also recognised by the Central Commission in CERC (Open Access in Inter-State Transmission) Regulations 2008. The issue in the present case is in relation to treatment of State Utility under such CERC (Open Access in Inter-State Transmission) Regulations 2008:

"State utility" means a State Electricity Board, or Electricity Department of the State, or a State Government organization authorized to sell or purchase electricity on behalf of the State;"

12.11. In regard to aspect of Collection and Disbursement of Transmission Charges, the following provision is made under Regulation 25(4):

"(4) In case a State utility is the open access customer, the operating charges and the transmission charges to be collected by the nodal agency shall not include the charges for the State network and operating charges for the State Load Despatch Centre."

12.12. It is submitted that though the above CERC Regulations have been repealed and replaced by Central Electricity Regulatory Commission

(Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 effective on various dates and Regulation 43 was effective 01.10.2023. GETCO is right in placing reliance on the earlier regulations to show that the pleadings taken by GETCO is supported by the dispensation prevalent. The CERC Regulations also shows that similar dispensation existed in other states also. The GNA Regulations do not modify the position to provide positively that intra-state transactions within Gujarat should also necessarily be subjected to STOA charges irrespective of the treatment in Gujarat.

12.13. It is wrong on the part of the petitioner to allege any perjury on the part of GETCO in not referring to the repeal of the above CERC Regulations by GNA Regulations. The existence of GNA Regulations 2022 (effective partly from 15.10.2022 and from 01.10.2023) has been known to the Petitioner, it is law applicable governing inter-state transmission and the petitioner has been sourcing power from outside Gujarat using inter-state transmission network both before and after the coming in to force of the GNA Regulations effective 01.10.2023 (for the present purpose). The Petitioner has raised the aspect of the earlier CERC Regulations being repealed in its rejoinder. There has been no incidence of GETCO having pleaded any wrong fact much less any attempt to pleadings any false deliberately before the Commission.

12.14. If the Petitioner is required to share the entire revenue requirement of GETCO in regard to the intra-state transmission in the State of Gujarat, in the same manner as done by GUVNL based on entire load of all power procurements, Torrent Power would become liable to share much higher transmission charges than it is currently paying for identified transmission system only. Torrent Power cannot retain the benefits of the present dispensation of consideration of the identified open access quantum only and at the same time claim parity on STOA charges with GUVNL/ four state distribution licensee.

12.15. In view of the above, there is a clear intelligible differentia of contribution to the transmission charges by GUVNL/4 State DISCOMs as compared to the Petitioner or other users of the transmission system as the entire load of the power purchase agreements contracted by GUVNL including from renewable power sources is considered as an aggregate capacity for sharing of transmission charges proportionately with others. The Petitioner cannot claim parity with GUVNL/ 4 State DISCOMS when it is not subject to the same obligations as GUVNL/4 State DISCOMS.

12.16. GETCO submitted that it is well settled principle that it would be wrong to compare unequals and treating unequals as equals is also discriminatory. In support, GETCO has cited judgements of Hon'ble Supreme Court in the matter of State of West Bengal v. Anwar Ali Sarkar [AIR 1952 SC 75], Kallakkurichi Taluk Retired Officials Association, Tamil Nadu and others v. State of Tamil Nadu [(2013) 2 SCC 772], Murthy Match Works v. CCE, [(1974) 4 SCC 428], Budhan Choudhry v. State of Bihar, [(1955) 1 SCR 1045] and Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594 etc.

12.17. GETCO submitted that differential treatment to State Discoms is not discrimination but a valid distinction to have reasonable classification. In support, GETCO referred decisions of Hon'ble Supreme Court in UP Power Corpn. Ltd. V. Ayodhya Prasad Mishra [(2008) 10 SCC 139 Para 40] and Venkateshwara Theatre v. State of A.P. [(1993) 3 SCC 677 Para 23]. Further, to support sub-classification, GETCO has referred decisions of Hon'ble Supreme Court in the matter of Indra Sawhney -v- Union of India, 1992 Supp (3) SCC 217 and Jayesh A. Joshipura -v- State of Gujarat and Ors. dated 09.10.1982 in Special Civil Application No. 3032 of 1982 (High Court of Gujarat).

12.18. GETCO also submitted that there can be no issue or dispute that the Petitioner is liable to pay State transmission charges for the inter-state open access. The Petitioner cannot claim that it is not liable to pay the transmission charges which is clearly payable as per law. The attempt of the Petitioner to claim exemption from the payment of transmission charges is not correct. The Petitioner has not shown any basis for it to be not liable to pay state transmission charges and it has in fact paid the State transmission charges. The Petitioner is not referring to any provision of law which would entitle it to claim exemption from the liability to pay the state transmission charges but on the other hand, the law is clear that the Petitioner as open access customer is liable to pay State transmission charges as determined by this Commission for inter-state open access also.

12.19. GETCO submitted that the Petitioner's claim that it does not use the GETCO/Intra-State Transmission system for procuring power from the power exchange/third parties is baseless. The interconnection point in case of power exchange/third party transactions outside the state of Gujarat is usually at the state periphery/GETCO periphery, and thereafter there has been some use of the intra-state network. Further, it is the Petitioner who is applying for open access to the intra state network and is being charged for the same, if there was no use of the GETCO network, then there is no explanation as to why the Petitioner is applying for open access on regular basis. In fact, the said claim is contrary to the record as well, GETCO has placed on record agreements signed by the Petitioner for open access at GETCO sub-stations. Further no such contention was raised in the Petition and is a completely new issue sought to be raised.

12.20. GETCO submitted that the present Petition is not maintainable for non-joinder of necessary parties, namely, GUVNL, four distribution licensees, SLDC, open access consumers including generators seeking such open access as well as public at large who are the people heard during determination of tariff proceedings of GETCO. Further, any impact on tariff has to be given prospectively. The Petitioner cannot proceed in the present proceedings as if it is seeking an amendment to the Tariff Order dated 29.03.2025. GETCO also submitted that the relief claimed is substantially time barred. According to GETCO, the Petitioner was always aware of all aspects and there cannot be any claim of parity. The Petitioner seeks open access for specific quantum, whether long term, medium term or STOA and is liable to pay transmission charges accordingly. The Petitioner had never challenged either the NOC/Standing Clearance given by SLDC and had in fact on the said basis proceeded with the Open Access. Therefore, at no point did the Petitioner have any issue or dispute with the applicability of the state transmission charges. The liability of the Petitioner would not change merely because of the aspects relating to other persons. The only issue raised is comparison with other Discoms. The Petitioner is not claiming to be a State utility and therefore seeking parity in terms of the CERC Regulations. The Petitioner is not similar to the State Distribution Companies and is liable to pay the transmission charges only as per the open access identified and availed by it, whether LTOA/MTOA or STOA. When it avails STOA, it pays on per unit basis. On the other hand, as submitted hereinabove, the GUVNL/state distribution companies bear the cost of the entire network.

12.21. The claim of the Petitioner in regard to the charges being recovered from Petitioner during the years requires verification. The STOA charges are collected by SLDC and therefore need to be verified by SLDC. There cannot be any refund for the past period let alone from FY 2017-18.

13. Further, GETCO has also filed additional written submissions dated 29.10.2025 submitting as under.

13.1. The Petitioner has relied on the Order dated 05.10.2010 of the Hon'ble Commission relating to application of the intra-state ABT Regime which was not argued and has been placed for the first time by way of written submissions. GETCO submitted that the reliance by the Petitioner is misplaced. The purpose of the intra-state ABT mechanism is to deal with the intra-state despatch, scheduling and deviation mechanism. Prior, the State Distribution Licenses were considered as one entity and the Petitioner was considered as an independent entity and not at par with the State Distribution Licenses. The burden of intra-state ABT was entirely taken by the State Distribution Licenses in aggregate and the deviation of the 4 State Distribution Licenses was in a different manner. With the Intra-State ABT coming into existence vide Order dated 11.08.2006 and 01.04.2010, the intra-state entities are also subjected to ABT Mechanism for deviation and settlement. This has no implication on the transmission charges payable for the intra-state transmission services. The levy of such charges continues to be the same as before, based on point to point open access sought for and taken by intra-state entities other than the State Distribution Licenses. The position of the State Distribution Licenses continues to be the same in regard to transmission charges as stated in the written submission filed by GETCO on 27.10.2025. The above Order relating to ABT mechanism has no relation to the issues at hand.

13.2. GETCO submitted that the inter-state open access is on a different methodology. Intra-state open access is on a postage stamp method. GETCO's pleading is not that intra-state open access is on a methodology which is not on postage stamp. The distinction is between the point-to-point open access sought by the Petitioner and other entities as compared with that of the State Distribution Licenses where every point of injection and every point of delivery is covered by the transmission charges already paid to GETCO in the State of Gujarat. The Petitioner is twisting the point-to-point open access and is mixing it up with postage/non-postage stamp methodology.

13.3. The Petitioner is also raising an issue about use of the intra-state network by the Petitioner. Such aspects cannot be raised. In the power exchange transactions being a collective transaction the power flow could be through any interconnecting point of GETCO in the inter-state transmission system and then to the Petitioner's sub-station. For this reason, the Petitioner itself is applying for open access. No such issue was also raised in the Petition. During the arguments also, it was pointed out by GETCO that the Petitioner cannot, apply for intra-state open access and then claim that it is not using any part of the GETCO system.

13.4. GETCO submitted that the allegation of the Petitioner that the TSA entered into between GETCO, GUVNL and State DISCOMs cannot override the Open Access Regulations is misplaced. GETCO referred Regulation 46 of the Open Access Regulations 2011 as under:

"46. Repeal and Savings

(3) Open access customers to the intra-State transmission system and the distribution system in the State on the date of coming into force of these regulations under an existing agreement/contract shall be entitled to continue to avail such access to the transmission and distribution system on the same terms and conditions, as stipulated under such existing agreement/contract. Such persons are eligible to avail long-term access or medium-term open access under these regulations on expiry of such existing agreement/ contract. Such persons, shall have to apply to come under the long-term access or medium-term open access category at least thirty days prior to the expiry of such existing agreement/contract."

GETCO submitted that the transmission charges under the TSA are paid as per the charges determined in the Tariff Orders of GETCO. It is not the case that the State Distribution Licenses is not paying transmission charges or is paying at a rate not determined by the State Commission.

13.5. With regard to the decisions relied upon by the Petitioner in its Written Submissions, GETCO submitted that the reliance on the said decisions is misplaced and distinguishable on both fact and law for the following reasons:

a. National Insurance Co. Ltd. v. Kirpal Singh, (2014) 5 SCC 189: The decision in regard to the expression "means" is of no assistance to the Petitioner. The definition of State Utility does not include Torrent.

b. The Petitioner has relied upon the decisions in Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd., (2022) 4 SCC 103 and A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468 to state that there is no applicability of the provisions of the Limitation Act. In this regard, GETCO submitted that there is no continuing cause of action, in fact there is acquiescence by the Petitioner. There is no continuing breach. There is no breach of contract as referred in Samruddhi Coop Case. Further even as per the above case, there is no continuing wrong. In para 15, the judgment refers to another judgment, wherein it is recognised that "court should not be eager to hold that an act or omission is a continuing wrong or default". Para 16 referring to instances of continuous wrong demonstrate that this is not any such case. Further each STOA transaction is completed and the transmission charges are paid. What is being sought is recovery of the charges paid. This is not a continuing wrong. The issue is not of any regulatory aspect but of recovery. The Hon'ble Supreme Court had upheld the principle of limitation in case of tariff [Gujarat Urja Vikas Nigam Limited v. CLP India Pvt Ltd in Civil Appeal 2969 of 2010 dated 06.05.2020], and in cases of change in law and payment of delayed payment surcharge [Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission and Others Civil Appeal No. 1843 of 2021 dated 08.10.2021] and this Hon'ble Commission had upheld the limitation in case of POC charges [Nayara Energy Limited in Petition No. 1429 of 2014]. Even otherwise, the principle of laches and delay would apply. The Courts have applied the timelines as per limitation even in cases where Limitation Act does not apply such as writ petition etc. Reference: Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110.

Further this is not a case of simpliciter regulatory/administrative functions and there is adjudication of rights and obligations between parties. The Petitioner is seeking to raise a time barred claim. In fact in AP. Power Coordination Committee (Supra) monetary claims have been held to be within the ambit of the Limitation Act. On one hand the Petitioner is pleading continuing cause of action, on the other it is relying on the decision in Delhi Transco Ltd. Vs. DERC, (2009) SCC Online APTEL 6 to plead that each Tariff Order is distinct and separate. There is therefore a direct contradiction in the claims of the Petitioner.

c. The decisions in Indian Wind Power Assn. Vs. Eastern Power Distribution Co. Of Andhra Pradesh Ltd. , and MSEDCL Vs. CERC, (2011) SCC OnLine APTEL 119 relied upon by the Petitioner deal with a situation where there was difficulty in implementing certain provisions of the Regulations notified by the Central Commission and have no application to the present case. With regard to postage stamp method the submissions made hereinabove and in the Written Submissions dated 27.10.2025 are reiterated.

d. The decision in LIC Vs. Gangadhar Vishwanath Ranade, (1989) 4 SCC 297 relied on by the Petitioner relates to a case where there was a claim for payment of interest from LIC only and no other party, therefore the plea for impleading the income tax officer was not entertained. In the present case, the claim of the Petitioner directly impacts the status of the other licensees in the State as well as data with SLDC since the STOA is dealt with by SLDC.

e. The existing TSA between GETCO, State Discoms, GUVNL etc is protected in view of the provisions of Regulation 46, therefore the reliance on PTC Vs. CERC, (2010) 4 SCC 603 is misplaced.

13.6. In regard to issue of SLDC, GETCO submitted that this Commission has treated GETCO undertaking the transmission services and STU functions and SLDC as distinct functions to be kept separate and not to be mixed up though all of them fall under one corporate entity.

Analysis and Decision

14. We have carefully considered the submissions made by both the parties. We note that the present Petition has been filed by the Petitioner for (a) Refund past period STOA charges recovered by GETCO from TPL for the period FY 2017-18 to FY 2024-25; (b) to direct GETCO to treat all the Distribution Licensees including the Petitioner uniformly in its treatment for recovery of STOA Charges for future period. The Petitioner has also prayed to direct GETCO to grant parity to TPL and its consumers with the State Discoms and their consumers in respect of STOA charges on power procurement. Before dealing with issues on merits, we deem fit to deal the issue on maintainability.

15. We note that GETCO has raised issue on maintainability of the Petition due to non- impleadment of the State Distribution Companies /GUVNL /SLDC /others as parties to the present proceedings. In support of its

contention, GETCO submitted that though Petitioner is raising issues of distribution companies, they are not made party. Further, GETCO submitted that issues raised are related to the aspects of STOA which are dealt with by State Load Despatch Centre. However, SLDC is not made party. Per contra, the Petitioner has clarified that the Petition is confined to seeking parity in treatment by GETCO between the consumers of TPL and those of the State DISCOMs, referring to the latter only as a regulatory precedent and not as parties against whom any adverse relief is sought. The Petitioner further submitted that since the SLDC functions as a nodal unit of GETCO and no independent relief is claimed against it, accordingly, the question of non-joinder of either the State DISCOMs or SLDC does not arise. The Petitioner has relied on para 17 of the Judgement of Hon'ble Supreme Court in the matter of *LIC Vs. Gangadhar Vishwanath Ranade* [(1989) 4 SCC 297].

16. In this regard, we observe that the Petitioner has not sought any relief against the State Discoms and any other party. Further, the STOA charges recovered by SLDC are approved by this Commission in the Tariff Order of the Respondent, GETCO. SLDC is only a nodal agency for STOA as designated by this Commission under GERC Open Access Regulations read with GERC Tariff Regulations. In our view, such Collection Agency does not have any locus standi as decision to give

differential treatment is taken by GETCO and role of SLDC is only to collect the STOA Charges on behalf of GETCO. Further, the Petitioner has not sought any relief against SLDC.

17. We have also noted the Judgement of Hon'ble Supreme Court in the matter of *LIC Vs. Gangadhar Vishwanath Ranade* [(1989) 4 SCC 297] cited by the Petitioner. In the said matter, the Hon'ble Supreme Court has decided not to make ITO a necessary party since no relief was sought against the ITO. In our view, the ratio of the said judgement is clearly applicable in the present case since the Petitioner has not sought any relief against State Discoms, SLDC or any other party. Under the circumstances, we hold that the contention raised by GETCO regarding non-joinder of SLDC, State Discoms etc. is not correct and that the Petition is maintainable.

18. The Petitioner has sought refund of past period STOA charges as recovered by GETCO from TPL for the period FY 2017-18 to FY 2024-25 and implementation of uniform treatment for STOA Charges. In this regard, GETCO has raised issue of limitation and contended that the Petition is time barred. According to GETCO the matter pertains to a long-standing and settled practice. GETCO has also contended that this Commission was aware about mechanism being followed by GETCO for recovery of Transmission Charges.

19. Per Contra, the Petitioner refuted the contention of GETCO stating that recovery of STU STOA Charges being continuous activity, there is no question of limitation. The Petitioner has also referred the order of this Commission in Petition no. 1740 of 2018 dated 22.07.2020. In the said Order, we have allowed SLDC to raise supplementary invoices for correcting the bills of the past periods. The Petitioner has also highlighted that it came to know about such differential treatment for the first time during the proceedings of Petition no. 2419/2024 – GETCO MYT Tariff. The Petitioner has clarified that it is not a contentious matter but a tariff related issue on principle of non-discriminatory actions mandated to be undertaken by GETCO. The Petitioner has also referred Para 13 to 15 of the Judgement of Hon'ble Supreme Court in the matter of *Samruddhi Coop. Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction (P) Ltd.* *[(2022) 4 SCC 103]* and submitted that use of transmission system, raising of bills by GETCO, payment thereof by inter alia Distribution Licensee, all reveal a continuous action within the ambit of Section 22 of Limitation Act, 1963.

20. GETCO has relied on Transmission Service Agreement (TSA) dated 01.04.2005 between GETCO, GUVNL and State Gencos to claim differential treatment for State Discoms. However, we have observed that this TSA was brought to our notice first time during the process of

this Petition and was not relied upon even during the proceedings of original Tariff Petition i.e. Case No. 2419 of 2024. Also, such TSA is only an understanding between these entities which cannot be in contradiction to the Regulatory Framework. In fact, we took note of importance of the aspect of STOA Charges raised by the Petitioner during the GETCO Tariff Petition and asked the Petitioner to file separate Petition so as to analyse the same in detail and decide the issue accordingly.

We have considered the views of both the Parties. In _Samruddhi Coop. Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction (P) Ltd._ *[(2022) 4 SCC 103],* the Hon'ble Supreme Court has dealt with the issue of limitation. As per Section 22 of the Limitation Act, 1963, for a continuing breach of contract or a continuing tort, a new period of limitation begins to run at every moment the breach or tort continues. This means a person can file a lawsuit as long as the wrongful act or breach is ongoing, as the limitation period is reset each day. Additionally, we have also observed that limitation, if any, will not be applicable in respect of the Commission's powers or functions which may be administrative and Regulatory in nature. In our Order dated 22.07.2020 Petition no. 1740 of 2018 (TPL Vs. SLDC), we held that supplementary invoices raised by

SLDC for correcting the bills of the past periods are not only lawful but also justified.

Under the circumstances, we do not agree with the contention of the GETCO that the Petition is time barred or it should be prospective only. In our view, the issue raised pertains to continuing wrongdoing and not related to any tariff determination or amendment of Tariff Order dated 29.03.2025. This settles the issue related to limitation.

21. Now we deal with the issue about uniform treatment in respect of payment of Transmission Charges for all the Open Access Customers in the State. In the GERC Open Access Regulations, 2011, the Commission has defined "Open Access Customer" as follows:

""Open access customer" means a consumer, trader, distribution licensee or a generating company who has been granted open access under these regulations"

22. Further, Regulation 21 of GERC Open Access Regulations, 2011, prescribes the Transmission Charges Payable by the "Open Access Customers". This Regulation clearly includes distribution licensee as Open Access Customers without distinguishing between State Discoms and any other Distribution Licensee. Thus, there is no discrimination envisaged in the Regulations in terms of recovery of Short-term Open

Access Transmission Charges for the Petitioner as compared to State Discoms.

23. We note that GETCO has relied on Transmission Service Agreement (TSA) dated 01.04.2005 between GETCO, GUVNL and State Gencos to claim differential treatment for State Discoms. However, as noted above, the TSA is only an understanding between these entities which cannot be in contradiction to the Regulatory Framework. We have also observed that even TSA has taken note of the Regulatory Framework and ensured that Transmission Charges shall be as specified by the Commission. However, methodology being followed by GETCO is not in line with Regulatory Framework prescribed by this Commission.

24. GETCO referred to CERC Open Access Regulations, 2008 and claimed that State Discoms are exempted from payment of Short-Term Open Access Charges of STU. We are unable to accept such argument. Electricity is a concurrent subject and Open Access including its charges for Intra-State Network in Gujarat falls within the ambit of this Commission. Further, there is no such mandate through Rules or otherwise mandating this Commission to follow CERC Regulation in terms of Transmission Charges.

We would also like to highlight that this Commission was never apprised by GETCO/ SLDC about existence of some TSA or following different

Open Access mechanism including exempting State Discoms from payment of Short-Term Transmission Charges as per CERC Regulations. For time being, even assuming that the CERC Regulations 2008 was applicable, we are unable to understand why GETCO continued exempting State Discoms even after repeal of the CERC Open Access Regulations, 2008 with the implementation of CERC GNA Regulations w.e.f 01.04.2022. In our view, GETCO has defeated its own arguments by stating applicability of CERC Regulation 2008 and not following the Regulation after its repeal. In any case, repeal of CERC Open Access Regulations 2008 has no relevance in the present case as the same is not applicable for Intra-State Open Access Charges. Thus, we make it clear that GERC Open Access Regulations are uniformly applicable to State Discoms as well as TPL Discoms. There cannot be any deviation in the Regulations for State Discoms. We would also like to point out that earlier, State Discoms including GUVNL approached this Commission seeking deviation from the Open Access Regulations to consider all the State Discoms as a Single Entity for the purpose of UI/ ABT. However, this Commission did not accede to the request of the State Discoms. In present case, GETCO did not seek any approval for deviation and continued with contradiction of the GERC Open Access Regulations in the garb of TSA. GETCO has also referred to Regulation 46 of GERC Open

Access Regulation 2011 to claim that TSA, being existing agreement, is applicable. We would like to make it clear that any agreement made has to be in consonance with the Regulatory Framework prevailing at the time of making such agreement. The GETCO has claimed that there is no contradiction. However, GETCO's submission itself clarifies that it gives access to entire network to State DISCOMs without any limitation as against Point to Point Open Access to other DISCOMs. Same is contrary to GERC OA Regulations. Thus, said TSA completely ignored the Regulatory Framework. In fact, GETCO has repeatedly claimed that as per TSA there is no such phenomenon as Long term, Medium Term or Short Term for the State Discoms. It is clear that without GETCO/ SLDC's approval to procure power from Short Term Market, the Power Exchange cannot allow State DISCOMs to participate and State DISCOMs cannot schedule the power from Short Term sources. This appears to be non-compliance of the Regulations and therefore question of such TSA being valid does not arise.

25. The Commission has prescribed Open Access Regulations whereby all the Open Access Customers are required to pay transmission charges for Identified Open Access Transection. As per the Regulation, each Open Access transaction has definite injection source. In view of above, we

hold that GETCO is required to follow and adhere to provisions of Open Access Regulations uniformly for all Open Access Customers.

GETCO has referred Hon'ble Supreme Court Judgements in the matter of *State of West Bengal v. Anwar Ali Sarkar [AIR 1952 SC 75], Kallakkurichi Taluk Retired Officials Association, Tamil Nadu and others v. State of Tamil Nadu [(2013) 2 SCC 772], Murthy Match Works v. CCE, [(1974) 4 SCC 428], Budhan Choudhry v. State of Bihar, [(1955) 1 SCR 1045] and Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594 etc.* Based on these Judgements, GETCO has claimed that differential treatment to State Discoms is not discrimination but a valid distinction to have reasonable classification. GETCO has also referred to decision of Hon'ble Supreme Court in *UP Power Corpn. Ltd. V. Ayodhya Prasad Mishra [(2008) 10 SCC 139 Para 40] and Venkateshwara Theatre v. State of A.P. [(1993) 3 SCC 677 Para 23*]. Per contra, the Petitioner has referred *Sukanya Shantha Vs. Union of India [(2024) SCC Online SC 2694)* - (Para 26, 33 & 34)] and stated that Article 14 of Constitution of India explains the concept of Equality that classification must be on intelligible differentia and the differentia must have rational relation. In our view, even if any classification is to be made, only this Commission is empowered to do so. The Respondent GETCO could not have assumed the role of this Commission itself and create any classification and that too without any knowledge or approval of this Commission. Under the circumstances, the judgements quoted by GETCO are clearly not applicable in the present case. Further, such an action by the Respondent GETCO to consider differential treatment to the State Discoms under the guise of TSA is contrary to Regulations framed by this Commission for Open Access in the State of Gujarat wherein all the Distribution Licensees are required to be treated without any discrimination. At this juncture, it is pertinent to refer Hon'ble Supreme Court Judgement in **PTC Vs. CERC [(2010) 4 SCC 603].** In the said Judgment, the Hon'ble Supreme Court has clearly held that Regulations are in the nature of subordinate legislation and makes inroads even into the existing contracts. Even the TSA also provides that same is to be amended as per the Regulations. *Relevant extract of the TSA is reproduced hereinbelow:*

"WHEREAS

.....

(14) TRANSCO, GENCO, GUVNL and Discoms are and shall continue to be under the regulatory control of the State Commission and have to act and undertake their respective functions as per the directions and orders which the State Commission may issue from time to time and the regulations which the State Commission may frame from time to time, including in regard to the tariffs, terms and conditions for the sale and supply of electricity or for transmission of electricity; and"

Hence, if there is any inconsistency in TSA & Regulations, the Regulations will prevail which mandates equal treatment for all the

Open Access Customers. In any case, we have already made it clear that TSA is the internal document between the Parties and is not a valid document in the Regulatory Framework, particularly, when the same has not been approved by this Commission.

26. As regards refund of STOA Charges paid by TPL for past period, we have noted that TPL has direct connectivity with ISTS Network. TPL has also claimed that it does not utilise State Network for short term Open Access and stated that the same can be verified by GETCO from the data available with GETCO. GETCO is the owner of Transmission Network and has details of imports/ exports at various interconnection points with ISTS as well as TPL. In our view, the aspect of intelligible differentia also supports the prayer of the Petitioner for refund of STOA charges, particularly when the Petitioner has not been utilizing the Intra-state Network of GETCO for sourcing of power through STOA in addition to the ground to give uniform treatment to the consumers of State DISCOMs and TPL. Accordingly, we direct GETCO to verify the claim of TPL within 2 months from the date of this order. Upon verification of STOA charges recovered from TPL, GETCO should refund such STOA Charges paid for procurement of inter-state bilateral and Power Exchange Transactions starting from 01.04.2017 till the date of this

Order for Inter-State Short Term Bilateral and Power Exchange Open Access Transactions **in six equal monthly** instalments.

27. In view of foregoing, we order as follows:

(a) GETCO shall adhere to Open Access mechanism for grant of Short Term Open access and levy of STOA charges without any discrimination in line with the provisions of GERC Open Access Regulations.

(b) GETCO/ SLDC is directed to implement the decision in Para No (a) above and file compliance affidavit within **2 months** from the date of this Order.

(c) GETCO/SLDC shall verify the claims of the Petitioners and refund the STOA Charges recovered from TPL- Ahmedabad and Surat for Inter-State Short Term Bilateral and Power Exchange Open Access Transactions w.e.f. 01.04.2017 till the date of this Order to pass on to TPL Ahmedabad and Surat consumers.

28. We order accordingly.

29. With this order, the petition stands disposed of.

Sd/-
[S.R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 10/11/2025