

**GUJARAT ELECTRICITY REGULATORY COMMISSION
BEFORE THE ELECTRICITY OMBUDSMAN, GUJARAT STATE
Polytechnic Compound, Barrack No.3, Ambawadi,
Ahmedabad-380015**

CASE NO. 117/2016

Appellant: M/s. T. T. Limited
(Unit: Gopeshwar Spinning Mill)
Rajula-Mahuva National Highway
Nr. Reliance Petrol Pump
Post: Kadiyari-365560. Ta. Rajula. Dist. Amreli.

Represented by: Shri Vikrambhai L. Shah, Authorized representative.

V/s.

Respondent: Executive Engineer
Paschim Gujarat Vij Company Ltd.,
Division Office, Savarkundla-364515.
Dist. Amreli

Represented by: Shri A.B.Jani, DE, PGVCL,Savarkundla Divn.Office.

:::PROCEEDINGS:::

- 1.0.** The Appellant had submitted representation aggrieving with the order No. 4227 dated 22.08.2016 passed by the Consumer Grievances Redressal Forum, PGVCL, Bhavnagar, in case No.65/2016-17. The representation was registered at this office as Case No.117/2016. The hearing of this case was kept on 20.10.2016.
- 2.0.** The Appellant has represented the case as under.
 - 2.1.** Appellant, M/s. T.T. Limited is having HT connection, at village Kadiyali, Taluka Rajula, bearing No. 43133 in the name of Gopeshwar Spinning Mill, with contracted demand of 2450 KVA under HTP-I tariff, since 2009. The electricity is used to produce textiles yarn and related products. Appellant is having an another HT connection in the name of M/s. Rajula Spinning Mill, bearing connection No. 43149, which was released in the year 2013 with contracted demand of 2400 KVA. The said connection exists in adjacent survey No. 88 of said village.

2.2. On 08.06.2015 Appellant had received notice from Executive Engineer, PGVCL, Savarkundla for merging of above two connections, which was replied by Appellant on 15.06.2016 and explained the situation of Appellant. Respondent had rejected the plea of Appellant vide letter dated 06.07.2015 and started billing by merging demand and units of both the connections. A loss of 11.11% is added on addition of units in respect of both connections.

Under the above circumstances, Appellant was agreed with the illegal demand of merger of both the connections and had applied for load extension at 66KV and for that work is in progress.

Respondent has issued combined bills for both the connections considering them as merged with penalty of 11.11%, which creates financial havoc to the Appellant. Appellant has appealed against the merger notice issued by Respondent and for cancellation of merger notice.

2.3. Appellant has submitted below mentioned grounds:

(1) CGRF has concluded that the action taken by Respondent for recovery of losses, i.e. 11.11% from Appellant, is in order, which is not correct looking to the provision of Section 2.21 of Notification No.2 of 2011.

“Forum(s) while dealing with the Complaints/Grievances shall follow the principles of natural justice, including, inter alia, the following:

- i. it shall protect the interest of Consumers;*
- ii. it shall inform Consumers of their rights;*
- iii. it shall facilitate and expedite the redressal of Complaints/Grievances;*
- iv. it shall ensure that Consumers can also have a remedy in the event of failure or delay on the part of the Distribution Licensee in redressing their Complaints/Grievances.”*

As per above provisions Forum should protect the interest of consumer. In this case in spite of giving all evidences Forum has not considered the plea of Appellant.

In the conclusion of Forum order it is stated that “In this case plaintiff has accepted the merger and demanded for 66KV (EHV) connection and now work is in progress. So the issue is not required for any order from CGRF.” Appellant has stated that he has challenged the

authenticity of merger notice issued by Respondent and he has opted EHV connection but CGRF has not gone in the details of the issue.

- (2) Appellant has referred the Section 2.44 of Notification No.2 of 2011 and raised doubt regarding legal authenticity of action taken by Respondent.

“After considering the Complaint/Grievance submitted by the Consumer, issue-wise comments on the Complaint/Grievance submitted by the Distribution Licensee, all other records available, the Forum shall complete the enquiry as expeditiously as possible and every endeavour shall be made by the Forum to pass appropriate order, on the Complaint/Grievance for its redressal within a maximum period of 45 days from the date of receipt of the Grievance by the Forum.”

Respondent has not replied the query raised by Appellant and CGRF has not considered plea of Appellant. Looking to the above Regulations, there is an error in face of record in the order issued by CGRF.

- (3) It is stated that in CGRF order, Forum has combined the load of both the connections, i.e. M/s. Gopeshwar Spinning Mill- 2450 KVA and M/s. Rajula Spinning Mill-2400KVA, as the ultimate owner of both the companies are same. The demand considered as merged by PGVCL and endorsed by CGRF without considering any legal provisions, is illegal. CGRF has mentioned that matter is pending at various higher levels, even though the decision is given in the favour of Respondent, which is against the spirit of judiciary.
- (4) Both the connections of owner M/s. T. T. Limited are released by Respondent after due scrutiny of applications and audit of the file. The Regulations under which they are proposing merger was in existence since the year 2005, yet the connections are released by Respondent. It is stated that the consumer appellant has spent millions of rupees on infrastructure has got right to know about the circumstances which led to release of connection as well as merging of connections. In the correspondence it is said by Respondent that CAG has commented on such connections but CAG comments does

not mean that legally released connections should be recalled. So there is an error by CGRF in this issue.

- (5) It is stated in the CGRF order that Respondent has incurred high losses in supplying power at lower voltage level i.e. 11KV to M/s. Gopeshwar Spinning Mill and M/s. Rajula Spinning Mill. These losses should be recovered from the Appellant as per Forum order. The losses can be calculated in two ways. (i) Measurement of actual losses (ii) calculation of theoretical losses of the line.

The power is catered exclusively to both the above connections from 11KV Gopeshwar feeder. The losses occurred in supplying power to above connections can be calculated with different methods.

- (i) Actual losses for supplying power on 11KV feeder = (Reading difference of penal meter of 11KV opeshwar feeder) – { consumption of Gopewshwar Spinning Mill + consumption of Rajula Spinning Mill } for same period.
- (ii) Theoretical losses on 11KV feeder = {average current of feeder during the month}² x Resistance of the conductors of the feeder}.

In place of applying the simple formula mentioned above, Respondent PGVCL had applied a historical formula used in calculating cross subsidy and additional surcharge of open access consumer. On the above formula also they had added an additional 11.11% (not 1.11% as mentioned) on above just to top up the figure. The total distribution losses including LT and HT losses of other Distribution companies of Gujarat are around or less than 10%. The losses on HT side to be collected at 11.11% is nothing but act of converting monopolistic power in to profit.

- (6) CGRF in its order has stated that “if the power would have supplied at 66KV, the infrastructure installed by Respondent would have been used for supplying power to other consumers besides increases available margin in the infrastructure.” For getting connection

infrastructure is erected under ND scheme for which total expenses are incurred by Appellant. The infrastructure cost should have been saved if at first stage Respondent would have declared that the power to the connections is required to be catered in 66KV voltage level. Respondent should be instructed to refund the amount paid by Appellant for erecting infrastructure at 11KV side as per the estimate served by the Respondent for both the connections.

2.4. Appellant has submitted main arguments against merger notice and additional penalty of 11.11 %, as explained before CGRF, which are summarized as under.

- (1) The merger of connection is not mentioned in Electricity Act, 2003 or any of the GERC Notifications. The Supply Code suggested vide Regulations 4.1.17 that two connections can be released in one premises under certain conditions, but it is not suggested that under which circumstances such connections should be merged after release of the same. This Clause is not applicable after release of connection.
- (2) In case of merger notice issued procedure to be followed is not defined in any Regulations. It is also not mentioned regarding refund of estimated amount which was paid at the time of getting original connection.
- (3) In the case of Appellant without giving any chance to confirm the documents of separate legal entity the merger notice is issued. The definition of separate legal entity is separate accounting practice. When both the adjacent units of M/s. T.T. Limited are different entities, as per the conditions mentioned in Supply Code, the Respondent should have allowed us second meter in single premises.
- (4) The second connection of M/s. Rajula Spinning Mill was released by Respondent after due scrutiny of application and documents. If the same is not legal, then action should be initiated against the authorities who had sanctioned and released the connection.

- (5) The premises of two connections (1) M/s. Gopeshwar Spinning Mill and (2) M/s. Rajula Spinning Mill are considered to be adjacent premises, while Section 4.1.17 is related to single premises.
- (6) After release of connection Regulation 4.1.17 is not applicable but Regulation 3.5.1 is applicable for any change in the status of connection. The procedure under this Regulations is not followed by Respondent so the merger notice issued by Respondent should be quashed.
- (7) The merger notice is given in discriminatory matter. Many connections including LT connections are not served with the merger notice while only selected connections were served with such notice. In fact, some LT connections were released in the same premises with same name and entity.
- (8) It is stated that in many connections to whom merger notice is issued. In case of Appellant Respondent has issued bill with merging of demand and units for two separate connections.
- (9) Respondent has collected 11.11% losses over and above the real consumption with merging of two connections, which is not decided by GERC in tariff order. There is no provision in the tariff schedule declared by GERC on 31.03.2016 to allow distribution licensee to collect such losses from the consumer.
- (10) Appellant has referred the order of Petition No.1305 of 2015 and stated that Respondent has not educated the Appellant regarding collection of charges and applicable tariff.
- (11) Appellant has referred Section No. 45(2) of the Electricity Act,2003 and stated that Respondent has violated this provision, so such bills issued should be quashed and actual bills as per tariff formula should be issued.

2.5. It is prayed by Appellant as under:

- (1) CGRF order dated 22.08.2016 should be quashed.
- (2) Notice for merger of two connections should be cancelled as both the connections are having different entity.
- (3) Respondent should be instructed to stop discriminatory action against Appellant by issuing merger notice and additional bill with illegal losses and merged units.
- (4) To refund the merged bill amount which is collected by Respondent, with interest.
- (5) The loss factor of 11.11% added in the bill should be cancelled.

3.0. Respondent has represented the case as under.

- 3.1. M/s. Gopeshwar Spinning Mill (Unit of M/s. T.T. Limited) is a HT consumer of Respondent, having contracted demand of 2450 KVA. M/s. Rajula Spinning Mills is also HT consumer of Respondent with contracted demand of 2400KVA. Both the connections are situated at village Kadiyali of Rajula taluka and adjacent to each other i.e. within same premises and also supplied at 11KV voltage level.
- 3.2. M/s. Gopeshwar Spinning Mill (Unit of M/s. T.T. Limited) and M/s. Rajula Spinning Mills are two different Divisions of M/s. T.T. Limited owned and operated by same legal entity. The total contracted demand of M/s. Gopeshwar Spinning Mill and M/s. Rajula Spinning Mills together is 4850 KVA, which is quite higher than maximum permissible demand as per Provisions of Electricity Supply Code which can be catered at 11KV level, i.e. 4000 KVA.
- 3.3. Therefore, M/s. T.T. Limited was required to enhance its contracted demand instead of going for separate connection. While getting the connection in respect of M/s. Rajula Spinning Mills, CAG has also raised the Paras for similar kind of consumers.
- 3.4. To avoid the revenue leakage of the Respondent the energy bill was required to be issued considering it virtually a single connection being supplied at appropriate voltage level, i.e. by adding energy consumption of both the

connections and also by adding actual maximum demand of both the connections as if supply at 66KV voltage level.

- 3.5. Respondent has incurred higher level losses in the present situation in supplying two different demands at lower voltage level which otherwise would have been supplied at high voltage level i.e. 66KV voltage level, and also infrastructure installed by Respondent could have been utilized for supplying power to other consumers besides increase in available margin in the power transformer.
- 3.6. It is stated that it has been recognized in the Supply Code too. Therefore, it is also required to recover additional loss occurred in supplying power supply in the present situation. The loss level of 10% for energy input at 11KV level and energy drawl at 11KV level has been specified by Hon'ble Commission in the Tariff order issued time to time, which ultimately mean 11.11% if apply on energy measured at consumer end. Thus Respondent has rightly recovered losses i.e. 11.11% from Appellant.
- 3.7. It is stated that in view of Respondent merely recovering the energy bill as if a single connection for the total energy consumption and on total actual maximum demand would never incentivize the consumer for actually shifting to high voltage level for its final contract demand as per its requirement at appropriate voltage level as per Provisions of Supply Code, if the additional loss incurred by Respondent, is not recovered from the Appellant.

::ORDER::

- 4.0. I have considered the contentions of the Appellant and the Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.
- 4.1. It is prayed by Appellant that Notice for merger of two connections should be cancelled as both the connections are having different entity. Respondent has submitted that Appellant M/s. T.T. Limited owned and operated two different divisions namely (1) M/s. Gopeshwar Ginning Mills, 2450 KVA and (2) M/s. Rajula Spinning Mills, 2400KVA, at village Kadiyali

of Rajula taluka. Both units are adjacent to each other, supplied at 11KV voltage level.

M/s. T.T. Limited is one legal entity having two units adjacent to each other having two HT connections supplied at 11KV voltage level, having total contracted load of 4850 KVA of both the connections.

- 4.2. While getting application for waiver of electricity duty for HT connection No. HT-43149 of M/s. Rajula Spinning Mills, Collector of Electricity Duty, Gandhinagar has observed as under:

M/s. Rajula Spinning Mills, HT-43149, 2400 KVA, connection was released on 06.07.2013.

M/s. Gopeshwar Spinning Mills, HT-43133, 2450 KVA, connection was situated adjacent to M/s. Rajula Spinning Mill, HT 43149, and was released on 23.07.2009. Both HT connections are owned and operated by Appellant M/s. T.T.Ltd.

Collector of Electricity Duty has asked clarification of Respondent against release of HT connection of M/s Rajula Spinning Mills adjacent to M/s. Gopeshwar Spinning Mills (M/s. T.T. Limited). Thereafter the present issue is developed.

- 4.3. Appellant has produced documents of both HT connections as under:

- (1) M/s. Gopeshwar Spinning Mills, Survey No.89, Kadiyali.
 - (a) GoG, Commercial Tax Department, Certificate of Registration No. 24092703103.
Name of Business: T.T.Limited
 - (b) License to work a factory: Registration No. 215/17111/2009, License No. 9299.
- (2) M/s. Gopeshwar Spinning Mills, Survey No.88, Kadiyali.
 - (a) GoG, Commercial Tax Department Certificate of Registration No. 24131300890 in the name of M/s. Rajula Spinning Mills. At LS No.87 and 88 at Kadiyali of Amreli District. Date of effect 17.01.2012.
 - (b) Directorate Industrial Safety & Health, Gujarat License to work a factory.
Rajula Spinning Mills (Prop. T.T.Limited).
Reg. No.292/13111/2013. License No.21539

- (3) Namuna No.8A, Khata No. 353, Kadiyali. Shows Block/Survey No. 84/P1, 84/P2, 87/P2, 87/P3, 87/P4, 87/P5, 88, 89/P1, 89/P2, 90/P4, 100/P1, in the name of M/s. T.T. Limited, New Delhi, M.D. & Chairman Shri Rikhauchand Jain, 210907.

In the above case both HT connections were released after enactment of Electricity Supply Code Regulations, 2005, Notification No.11 of 2005, published by GERC on 31.03.2005.

- 4.4. It is also observed from the revenue documents submitted by Appellant, i.e. 8A Utara and Index copy, the survey numbers where above both the connections are situated are in the name of M/s. T. T. Limited.

- 4.5. CGRF, PGVCL, Bhavnagar has noted in its order as under:

“As per plaintiff representation the issue of merger is pending at various authorities like GERC and High Court.

- SCA No.464/2013, M/s. Arvee Denim V/s UGVCL in which stay is granted by High Court against merger.
- SCA No.347/2016, Bhavnagar Salt V/s PGVCL in which stay is granted by High Court.
- GERC Petition No.1566/2016, Acrysil Limited V/s. PGVCL is pending.

In this case Plaintiff has accepted the merger and demanded for 66KV (EHV) connection and now work is under progress.

- 4.6. Aggrieved by order of Electricity Ombudsman in case No.103/2015 filed by M/s. Acrysil Limited, Petition had been filed before Hon'ble Commission which was admitted as Petition No. 1566 of 2016 and observed in Para-5 that *“limited issue in the case is of interpretation of Clause 4.1.17 of GERC (Electricity Supply Code and Related Matters) Regulations 2005.”*
- 4.7. Hon'ble High Court has passed Oral Order dated 06.01.2014 in LPA No. 1483 of 2013 mentioning that *“The question that arises for consideration in the present Letters Patent Appeal is about the interpretation of the Clause 4.1.17 of the Electric Supply Code,2005 which provides that the Distribution Licensee shall not provide more than one connection/ meter for one premises. Where subsequently, if the consumer purchases another premises which is*

adjacent to it. Whether it can be termed as one premises or two different premises, though earlier, the Distribution Licensee has provided two different electric connections to both the premises.

Prima facia, it appears to us that both the premises are different though the consumer is one and, therefore, in our prima facia opinion, the view taken by the Learned Single Judge that since the consumer is one, the adjoining premises has to be clubbed as one premises, appears to be erroneous.”

The said matter is pending before Hon’ble High Court of Gujarat.

The similar issue is involved in the present representation and same is sub judice before Hon’ble High Court of Gujarat.”

- 4.8. Issue of merger of both HT connections is after raising the query by Collector of Electricity Duty, Gandhinagar and notice served by Respondent. Appellant has accepted the energy bill w.e.f. July,2015 with merger of both HT connections and challenged the portion of calculation of energy bill with additional losses of 11.11% in the energy bill. Appellant has submitted various letters to Respondent from July,2015, objecting the merger of bills issued by Respondent.

In objection letter Appellant has stated as under:

“Without prejudice, we propose as under:

- (1) We have no objection in joint/combine billing of three connections (Connection No.43133, 43149 and 85336/00838/ 9) but tariff should be individually applicable until the billing conditions are mutually fulfilled.*
- (2) A time of six months be allowed for merger of all three connections and migrating from 11KVA line to 66KVA line.*
- (3) Until 66KVA line feeder become operative, all conditions, including tariff, would remain same as in the month of April, 2015.*
- (4) We request you to maintain status quo and revise the bill as per independent connection”.*

Thus, as per above, Appellant has accepted joint/combine billing of all connections. The issue of merger of connections substantially raised by Appellant before CGRF.

4.9. The issue is of merging of bills of both HT connections with additional charges of 11.11%.

Both the HT connections are adjacent to each other having contracted load as under:

M/s. Gopeshwar Spinning Mills:	2450 KVA
M/s. Rajula Spinning Mills:	<u>2400 KVA</u>
Total:	4850 KVA.

Both HT connections are feed from 11KV voltage level. By way of clubbing both HT connections, total contracted demand would become 4850 KVA.

As per Amendment dated 20.06.2012 of GERC Supply Code Regulations, 2005, Clause 3.1.2(c) states "11KV, 22KV Three phase":

- *for all installations with contract demand exceeding 100 KVA/KW and up to 4000 KVA/KW."*

"In case of existing consumers drawing power at lower voltages, if due to the additional requirement they cross the threshold limit of load, in such cases the Licensee may, as far as possible, make commercially viable offer to the consumer so that he opts for the next higher voltage of supply.

The commercial offer may be framed taking into consideration the following:

(a) Likely reduction in Transmission and Distribution losses.

(b) Load reduction on transformers of Licensee's system and their availability for meeting new requirements.

However, supply to existing consumers at voltage lower than the limit specified above should be continued and in case their load requirement increase, the above specified load limit will be applicable."

Respondent has started monthly billing with merger of two HT connections.

The contracted demand exceeds 4000 KVA under 11KV voltage level as specified in Supply Code, Appellant has been informed to opt 66KV voltage level. The merger of both HT connections with additional charges i.e. 11.11%, worked out by Respondent stating the content as mentioned in Para No. 3.6.

4.10. In present case, Appellant has earlier objected the action of Respondent and submitted letters to Respondent every month after receipt of monthly energy bill with merger of both HT connections. In said letter, Appellant has asked time limit for six months to be allowed for merger of all connections and migrating from 11KV line to 66KV line. It has been also noted in letter

of appellant that until 66KV feeder becomes operative, all conditions including tariff would remain same as it was in the month of April,2015.

It is also to note here that Respondent has acted for merger of both HT connections which are fed from 11KV feeder and are adjacent to each other of same owner M/s. T.T.Limited.

In present case, as per objection letters, it seems that consent has been given for combine/joint billing of both connections and time of six months asked by Appellant for merger of connections and migrating from 11KV to 66KV line.

Looking to the above mentioned amended Clause No. 3.1.2(c) Respondent should have granted period for merger of connections and migration from 11KV line to 66KV line.

The validity of additional charges of 11.11% in the merging of HT connection bill is the issue concerned if billing on 11KV side as per HTP tariff.

The physical merger of both HT connections have not taken place as for that 66KV line erection and shifting of connection from 11KV voltage class to 66KV voltage class are needed. In the present position clubbed bills of both HT connections are being prepared with taking of 11.11% additional charges in the energy bills.

- 4.11. The merger issue is challenged by Appellant even after opting combined/joint bills of 2 No. of HT connections with option of laying 66KV line at his level. Whether same is permissible or not is needed to be verified by the interpretation of the provisions of the GERC Electricity Supply Code & Related Matters Regulations,2005 and provisions of Electricity Act,2003. Further the issue pertains to the recovery of 11.11% charges in addition to monthly energy bill by the Respondent and whether such recovery is legal and valid or not?

It is clarified that the Licensees are eligible for recover the tariff from the consumers as determined, decided and approved by the Commission in its tariff order. This issue also needs to be determined with consideration of

the tariff schedule approved by the Commission for different consumers' tariff rate applicable to them, additional charges, penalty, if any imposed on the consumers, who violate certain conditions lay down in tariff like P.F. penalty/rebate. Thus in the present case also the issue whether the additional charges of 11.11% charged by the Respondent is legal or not is required to be decided based on tariff order of the Commission with interpretation of tariff scheduled in order and provisions of it and tariff regulation notified by the commission falls in the jurisdiction of Hon'ble Gujarat Electricity Regulatory Commission and hence it does not fall in the jurisdiction of Electricity Ombudsman. Thus the present appeal is not admitted.

4.12. Considering the above observations, the issue of merger of both the connections of Appellant, an interpretation of Clause No. 4.1.17 of Electricity Supply Code Regulations, the matter is sub judice and is pending at Hon'ble High Court, as mentioned in Para 4.7.

The issue of recovery of 11.11% additional charges on monthly energy bill by the Respondent falls within the jurisdiction of Hon'ble Commission.

4.13. I order accordingly.

4.14. No order as to costs.

4.15. With this order, representation/Application stands disposed of.

(Dilip Raval)
Electricity Ombudsman
Gujarat State

Ahmedabad.

Date: 09.12.2016.